IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 184

Suit No 214 of 2015

Between

Ng Lay Peng

… *Plaintiff*

And

Gain City Engineering & Consultancy Pte Ltd

… *Defendant*

And

Ng Peng Boon

... *Thirty Party*

And

AXA Insurance Singapore Pte Ltd

... *Intervener*

JUDGMENT

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

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Ng Lay Peng
v
Gain City Engineering & Consultancy Pte Ltd (Ng Peng Boon, third party) (AXA Insurance Singapore Pte Ltd, intervener)

[2018] SGHC 184

High Court — Suit No 214 of 2015
Andrew Ang SJ
31 January, 1, 2, 8 February, 29–31 May, 1, 2 June 2017; 3 November 2017

23 August 2018 Judgment reserved.

Andrew Ang SJ:

Introduction

1 The Plaintiff's claim is for damages for personal injuries and consequential losses arising from a traffic accident on 25 July 2012.

2 The Plaintiff was a front seat passenger in the Third Party's (her husband's) car.[1] The accident occurred at an uncontrolled road junction in an industrial park. The nature and extent of damage caused to the Defendant's van (GV 9457H) and Third Party's car (SJY 2597G) suggest a light contact between the two vehicles. What happened on 25 July 2012 was a minor accident.[2]

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1 AEIC of Ng Lay Peng dated 10 October 2016 ("NLP") at para 3.

2 AEIC of Koay Hean Lye Kelvin dated 19 January 2016 ("KHLK") at para 36.

3 Consent Interlocutory Judgment was entered at 100% liability against the Defendant with a 25% indemnity from the Third Party.[3] I note that the Consent Interlocutory Judgment was agreed to be without prejudice to DC Suit No 107 of 2014 which is the claim of the Third Party against the Defendant.

4 The Intervener is the motor insurer of the Third Party. It applied to join in these proceedings as an additional party when the Third Party agreed to give evidence as Plaintiff's witness. This was to enable its counsel to cross-examine the Third Party.[4] This notwithstanding, the Intervener confirmed that it was not repudiating its coverage of the Third Party. The Defendant and the Third Party jointly tendered a set of closing submissions ("the Defendants' Closing Submissions") and for ease of reference I shall refer to them collectively as "the Defendants".

5 I shall deal with the claims in the following order:

General Damages for Personal Injuries

Under this head I will deal with:

(a) the physical injuries comprising:

(i) lumbar injury;

(ii) Cauda Equina Syndrome;

(iii) high blood pressure;

(iv) cervical injury; and

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3 NLP at para 4.

4 NE for 8 February 2017 at p 2.

(b) the psychiatric injuries comprising:

(i) Post-Traumatic Stress Disorder; and

(ii) Major Depressive Disorder with anxiety and obsessive compulsive features.

Income Loss – Pre-trial loss and Future loss

Income Loss comprising:

(a) pre-trial loss of earnings; and

(b) loss of future earnings and/or loss of earning capacity.

Special Damages

Special Damages – Pre-trial expenses comprising:

(a) medical and transport expenses;

(b) expenses for domestic maid;

(c) renovation and other expenses.

Future medical and other expenses comprising:

(a) future expenses for engaging domestic worker; and

(b) future medical expenses.

General Damages

Physical injury

(a)(i) Lumbar Injury

6 The Plaintiff did have pain in the lower back before the accident although the parties are not agreed as to the extent to which the Plaintiff's lumbar degeneration was aggravated by the accident (if at all).[5]

7 The Plaintiff had complained of low back ache to her family physician Dr Chang Chee Chea ("Dr Chang") on December 2007 and 2008. She was advised to undergo a general screening in April 2008 and a urine culture in May 2008. The latter revealed a urinary tract infection. In oral evidence Dr Chang attributed the low back pain to the urinary tract infection.[6] The Plaintiff avers that after the urinary tract infection was resolved, she no longer complained of back pain until 8 June 2012 when she saw Dr Eu Kong Weng ("Dr Eu") for a review after surgery for gall stones and haemorrhoids. Dr Eu referred her to an orthopaedic surgeon Dr Hee Hwan Tak ("Dr Hee")[7] whom she saw on 7 June 2012.[8]

8 An MRI of the lumbar spine revealed degenerated L4/L5 disc with posterior annular tear and degenerated L5/S1 disc with focal left prolapse

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5 Plaintiff's closing submissions dated 3 November 2017 ("PCS") at para 2.3; Joint Submissions of the Defendant and the Interveners dated 6 October 2017 ("DCS") at para 12.

6 AEIC of Dr Chang Chee Chea dated 28 October 2016 ("CCC"), CCC-2.

7 AEIC of Dr Eu Kong Weng dated 31 October 2016 ("EKW"), EKW-2.

8 AEIC of Dr Hee Hwan Tak dated 28 October 2016 ("HHT"), HHT-2.

indenting left S1 nerve root and mild narrowing of left exit foramina.[9] The Plaintiff's back pain did not abate after traction, physiotherapy and acupuncture.[10] The Plaintiff finally opted for L4/L5 and L5/S1 percutaneous nucleoplasty and bilateral L5/S1 nerve root blocks on 21 July 2012.[11] According to the Plaintiff, she no longer felt pain in her lower back after the said procedures.[12] Unfortunately she met with the accident four days later on 25 July 2012.

9 According to the Plaintiff, since the accident, she has been hospitalised no fewer than 14 times and has undergone fusion surgery to her lower spine.[13] She uses a crutch to aid her in walking because of pain and weakness in her left leg radiating from her lower spine.[14]

10 Dr Hee and Dr Chang Wei Chun (the Defendants' orthopaedic expert witness) ("Dr WC Chang") agreed that the Plaintiff's back condition was aggravated by the accident but they differed as to the extent of such aggravation with Dr Hee suggesting 50% and Dr WC Chang 15% to 20%. Both experts acknowledged that their estimates were merely rough guides.[15]

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9 DCS at para 21(e); AEIC of Dr Chang Wei Chun dated 22 August 2016 ("CWC") at p 14.

10 HHT-2; Tr/30.05.17/47/3.

11 HHT-2; Tr/01.06.17/79.

12 NLP at paras 7–8.

13 NLP at para 26.

14 NLP at paras 28–30.

15 Tr/01.06.17/86–89, 125; Joint Experts' Report at p 3.

11 Dr WC Chang opined that natural degeneration was a greater contributory factor than the aggravation caused by the accident. He gave the following reasons:[16]

(a) There was only slight contact between the vehicles in the accident.

(b) The Plaintiff sat cocooned in the front seat secured by a seat belt. Her spine was protected as she sat cocooned in the front seat. Any strain to the Plaintiff's back would have been minimal.

(c) In his report, Mr Kelvin Koay, the Defendants' accident reconstruction expert, opined that the force generated at the accident was below the threshold for injury. The Defendants pointed out that there was no mention of Plaintiff sustaining even a bruise on any part of her body.

(d) A comparison of the MRI of her spine before and after the accident showed no change. I note that, by her own account, immediately after the accident the Plaintiff was walking around taking photographs at the accident site. It was only an hour later that day that she sought treatment at Mount Alvernia Hospital complaining of pain.[17] As the Defendants pointed out, such delayed onset of pain was inconsistent with her allegation that she suffered severe traumatic impact to the lower spine as a result of a serious collision.

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16 DCS at paras 13, 15; Joint Experts' Report at pp 3–4.

17 NLP at para 10.

12 The Defendants also challenged the Plaintiff's assertion that after nucleoplasty she no longer felt pain leading to the suggestion that her subsequent condition was caused mainly by the accident.[18] The Defendants submitted that it was too soon to tell whether nucleoplasty had given her long-term relief from back pain.[19] Dr Hee's own evidence was that he would have continued with up to two years of post-operative follow-up monitoring and review.[20]

13 In short, Defendants' submission was that even if there were no accident the Plaintiff would, progressively with age, experience more symptoms of back pain; accordingly, the quantum of damages for aggravation of the back condition could not be the same as that which a healthy person (with no pre-existing back condition) would receive.[21]

14 A case in point is *Teddy, Thomas v Teacly (S) Pte Ltd* [2014] SGHC 226 ("*Teddy Thomas*"). The facts of that case are as follows.

15 On 15 November 2010, the plaintiff, Mr Thomas Teddy, was travelling as a passenger in a taxi when a lorry belonging to the defendant collided into the rear of the taxi. The plaintiff claimed that he did not feel any pain immediately after the accident although he was jerked forward and then flung backwards. Later that evening, he experienced loss of sensation in both his hands and arms.

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18 NLP at para 7.

19 DCS at para 22.

20 DCS at para 22; Tr/01.06.17/121/4–23.

21 DCS at para 22.

16 The plaintiff had suffered a stroke about 11 months earlier on 10 October 2009. He managed to recover from the stroke by December 2009. However, as of March 2010, he began experiencing pain in the neck, weakness in both hands and progressive gait instability. He consulted a neurologist, Dr Tang Kok Foo on 11 May 2010. Dr Tang ordered an MRI of the plaintiff's spine. It revealed that the plaintiff had disc degeneration at three levels (C3/C4, C4/C5 and C5/C6) with very severe cord compression at the lower two levels. Essentially, he diagnosed the plaintiff as suffering from cervical myelopathy and diabetic neuropathy and recommended surgery to stop the cervical myelopathy from getting worse.

17 The plaintiff consulted a neurosurgeon, Dr PK Pillay for a second opinion on 7 July 2010. Dr Pillay also ordered an MRI and on the basis of the MRI findings, he diagnosed the plaintiff with cervical myelo-radiculopathy and also recommended surgery. On 14 July 2010, Dr Pillay performed an "anterior cervical microdisectomy and fusion for C4/5 and C5/6 significant disc protrusions that were causing the myelo-radiculopathy" ("the first surgery"). According to the plaintiff he felt a dramatic improvement in his condition after the first surgery. He claimed to have completely recovered from the first surgery by October 2010, *ie*, one month before the accident.

18 The day after the accident, the plaintiff went to see Dr Pillay because he was concerned that the accident might have had an impact on his spine. An MRI of his cervical spine was done on the same day. In the MRI report, the radiologist stated the following:

> (a) There are fractures of the C4 to C6 vertebral bodies with post-operative changes present.

(b) Posterior central/paracentral disc protrusions at C3/4 to C7/T1 are seen.

19 The plaintiff claimed that he could not feel his hands and that "everything was numb". Dr Pillay carried out urgent surgery on 26 November 2010. According to the plaintiff, there was little improvement after the surgery. Dr Pillay's report dated 18 March 2011, a few months after the second surgery, estimated that the plaintiff had "a 70% permanent disability".

20 At the assessment of damages before an Assistant Registrar ("the AR"), one of the "most hotly contested issues" was whether the plaintiff's injuries and disabilities were caused by the accident or by pre-existing conditions. The AR found that the injuries sustained by the plaintiff were caused by the accident and awarded, *inter alia*, $60,000 for pain and suffering.

21 The defendant's appeal was heard by Prakash J (as she then was). The learned judge accepted the defendant's submissions that the defendant "should not have to compensate the plaintiff for any pain or disabilities he would have suffered regardless of the accident" (at [25]).

22 To decide whether that was indeed the case, she asked three questions pertinent to the facts of the case:

(a) What was the effectiveness of the first surgery in relieving the pain that the plaintiff experienced prior to that surgery?

(b) What was the effectiveness of the first surgery in preventing the plaintiff's cervical spine from degenerating further?

(c) What was the effect of the accident on the cervical spine?

23 In answer to the first question, the learned judge accepted that the plaintiff experienced dramatic improvement after the first surgery. She also found on the balance of probabilities that the first surgery was effective in arresting deterioration of the plaintiff's spine (at [28], [34]). With regard to the third question she found that the fractures were more likely than not caused by the accident (at [36]). Accordingly, the defendant's appeal against the award of damages for pain and suffering was dismissed.

24 Adopting a similar line of inquiry as that adopted by Prakash J in *Teddy Thomas*, the relevant questions are:

(1) Whether the nucleoplasty and bilateral nerve root blocks were effective in relieving the pain in the lumbar spine

25 The Plaintiff reported four pain free days before the accident occurred.[22]

26 Whether the pain relief could have been sustained for a long period is unclear. Dr Hee himself said that he would have continued with up to two years of post-operative follow-up.[23]

(2) Whether the surgery was effective in arresting further spinal degeneration

27 The Defendants submitted that the surgery was for symptomatic/therapeutic pain relief involving the injection of local anaesthetic and steroid into the spinal root and nerve and not intended to prevent further degeneration.[24] Although this may be so, I have not been able to find evidence

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[22] NLP at para 8.

[23] Tr/01.06.17/121/4–23.

[24] DCS at para 33(b).

supporting this submission. Equally, although the plaintiff reported that she was free of pain after Dr Hee's nucleoplasty and nerve root blocks, there was no assertion that the procedure had stopped further degeneration. In fact, Dr Hee himself accepted that 50% of the Plaintiff's condition after the accident had been caused by natural degeneration.

28 I therefore find that the surgery did not prevent further deterioration.

(3) The effect of the accident on the Plaintiff's spine

29 At the time of the accident the Plaintiff was wearing a back support belt affording protection for her back. She was also protected by a seat belt.[25] The accident was a minor collision at low speed. There was no evidence of any injury immediately after impact. She was able to walk around the accident site taking photographs.

30 After the accident, repeat MRI scans were performed. Paragraph 5 of the points agreed between Dr Hee and Dr WC Chang in their Joint Experts' Report states that the repeat MRI scans performed after the accident showed no difference from the pre-accident scans. It also recorded that she had "disc degeneration (pre-existing) at C3-4, C4-5, C5-6 and C6-7 levels, with L4-5 annular tear, left sided L5/S1 disc bulges (pre-existing)".

31 As against that, the Plaintiff's evidence was that she began to experience pain about ten to 15 minutes after the accident and that since the accident she had been hospitalised no fewer than 14 times, undergone major surgery to her

[25] NLP at paras 3, 7.

spine, suffers chronic pain resulting in Cauda Equina Syndrome and high blood pressure. She also averred that the pain affected her sleep.[26]

32 It is perhaps appropriate to state at the outset that the hospitalisation expenses were mostly disallowed for reasons more particularly set out later. In regard to sleep, Dr Tan Tee Yong, her consultant pain specialist suggested that the Plaintiff might be having obstructive sleep apnoea.[27] The medical evidence which I deal with later also does not support her contention that her high blood pressure was caused by the accident.

33 In view of the evidence, I have difficulty in finding that the accident caused any immediate discernible injury to the spine. That said, I note the agreement between the experts in para 7 of the Joint Experts' Report that "[t]here was some aggravation of the Plaintiff's pre-existing cervical and lumbar spondylosis".

34 It follows from the foregoing that damages for pain and suffering caused by the back condition should be reduced to take into account the Plaintiff's pre-existing medical condition.

35 Both Dr Hee and Dr WC Chang acknowledged that the percentage figures they respectively estimated to be the extent of aggravation were merely rough guides. In the circumstances, I will adopt the mean between their estimates, *ie*, 35%.

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26 NLP at paras 10–12.

27 PCS at para 2.17; Plaintiff's Bundle of Documents ("PBD"), volume 1 at p 39.

(a)(ii) Cauda Equina Syndrome

36 As the Plaintiff has included the Cauda Equina Syndrome and high blood pressure in the claim for damages for the lumbar injury, I shall go on to consider the two conditions before deciding on the quantum.

37 About nine months after the accident the Plaintiff reported urinary and fecal incontinence. MRI scans performed on 18 April 2013 revealed severe stenosis at L4/L5 and L5/S1 due to disc protrusion at L4/L5 and sequestrated disc at the L5/S1 interval.[28] Pressure on the nerves from the disc extrusion was the cause of the Cauda Equina Syndrome. On 20 April 2013, Dr Hee performed decompression surgery and fusion of the vertebrae from L4 to S1.[29]

38 Dr Hee's opinion was that the Cauda Equina Syndrome was part of the continuum of degeneration and that it could be due to the patient's age and lifestyle and could also be due to the accident.[30]

39 Dr WC Chang's opinion was that prior to the accident, the Plaintiff already had spinal stenosis and a small slipped disc at L5/S1. He opined that even without the accident, it was possible that the L5/S1 disc would eventually prolapse out to cause Cauda Equina Syndrome.[31]

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28 Joint Experts' Report at para 8.

29 Tr/01.06.17/82–83; Joint Experts' Report at p 4.

30 Tr/01.06.17/111/12–23.

31 DCS at paras 49–50; Tr/01.06.17/111/24–31.

40 However, he agreed that the accident did aggravate the Plaintiff's pre-existing condition eventually leading to the Cauda Equina Syndrome although, in his view, the accident contributed less.[32]

41 I therefore find that the Plaintiff's Cauda Equina Syndrome was partly caused by the natural progression of the lumbar degeneration and partly by the aggravation of the Plaintiff's pre-existing condition as a result of the accident.

(a)(iii) High Blood Pressure

42 The Plaintiff attributed her high blood pressure to pain from her lumbar injuries and submitted that the damages for the lumbar injury should be increased to take that into account.[33]

43 However, with the exception of one of her doctors, Dr Eric Hong, who opined that the Plaintiff's high blood pressure was contributed to by the pain,[34] none of the medical witnesses gave evidence in support of the Plaintiff's contention. Dr Eric Hong was not called as a witness.

44 Dr Hee said in the Joint Experts' Report that it is difficult to prove that hypertension arose from the injury.[35]

45 Dr WC Chang said that pain does not cause hypertension and that although blood pressure can be momentarily elevated by exacerbation of pain,

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32 Tr/01/06/17/112/8–9.

33 PCS at paras 2.53–2.54.

34 PCS at para 2.53; Defendants' Bundle of Documents ("DBD"), volume 1 at p 9.

35 Joint Experts' Report at p 6.

the body would adjust to the condition and the blood pressure would return to normal. Dr WC Chang further stated that the Plaintiff was overweight and that such people are more susceptible to developing high blood pressure.[36]

46 Dr Chang Chee Chea similarly could not be certain about the cause of the Plaintiff's hypertension. He also said that people who are overweight are three times more likely to have high blood pressure.[37]

47 The evidence therefore does not support the Plaintiff's contention that her high blood pressure was caused by the accident.

48 In regard to the quantum of damages for pain and suffering, the Plaintiff seeks $50,000 for the lumbar injury, taking into account the Cauda Equina Syndrome and the high blood pressure.[38] In the alternative, if the court is of the view that the Plaintiff only suffered an aggravation of her pre-existing back condition as distinct from the accident being the sole cause of her back condition, the Plaintiff seeks damages at $25,000, *ie,* attributing 50% to the aggravation.[39]

49 The Defendants on their part submit that, on the basis that the Plaintiff's back condition was aggravated by the accident, the appropriate damages, (taking into account the Cauda Equina Syndrome but not the hypertension) ought to be $15,000.[40]

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36 Joint Experts' Report at p 6.

37 Tr/01.02.17/74/12.

38 PCS at para 2.55.

39 PCS at paras 2.56–2.58.

40 DCS at para 59.

50 Even taking the upper limit of 20% suggested by Dr WC Chang as the aggravation factor, the implied quantum on the basis of 100% liability for the back injury would be $75,000. Attributing 35% to the aggravation, the damages would work out to be $26,250.

51 Looked at this way, the figure of $25,000 sought by the Plaintiff appears to be reasonable save that one needs to deduct a part of it to reflect that no damages are allowed for the hypertension.

52 I would deduct a sum of $2,000, leaving the final quantum at $23,000.

(a)(iv) Cervical Injury

53 Prior to the accident, the MRI of the Plaintiff's cervical spine showed degenerative discs at C3-4, C4-5, C5-6 and C6-7. Dr Hee and Dr WC Chang agreed that the Plaintiff's pre-existing degenerative neck condition was aggravated by the accident although they disagreed on the extent of the aggravation. While Dr Hee suggested that the pre-existing condition of the Plaintiff's cervical spine and the accident were equally responsible for the deterioration in the condition of the Plaintiff's neck, Dr WC Chang attributed only 15% to 20% to the aggravation caused by the accident.[41]

54 It appeared from the Joint Experts' Report that another point of disagreement was as to whether the Plaintiff's neck condition was symptomatic before the accident. While Dr WC Chang said that her pre-existing neck condition was symptomatic before the accident, Dr Hee had stated that "without

[41] PCS at paras 3.2–3.3; Joint Experts' Report at p 3.

the accident she [would] be asymptomatic".[42] However, Dr Hee's oral testimony was that before the accident "[the Plaintiff] had both neck and back issues" for the treatment of which he had sent her for a course of physical therapy and acupuncture. He further testified that after the treatment "she opined that… [h]er neck was slightly better".[43] The Plaintiff's neck condition was therefore symptomatic before the accident.

55 The Plaintiff contends that the Plaintiff's neck injury would fit into the category of neck injuries set out in the Guidelines for Assessment of General Damages in Personal Injuries Cases ("Guidelines") under Chapter 2, Category (b)(ii).[44]

56 The Defendants on the other hand submitted that the Plaintiff's injuries fell within Category (c)(i) of the same Guidelines.[45]

57 I set out below a description of both with the range of damages awarded in past cases.[46]

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42 Joint Experts' Report at p 3.

43 Tr/01.06.17/119–120.

44 PCS at para 3.11; Plaintiff's Bundle of Authorities ("PBOA") at p 31.

45 DCS at para 72; PBOA at p 31.

46 DCS at para 72.

Cervical injuries – whiplash grade 2		
Guidelines for Assessment of General Damages in Personal Injuries Cases	**Chapter 2**	**Range**
Category (c)(i) (iv) Minor whiplash injury and soft tissue damage classified as **grade 2** whiplash injury. The **symptoms take longer to resolve** than in (c)(ii), ie about 2 years and **there are residual disabilities on a long term basis**.	"Neck injuries" Section (c) Minor Page 20	$7,000 - $8,000

Cervical injuries – whiplash grade 3 (For comparison)		
Guidelines for Assessment of General Damages in Personal Injuries Cases	**Chapter 2**	**Range**
Category (b)(ii)	"Neck injuries" Section (b) Moderate Pages 19-20	$8,000 - $15,000

Moderate whiplash injury classified as **grade 3** whiplash injury. The person suffers from considerable pain and restriction of neck movement **with neurological deficits**. Recovery takes a substantially longer period and there is also an increased vulnerability to future trauma. There is a likely risk of degenerative change occurring in the long run due to the weakened cervical spine.		

58 It appears from the Plaintiff's submissions that what she suffers is recurrent aching and tension in the neck.[47] This does not fit neatly into Category (b)(ii). Under this category the person suffers "considerable pain and restriction of neck movement with neurological deficits".

59 Category (b)(ii) corresponds with Grade 3 under the Quebec Classification of Whiplash-Associated Disorders where the condition is described thus:[48]

> Neck complaints and neurological signs including decreased or absent deep tendon reflexes, weakness or sensory deficits.

60 Category (c)(i) as above described appears to be more appropriate. This category corresponds with Grade 2 under the aforesaid Quebec Classification which describes the condition thus:

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47 PCS at para 3.10.

48 Defendants' Bundle of Authorities ("DBOA"), Tab L.

> Neck complaints and the examining doctor finds decreased range of motion and point tenderness in the neck.

61 The Plaintiff cited *Karuppiah Nirmala v Singapore Bus Services Ltd* [2002] 1 SLR(R) 934 ("*Karuppiah*") where the plaintiff had been awarded $14,000 for pain and suffering and loss of amenities for her whiplash injury which aggravated her existing cervical spondylosis. The appeal in the High Court did not concern the damages for her neck injury.

62 However, it appears from the judgement that what the plaintiff had suffered was "acute pain" in her neck (at [1]). Although by the time of the review of her condition a year later, she had recovered from her acute pain, the orthopaedic surgeon's opinion was that she would experience chronic pain secondary to the disc degeneration (at [6]). It is also not clear what her pre-existing condition was before the accident apart from the statement that the x-ray showed "evidence of cervical spondylosis" (at [4]). In contrast, the Plaintiff in the present case was suffering multiple-level degeneration of the cervical spine (C3-4, C4-5, C5-6 and C6-7).

63 The Defendants submitted that the Plaintiff's neck issue was far less severe compared to her back issues.[49] Dr Hee had conceded that the Plaintiff's lower back was the focus of priority in rehabilitation.[50] There is no mention of any specific treatment given for the cervical spine. Nevertheless, the Defendants conceded that there was some aggravation of the cervical spondylosis.[51]

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49 DCS at para 66.

50 DCS at para 66; Tr/01.06.17/126/19–22.

51 DCS at para 69.

64 On this basis, even treating the Plaintiff as falling within category (b)(ii) of the Guidelines, and allowing for an aggravation factor of 35% the damages should be between $2,800 to $5,250.

65 I would allow $4,000.

Psychiatric injury

66 Claims for damages in respect of psychiatric injury were added very late in these proceedings. One week before the trial commenced, on 24 January 2017 the Defendants were informed of a psychiatric report dated 11 December 2016 which Dr Lee Ee Lian ("Dr Lee") of Better Life Clinic Pte Ltd had prepared for the Plaintiff. The report was given to the Defendants two days later.[52]

67 Dr Lee diagnosed the Plaintiff as suffering from:[53]

(a) Major Depressive Disorder with Anxiety and Obsessive-Compulsive features; and

(b) Post-Traumatic Stress Disorder ("PTSD").

68 The Plaintiff underwent a psychiatric re-examination by Dr Lim Yun Chin ("Dr Lim") of Raffles Hospital Pte Ltd. Dr Lim agreed with Dr Lee that the Plaintiff suffered from Major Depressive Disorder but disagreed that she had PTSD.[54]

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52 DCS at para 81.

53 AEIC of Dr Lee Ee Lian dated 6 February 2017 ("LEL"), LEL-2.

54 AEIC of Dr Lim Yun Chin dated 27 April 2017 ("LYC"), LYC-2.

(b)(i) PTSD

69 I shall deal with PTSD first.

70 Under the DSM-5 diagnostic criteria for PTSD formulated by the American Psychiatric Association, there are eight criteria which need to be met before a diagnosis of PTSD is appropriate:[55]

Criterion A : Stressor

Criterion B : Intrusion symptoms

Criterion C : Avoidance

Criterion D : Negative alternations in cognitions and mood

Criterion E : Alternations in arousal and reactivity

Criterion F : Duration

Criterion G : Functional significance

Criterion H : Exclusion

71 Dr Lee was satisfied that the Plaintiff met all eight criteria. Dr Lim was prepared to give the Plaintiff the benefit of the doubt that she exhibited seven criteria from B to H but disagreed that she satisfied Criteria A.[56]

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55 DCS at paras 89–90.

56 Tr/02.06.17/6–8.

72 Dr Lim testified that in interpreting signs and symptoms under criteria B to H, there is an element of subjectivity, regardless of who administers the test.[57] There is no blood test or scan to help the psychiatrist determine the veracity of the patient's answers to questions in the examination.

73 Where it comes to Criteria A: the traumatic event, which Dr Lim regarded as the most important criterion, the test is objective in that the person must have been exposed to "death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence".[58] Such exposure may be:

(a) direct;

(b) as a witness; or

(c) indirectly by learning that a relative or close friend was exposed to such trauma.

74 Dr Lim, referring to material relating to the World Health Organisation's International Classification of Diseases criteria for PTSD, testified that the event has to be of an "exceptionally threatening or catastrophic nature which is likely to cause pervasive distress in almost anyone". Unfortunately, the actual document was not produced in court.[59]

75 Dr Lim noted that, by the Plaintiff's own account, the Plaintiff was able to confront the driver of the van at the scene of the accident and to walk around

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57 LYC-2 at p 4; Tr/02.06.17/8/22.

58 LYC-2 at p 4; Tr/02.06.17/24.

59 Tr/02.06.17/25/5–12.

taking photographs. He observed that the Plaintiff did not behave like a person who was exceptionally distressed or traumatised.[60]

76 Dr Lee disagreed with Dr Lim's contention that Criterion A was objective. In her view, what is important is how the claimant subjectively perceived the threat. Dr Lee went on to say that if a patient told her that she was traumatised, she had to accept that as the truth.[61]

77 Dr Lee was asked whether she knew how the accident occurred and whether it was serious. It emerged that from what she had heard from the Plaintiff "it seemed to be a major accident".[62] That clearly was a false impression. It was a minor accident at low speed. Dr Lee also agreed that the possibility of the Plaintiff exaggerating the trauma could not be ruled out.[63]

78 I have difficulty accepting Dr Lee's evidence that Criterion A is subjective in nature. The key question is, of course, whether the person was indeed traumatised. To answer that question, one should not be obliged to accept that if the claimant maintained that she perceived her life to be in danger, she was necessarily telling the truth. If that were the case, no claimant would ever fail in the claim. For this reason, it is necessary to consider the nature of the event to determine how likely it was that such an event would traumatise the claimant. Since it is impossible to read the mind of the claimant the way one reads a book or a scan, one inevitably has to fall back on common human experience; in other words, the objective test. That is not to say that there could

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60 Tr/02.06.17/25/17–22.

61 Tr/31.05.17/80/18–23, 83/18–23.

62 Tr/31.05.17/71/7–9.

63 Tr/31.05.17/96/25–27.

never be a successful claim based purely on the claimant's subjective perception of a threat being of a life-threatening nature despite objective evidence that the threat did not qualify as such. But it would have to be exceptional, with the court believing the claimant's perception to be true. Suffice it to say that such is not the case here.

79 The accident was obviously minor. Damage to the vehicle was minimal. The Plaintiff did not suffer any visible injury and could walk up to confront the driver of the van as well as take photographs. By any standard it would be an exaggeration to classify the event as qualifying under Criterion A.

80 I therefore find in favour of the Defendants and award no damages for the alleged PTSD.

(b)(ii) Depression

81 Dr Lee and Dr Lim are in agreement that the Plaintiff suffers from a Major Depressive Disorder.

82 That said, there are several questions raised by the Defendants which need to be considered. These are set out in paragraph 113 of the Defendants' Closing Submissions as follows:

(a) When did she become depressive?

(b) How did she become depressive:

(i) Was the accident a cause of her depression?

(ii) Was her depression caused by her pain medication?

(iii) Was the delay in seeking psychiatric help the cause of her current problems?

(c) What is a reasonable duration for treatment of her condition?

(1) When did the Plaintiff become depressive

83 The Plaintiff became a patient of Dr Lee from 25 October 2016, roughly 4¼ years after the accident. She had five consultations with Dr Lee in 2016 and seven in 2017.[64]

84 Dr Lee recorded the Plaintiff as reporting that her psychiatric condition developed one week after the accident.[65] There is no contemporaneous clinical record of her condition at that time as she had not consulted any psychologist or psychiatrist before Ms Natalie Lim (a psychologist) in January 2016.

85 Dr Hee, said that sometime in 2015, he had a suspicion that the Plaintiff might have psychological issues. Dr Hee said that he and the pain specialist (Dr Tan Tee Yong) began to wonder whether there was a psychological issue clouding her recovery when, after the second surgery, despite improvement in her foot power and regaining bladder and bowel control, she continued to complain of pain.[66]

86 According to a list prepared by counsel for the Defendants, between July 2012 (when the accident occurred) and 2015, the Plaintiff had no fewer than

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64 LEL at para 2; 2DBD 150; Tr/31.05.17/63/12.

65 Tr/31.05.17/65/5.

66 Tr/01.06.17/99/18–29.

113 medical appointments and yet none of the doctors attending to her noted any depression in the Plaintiff.[67]

87 The Defendants therefore suggested that the Plaintiff probably developed depression only in 2015.[68] I agree. There is therefore no need to consider the Defendants' alternative argument that if the depression started soon after the accident, by waiting until 2015 to seek professional help, she had contributed to the worsening of her symptoms.

(2) How the Plaintiff became depressive

88 The Defendants suggested that the likely cause of the Plaintiff's depression was over-medication.[69] The Plaintiff was prescribed a large range of medication as set out in exhibit P12. Certain of those had known side-effects which included mood disorders and depression.

89 Dr Lee agreed that Miacalcic could cause loss of appetite, numbness in legs and dizziness. She also agreed that Venlafaxine could cause agitation, dizziness and nausea amongst other side effects. She further agreed that Quetiapine could cause dizziness, drowsiness and restlessness etc.[70]

90 The Defendants' psychiatrist, Dr Lim, was asked to comment on the medication prescribed for the Plaintiff by her pain specialist. He stated that some of the medication for treating pain such as Tramadol and Lyrica have adverse

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67 DCS at para 119.

68 DCS at para 120(b).

69 DCS at para 127.

70 DCS at para 127; Tr/01.06.17/94/11–27.

side effects such as depression, bad dreams, nightmares and could even lead to suicide.[71]

91 Dr Lee agreed that potent pain killers could cause depression.[72]

92 Dr Hee and Dr Lee both suggested that the Plaintiff's pain specialist should be the one to explain to the court whether the prescribed medicine for pain treatment could have caused the Plaintiff's psychiatric condition.[73] For reasons not known to the court, the pain specialist, Dr Tan Tee Yong from Integrative Pain Centre, reportedly declined to testify.[74]

93 In light of the evidence, the Defendants suggest that it is probable that the Plaintiff's depression was caused by the vast quantity of pain medication she took. They therefore submit that the quantum of damages for her depression should be discounted.[75]

94 I agree it is possible that the depression might in part have been caused by the medication. But I disagree that there should be a discount on account thereof. Even if the depression was caused by the medication, the blame cannot be laid at the Plaintiff's door. One cannot expect a patient to discard medication prescribed by her doctor. Besides, the need for the medication at least partly arose as a result of aggravation of her physical symptoms caused by the accident.

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71 DCS at para 128; Tr/02.06.17/37/9–26.

72 DCS at para 129; Tr/31.05.17/88/4–8.

73 Tr/31.05.17/91/25–27; Tr/01.06.17/99/18–29.

74 Tr/01.02.17/106–108.

75 DCS at para 132.

95 Elsewhere in the Defendants' Closing Submissions, the Defendants also rely upon the evidence of Dr Lim and Dr WC Chang to contend that the pain that the Plaintiff complained of could be psychological. Even Dr Hee had allowed as much.[76]

96 Both Dr Hee and Dr WC Chang were of the view that after the second surgery (Decompression Laminectomy surgery and fusion from L4 to S1) to address the Cauda Equina Syndrome, the pain should have resolved on 20 April 2013 as a result of stabilisation of the spine.[77] Although Dr Hee qualified this by saying that in practice some patients continue to suffer back pain owing to what is called "failed back syndrome", he did not say that there was "failed back syndrome" in the Plaintiff's case. Dr Hee also went on to say that there was "a significant psychological component" to the pain complained of.[78]

97 Dr WC Chang explained that spinal fusion surgery results in stabilisation of painful unstable levels in the spine. The fusion surgery stops motion at the painful vertebral segment. He concluded that the Plaintiff's chronic pain was more psychological in nature than from the discs' disease.[79]

98 Dr WC Chang opined that although there was a possibility of a "failed back syndrome" the symptoms described by the Plaintiff were inconsistent with and out of proportion to the expected outcome of the surgery.[80]

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76 DCS at paras 84–86; Tr/01.06.17/93/1–12, 99/18–29.

77 Joint Experts' Report at pp 4–5.

78 Joint Experts' Report at p 5.

79 Joint Experts' Report at pp 4–5.

80 Tr/01.06.17/93/20–30.

99 At first blush, it might be thought that the opinion of the two orthopaedic surgeons as to the psychological origin of the back pain does not fit in comfortably with my finding that the Plaintiff developed depression in 2015.

100 If they had said that the Plaintiff was even then (in 2013) suffering from depression, that would be inconsistent with my finding that the depression developed in 2015. However, as recounted above, they did not go so far. All that was said was that the pain "had a significant psychological component" (per Dr Hee) and that the pain "was more psychological in nature…" (per Dr WC Chang). Therefore the statements are not inconsistent with my finding.

101 Moving on to the quantum of damages, the Plaintiff asks for $20,000[81] whereas the Defendants submit that the appropriate quantum should be $10,000 before discount.[82]

102 The Plaintiff relies on *Ong Tean Hoe v Hong Kong Industrial Company Private Limited* [2001] SGHC 303 where the Plaintiff lost both her hands as a result of an industrial accident. For the traumatic depression which ensued, she was awarded $20,000.

103 The Defendants contend that the Plaintiff's case does not warrant a similar quantum since it arose, as it did, from a low-speed, low impact collision.

104 I agree. The case relied on by the Plaintiff involved much more serious physical injury leading to traumatic depression. The Plaintiff's injuries are not comparable. In my view, $12,000 should suffice.

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81 PCS at para 4.10.

82 DCS at para 143.

Income Loss

(a) Pre-trial loss of earnings

105 The average income of the Plaintiff for the years 2009, 2010 and 2011 was $57,643. This was derived from the Plaintiff's Income Tax Notices of Assessment for Year of Assessment 2010, 2011 and 2012.[83] Accordingly, she based her claim on this annual quantum for the entire period from the date of the accident to the trial.

106 For 2012, 2013, 2014 and 2015 the Plaintiff suffered losses in her business, Boon Automobile Service ("Boon Auto"), of which she was the sole proprietor from 17 September 2001 to 20 January 2017.[84] She therefore sought damages not only for the income which she could have earned in those years, but also for the losses she suffered.

107 In para 47 of her AEIC,[85] she deposed that, based on the Notices of Assessment, her business losses in years 2012 to 2015 were $25,221, $46,831, $91,436 and $149,087. On that basis she claimed pre-trial loss of earnings up to the end of 2015 in the aggregate amount of $543,147.

108 However, her business losses derived from Statements of Accounts which she furnished one week before the second tranche of the trial revealed a discrepancy of $138,659.[86] Eventually, after the Plaintiff sought clarification

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83 PCS at para 5.4; NLP at para 46.

84 4PBD at p 756.

85 NLP at para 47.

86 DCS at para 174; Tr/29.05.17/46/9–12.

with the Revenue authorities, it emerged that the losses shown in the Notices of Assessment for Years of Assessment 2014 to 2016 were cumulative figures; unabsorbed losses for each Year of Assessment had been carried forward and added on to the next year's losses.[87] It was wrong, therefore, for the Plaintiff simply to have added up the losses appearing in the Notices of Assessment; that led to double counting.

109 Accordingly the Plaintiff's claim for the losses had to be reduced by $138,659.

110 The Defendants had other objections to the quantum of the Plaintiff's claim for pre-trial loss of earnings.

111 First, the Defendants noted that the Plaintiff's Notices of Assessment for Years of Assessment 2010 to 2014 had been amended on 4 September 2014 by an upward revision of income. The Plaintiff explained that this was done so that she could apply for the Productivity and Innovation Credit ("PIC") grant. In effect the Plaintiff admitted that the Notices of Assessment prior to amendment were inaccurate as she had under-declared her income.[88]

112 The Defendants stopped short of suggesting that the amendments were made to inflate the income for Years of Assessment 2010 to 2012 so as, in turn, to inflate the losses in the post-accident years.

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87 PCS at para 5.9.

88 DCS at para 176; Tr/29.05.17/42.

113 The Defendants next submitted that the salaries and employer's Central Provident Fund ("CPF") contributions paid by the Plaintiff had been inflated so as to increase the alleged losses suffered by the Plaintiff in the post-accident years.[89]

114 Based on the testimony of the Plaintiff under cross-examination, Boon Auto paid her husband a salary of $2,500 per month, about $1,800 to $2,000 for a second mechanic and $300 per month for a part-time worker.[90] Based on the above figures, Boon Auto's expenses for the salaries should be between $55,200 to $57,600 per year. If I took the second mechanic's salary to be $1,900 per month (the mean between $1,800 and $2,000 per month) Boon Auto's annual expense for salaries would be $56,400.

115 The discrepancy between the gross employee salary reflected in Boon Auto's Statement of Accounts and the sum of $56,400 is shown below.

Calendar year	**Gross employee salary** (per Statement of Accounts) (A)	**Discrepancy (A) – ($56,400.00)**
2012	$98,000.00	$41,600.00
2013	$85,000.00	$28,600.00
2014	$68,129.00	$11,729.00
2015	$71,129.00	$14,629.00

89 DCS at para 177.

90 DCS at para 178; Tr/29.05.17/38.

2016	$68,129.00	$11,729.00

116 When the discrepancies were pointed out to the Plaintiff, she sought to qualify her evidence by saying that the figure of $2,500 paid to the husband did not include overtime pay which she paid her husband. She explained that her husband had to work longer hours as he had become less productive as a result of injuries he sustained in the accident.[91]

117 The Defendants suggested that this explanation was an afterthought. Moreover, the loss to her business owing to overtime payments to her husband as a result of his own injury-related loss of productivity could not be characterised as her loss flowing from the accident.[92]

118 The Plaintiff did not attempt to sufficiently explain away the discrepancy by adducing any documentary evidence.

119 In the circumstances, I would agree with the Defendants that an appropriate adjustment should be made, depending on the number of loss years allowed.

120 The evidence also shows that the Plaintiff had inflated the figures for Boon Auto's employer's contribution to its employees' CPF. From the chart below, it can be seen that, whereas the percentage contributions for years 2009

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91 DCS at para 180; Tr/29.05.17/49.

92 DCS at para 181.

to 2013 ranged from 13.75% to 15.85%, those for years 2014 to 2016 ranged from 27% to 28.19%. The latter clearly exceeded the mandated contribution rates of 16% to 17%[93] and should be adjusted accordingly.

Calendar year	**Gross employee salary** (per Statement of Accounts)	**Employer CPF contribution** (per Statement of Accounts)	**% contribution**	**Mandated contribution rates for employers** (by age)	**Remarks**
2009	$80,185.00	$12,346.00	15.40%	45-50: 14.5% 50-55: 10.5%	Pre-accident
2010	$94,674.00	$13,708.00	14.48%	Ditto	Pre-accident
2011	$88,300.00	$13,267.00	15.02%	45-50: 15.5% 50-55: 11.5%	Pre-accident
2012	$98,000.00	$13,471.00	13.75%	45-50: 16% 50-55: 12%	Pre-accident
2013	$85,000.00	$13,472.00	15.85%	45-50: 16% 50-55: 14%	
2014	$68,129.00	$19,205.00	28.19%	Ditto	
2015	$71,129.00	$19,205.00	27%	45-50: 17% 50-55: 16%	
2016	$68,129.00	$19,205.00	28.19%	55 & below: 17%	

[93] DCS at para 184.

121 The Statement of Accounts for Boon Auto also show that the Plaintiff incurred substantial expenditure under "upkeep of equipment or machinery" in the aggregate amount of $55,899 for the years 2014 to 2016.[94] It was in the main for the purchase of two car lifts/jack, a compressor pump, a computer and a scanner. In addition the Plaintiff had undertaken renovation and excavation works to install some of the equipment.[95]

122 Several observations may be made in regard to that expenditure.

123 Firstly, money spent on capital equipment is not "lost". Renovation costs (as distinct from repair costs) are similarly capital in nature. As such these items should not *ipso facto* go to increase the losses in the Plaintiff's business except to the extent annual depreciation allowances are permitted.

124 Second, the Plaintiff had applied for government subsidies under the PIC scheme in 2014. It is not clear whether she did obtain the subsidies but, if she did, it would reduce her capital outlay for the purchase of equipment. Thus, even if it were appropriate to treat the capital expenditure as wholly allowable against the income (which in my view it is not), due adjustments ought to have been made because of the grants.

125 For the foregoing reasons, it is clear that the Plaintiff substantially inflated her losses.

126 To some extent, it would appear that the Plaintiff's computation of loss has been moderated by the Inland Revenue Authority of Singapore. Thus the

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94 DCS at para 188; 5PBD at pp 769–771.

95 Tr/29.05.17/51–53.

loss of $60,348 in Boon Auto's Statement of Accounts for 2015 has been reflected as $44,605 (derived from subtracting from the cumulative loss of $91,436 in Year of Assessment 2015, the cumulative loss of $46,831 for the previous Year of Assessment). I assume the Revenue would have picked up any inappropriate claim for capital allowances and failure to take into account the PIC grants (if any).

127 The loss of $66,736 for Year of Assessment 2016 reflected in the Statement of Accounts of Boon Auto has similarly been reduced to $57,651 (*ie*, $149,087 less $91,436). Similarly, any deduction for employer's CPF contribution beyond the mandated percentage would presumably have been picked up.

128 That leaves us with the inflated salary figures. It seems unlikely that those figures would have been challenged by the Revenue, unlike the obvious excessive claims for CPF contributions and deduction of capital expenditure.

129 It is necessary therefore to adjust losses claimed to have been suffered by the Plaintiff by reducing the salary figures and corresponding CPF contributions based on those salary figures.

130 In the absence of the ages of the employees, it is not possible to calculate the appropriate CPF contributions. But whatever figures are eventually arrived at, the discrepancy between those figures and the CPF contributions reflected in the Statement of Accounts ought to be deducted in determining the Plaintiff's losses.

Failure to mitigate losses

131 The Defendants submitted that the Plaintiff failed to mitigate her losses in that she should have sold off her business or ceased operations as soon as possible so as not to incur more loss.[96] In my view it is not reasonable to argue that the Plaintiff ought to have discontinued the business as soon as possible after it suffered a loss. In addition to the year in which the accident occurred, I would not regard hanging on to the business for another two years, *ie*, 2013 and 2014, as being unreasonable.

132 Besides, in the Defendants' own Closing Submissions,[97] it was argued that by the end of 2014 it should have become clear that the business was unsustainable; *ie*, two years and five months after accident.

133 Losses for those two years (2013 and 2014) therefore should be taken into account in the computation of pre-trial loss of earnings in addition to those for 2012 but subject to reduction to take into account the discrepancies in the salaries for the three years (*ie*, $41,600; $28,600; and $11,729) and in the CPF contributions.

134 In sum, the total of the Plaintiff's pre-trial loss of earnings is made up of (i) the loss of income at $57,643 per year from the time of the accident until trial less the income tax she would have had to pay; and (ii) the business losses incurred from the year 2012 to 2014, adjusted as ordered above.

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96 DCS at para 192.

97 DCS at para 244.

135 Counsel are directed to jointly work out the pre-trial loss of earnings following the foregoing rulings I have made.

(b) Loss of future earnings or earning capacity

136 The Plaintiff claims loss of future earnings with a multiplicand of $57,643 and a multiplier of ten years.[98]

137 The basis for the multiplicand being the full amount of the average income before the accident is premised upon the Plaintiff's assertion that she is incapable of earning any income. Indeed that is what is contended on her behalf – "that for all intents and purposes, she is… practically unemployable".[99] It is further contended that she does not possess the qualifications to work for someone else in the latter's workshop in a "white-collar" capacity. It is even urged that the Plaintiff is unable to walk without a crutch.[100]

138 In my view, this is an exaggeration and conflicts with the evidence. Firstly, when, for purposes of determining the pre-trial loss of earnings, it was necessary to show the extent of her involvement in the business, she gave evidence that she had an Institute of Technical Education certificate in automotive technology and that while her husband concentrated on doing the repairs, she handled all other aspects of the business.[101] The impression given was that she was almost indispensable to the business.

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98 PCS at paras 6.6, 6.11, 6.13.

99 PCS at para 6.4.

100 PCS at paras 6.4–6.5.

101 PCS at para 5.3

139 As regards her need for "a crutch to even walk", the video recording made by the private investigator appointed by the Defendants shows that she does not need a crutch to walk, at least for short distances.[102] I agree with the Defendants that there is no medical evidence that the Plaintiff is unemployable even in an administrative role.

140 I am aware of the opinion of Ms Heidi Tan, Senior Principal Occupational Therapist at Tan Tock Seng Hospital, in her Functional Assessment Report that "[a]t the client's current functional level, she is unable to do work even at a sedentary level… due to the impact of the chronic pain on various aspects of her life, including her emotional and social aspects".[103]

141 To put the opinion in context, it is pertinent to point out that the chronic pain was the Plaintiff's own subjective evaluation. She was aided by a family member who answered 13 out of 16 questions in the Dallas pain questionnaire on her behalf.[104] Although Ms Heidi Tan appeared to have accepted the Plaintiff's own evaluation, the question as to the extent of debilitating pain the Plaintiff actually experiences are not beyond doubt. It will be recalled that both Dr WC Chang and Dr Hee were of the view that the pain was more likely to be psychological. Also the evidence of Dr Lim Yun Chin is that depression can cause pain so that once the depression has been dealt with, the pain should resolve. It follows that the Plaintiff should not be regarded as permanently unable to take on even a sedentary job.

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102 DCS at para 209; 1DBD at p 77.

103 AEIC of Heidi Tan Siew Khoon dated 2 May 2017 ("HTSK") at p 24.

104 HTSK at p 22; Tr/02.06.17/87/16–20.

142 Given (i) that the business remains within the family, being reportedly owned by her brother and her son (as a partner allegedly in name only)[105] and (ii) her experience and capabilities, it may be that she could resume some involvement in the business. Although the Plaintiff gave testimony that Boon Auto was owned by her younger brother and her son, the ACRA search for Boon Auto as of 20 Jan 2017 appears to show that the sole proprietor of Boon Auto as of 20 Jan 2017 is one Ng Wei En, which appears to be the Plaintiff's son.[106] If this is correct, it will probably be even easier for the Plaintiff to resume involvement in the business. As to whether there are job opportunities outside the family business available for one with her profile, there is no evidence either way.

143 For an award for loss of future earnings to be made, there has to be credible evidence in support; the court cannot act on speculation or conjecture.

144 The CA in *Teo Sing Keng and another v Sim Ban Kiat* [1994] 1 SLR(R) 340 at [38] cited with approval the following dictum of Syed Agil Barakbah FJ in *Ong Ah Long v Dr S Underwood* [1983] 2 MLJ 324:

> Now, the general principle is that an injured plaintiff is entitled to damages for the loss of earnings and profits which he has suffered by reason of his injuries up to the date of the trial and for the loss of the prospective earnings and profits of which he is likely to be deprived in the future. 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.

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105 Tr/29.05.17/36/14–18.

106 DCS at paras 205–209.

145 As the learned editors of *Practitioners' Library – Assessment of Damages: Personal Injuries and Fatal Accidents* (LexisNexis, 3rd ed, 2017) ("*the Practitioners' Library*") pithily put it at para 4-3: "An award for loss of future earnings can only be made if there is real assessable loss provable by evidence".

146 One key difficulty in this case is in arriving at a multiplier. The Plaintiff's present limited capacity for work is largely because of her complaints of pain. The evidence of the orthopaedic surgeons on both sides is that after the fusion surgery the pain should have resolved (barring a "failed back syndrome" as to the existence of which, I note, there is no evidence). They therefore suggested that the pain was more psychological in nature. Dr Lim, the psychiatrist, referred to a link between pain and depression. If follows that if her depression is resolved, the pain should likewise resolve or, at the least, subside.

147 As was earlier noted, Dr Lee Ee Lian opined that she would be required to treat the Plaintiff for depression for a period of 18 to 24 months. Dr Lim was of the view that if the Plaintiff was stable for two years on medication, it would be a good time to stop medication. Therefore, it is possible that in about two years' time, she may be capable of undertaking work akin to what she was doing before the accident. Admittedly, there can be no certainty. Hence the difficulty with the multiplier.

148 It is also difficult to arrive at a multiplicand because her capacity for work is dependent on how well she recovers.

149 In short, it is impossible to undertake a computation of loss of future earnings without involving conjecture or speculation. The award should therefore be for loss of earning capacity.

150 When assessing loss of earning capacity, the court will have to take into account "all sorts of factors… varying almost infinitely with the facts of particular cases": per Browne LJ in *Moeliker v A Reyrolle & Co Ltd* [1977] 1 WLR 132 at 141. Ultimately, the court arrives at a figure 'in the round' which in its view would do justice to the plaintiff.

151 Defendants' counsel submit that the appropriate award for loss of earning capacity ought to be $70,000 taking into account the Plaintiff's profile, qualifications and trade experience. They cite amongst others, the case of *Karuppiah*.[107]

152 In that case, the claimant, aged 42 at trial, held a Bachelor of Arts degree from the National University of Singapore and a Master's degree in Child Development. She suffered injury of the cervical spine (with prospect of osteoarthritis and shoulder injury) as a result of an accident with a bus.

153 At the time of the accident, she was earning $4,300 per month ($51,600 per annum) both as an editor as well as a part-time lecturer. After the accident, she was obliged by reason of her injury to cease working as an editor, retaining her role as part-time lecturer and additionally taking up a role as a practicum supervisor which was physically less strenuous. Her monthly income dropped to $2,500 ($30,000 per annum). She was originally awarded loss of future earnings of $198,000 (*ie*, $1,500 per month for 11 years) but on the defendant's appeal, that was replaced by an award for loss of earning capacity of $70,000 (at [33]).

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107 DCS at paras 221–222.

154 In accepting the defendant's arguments in favour of an award for loss of earning capacity instead of loss of future earnings, the court held that while the accident adversely affected the claimant's earning ability and made it difficult for her to maintain an editing career, it did not affect her main skills or her ability to exploit them profitably. Further, as a well-qualified professional, the claimant could command reasonably good remuneration whether she worked on a full-time or part-time basis (at [31]).

155 Relying on this reasoning, the Defendants draw a parallel in the present case. They argue that the Plaintiff's skill set and experience are more towards administrative and organisational support rather than physically demanding repair work. Those skills remain exploitable despite her disabilities.[108] The Defendants therefore submit that $70,000 is the appropriate award for loss of earning capacity.

156 The Defendants also cite *Chew Poh Kwan Margaret v Toh Hong Guan and Another* [2004] SGHC 280 ("*Chew Poh Kwan Margaret*") and *Wong Kim Lan v Christie Kolandasamy* [2004] SGDC 234 ("*Wong Kim Lan*") for the modest quantum of damages awarded.

157 In my opinion the latter two cases are not helpful because:

(a) In *Chew Poh Kwan Margaret*, the AR noted that the claimant's income was "very much affected by factors beyond her control or at least, by factors not related to the accident". The low award can also be attributed to the finding that the claimant had an unrelated medical condition which was likely to affect her ability to work.

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108 DCS at para 225.

(b) In *Wong Kim Lan*, the low award of $45,000 resulted from the court drawing an adverse inference against the claimant. She had failed to tender her post-accident accounts despite the defendant's request. This led the court to infer that she must have earned more after the accident than before.

158 A review of some other cases where the claimant's income before the accident, disability and age were taken into account in the mix of relevant factors provides some guidance as to the appropriate award.

159 I avail myself of the case summaries conveniently outlined in the *Practitioners' Library* at p 40:

> (b) In *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* [2003] 3 SLR(R) 601, the plaintiff, a lawyer, suffered a whiplash injury to the spine with resulting disabilities. His condition would continue to deteriorate without surgical intervention. Taking into account the plaintiff's income of $420,000 per annum for the years immediately preceding and after the accident and a post-trial working period of 15 years till the age of 65, the High Court awarded the plaintiff $180,000 for loss of earning capacity.
>
> (c) In *Tan Siew Bin Ronnie v Chin Wee Keong* (supra), the plaintiff, a lawyer, suffered a whiplash injury with permanent disabilities. One factor which the High Court considered was the length of the plaintiff's remaining working life since 'the impairments, risk and various imponderables would have to be assessed over a longer period for a younger person' (at [34]). At age 47, the plaintiff had the same post-trial working span of 15 years as the plaintiff in *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* (supra). Comparing the income of the plaintiff in *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* (supra), 'a very high income earner' and that of the plaintiff in *Karuppiah Nirmala v Singapore Bus Services Ltd* (supra) (who was earning $51,600 per annum at the time of the accident), with the income of the plaintiff at $120,000 per annum, the High Court

held that the sum of $100,000 was a fair award for loss of earning capacity.

(d) In *Clark Jonathan Michael v Lee Khee Chung* (supra), the plaintiff, suffered a whiplash injury with permanent disabilities which, the court found, could interfere with his work performance. The plaintiff was 46 years old at the time of the accident. The plaintiff found employment as a psychiatric nurse in Australia after the accident although he had contended, without success, that the injuries had prevented him from returning to the United States, where he would have enjoyed a higher salary if he was employed as a registered nurse. Given that the plaintiff's condition might improve further, Judith Prakash J noted the difficulty in quantifying how the plaintiff's disabilities would affect his earning capacity in the long term. In the 2 years prior to the assessment hearing, the plaintiff's post-accident income was about A$35,000. This was much lower than the income of the plaintiffs in *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* (supra) and *Tan Siew Bin Ronnie v Chin Wee Keong* (supra). Other relevant considerations included the exigencies of life and accelerated receipt of the lump sum. The court held that an award of S$35,000 for loss of earning capacity was not unreasonable. This was roughly equivalent to 80% of one year's income.

160 At the time of the assessment of damages, the Plaintiff was 50 years old. Her average annual income before the accident was $57,643. As a result of the minor accident, she suffered aggravation of her existing cervical spondylosis (*ie*, degeneration of the cervical spine) for which there was no mention of any treatment. She also suffered aggravation of the pre-existing degeneration of her lumbar spine. The degree of aggravation is between the 15–20% (estimated by Dr WC Chang) and 50% (estimated by Dr Hee).

161 Her disability was largely because of the pain which she complained of. However, as earlier stated it is possible that the pain issue could be resolved within about two years, that being the estimated period for continuation of psychiatric treatment for her depression.

162 In the assessment of damages for loss of earning capacity, the Plaintiff's pre-existing health condition needs to be taken into account. In other words, her loss of income earning capacity owing to her pre-existing condition does not qualify for compensation. Even if I allowed that the Plaintiff's condition after the accident was 50% aggravated by the collision, the $70,000 proposed by the Defendants implies a quantum of $140,000 before the discount. If I were to apply the mean of 35% which I adopted at [35] above, the $70,000 proposed by the Defendants would imply a quantum of $200,000.

163 The Defendants' proposed figure of $70,000 in damages is therefore reasonable, taking into account her modest annual income before the accident, her age and the prognosis for resolution of her pain issue. Accordingly I award the Plaintiff $70,000 for loss of income earning capacity.

Special Damages

(a) Pre-trial Medical and Transport Expenses

164 A preliminary issue that was raised by the Defendants is whether hospital and other medical expenses borne by the Plaintiff's medical insurer, Great Eastern Life Assurance Co Ltd ("GE Life") under its Supreme Health Plan covering the Plaintiff should form part of the Plaintiff's claim for special damages. It was argued that to allow her so to do would be to permit double recovery.[109]

165 On principle I do not see any objection to the Plaintiff being able to do so. As between the Plaintiff and the Defendants, why should the Defendants have the benefit of the insurance when the premium would have been paid or

109 DCS at para 270.

borne by the Plaintiff? Whether or not the insurance is voluntary or compulsory is of no relevance. As between the Plaintiff and her insurer, whether or not the Plaintiff should reimburse the insurer from the special damages so recovered is strictly between them and of no concern to the Defendants.

166 James Edelman, *McGregor on Damages* (Sweet & Maxwell, 20th Ed, 2018) at p 1346, states:

> As early as 1874 it was decided in *Bradburn v G.W. Ry* [(1874) L.R. 10 Ex. 1], that, where the claimant had taken out accident insurance, the moneys received by him under the insurance policy were not to be taken into account in assessing the damages for the injury in respect of which he had been paid the insurance moneys. This decision has withstood time and is solidly endorsed at House of Lords level by *Parry v Cleaver* [[1970] A.C. 1], not only by the majority who relied upon it by analogy but also by the minority who sought to distinguish it, and more recently by Lord Bridge speaking for the whole House in *Hussain v New Taplow Paper Mills* [[1988] A.C. 514 at 527G] and in *Hodgson v Trapp* [[1989] A.C. 807 at 819H], and by Lord Templeman similarly in *Smoker v London Fire Authority* [[1991] 2 A.C. 502 at 539B–F]. The matter is clearly now incontrovertible. The argument in favour of non-deduction is that, even if in the result the claimant may be compensated beyond his loss, he has paid for the accident insurance with his own moneys, and the fruits of this thrift and foresight should in fairness enure to his and not to the defendant's advantage.

167 The same position was adopted by our Court of Appeal in *The "MARA"* [2000] 3 SLR(R) 31 at [28] so that it is not open to the Defendants to contend otherwise.

168 Moving on, I refer to Appendix A of the Defendants' Closing Submissions for the items of medical expenses disputed by the Defendants.

169 Under Heading 5,[110] the claim for medical expenses charged by cardiologist Dr Eric Hong was disputed by the Defendants for the following reasons:

(a) Despite the Plaintiff having paid Dr Eric Hong $13,505 for inpatient treatment and $16,688.90 for outpatient treatment, the Plaintiff did not apply for a substantive and comprehensive medical report from him.

(b) The Defendants does not know how Dr Eric Hong had any role in treating the accident-related injuries. Although Dr Eric Hong treated the Plaintiff's high blood pressure, it is not established that there is any link between the high blood pressure and the accident-related injuries;

(c) Dr Eric Hong was not called as a witness. There is no explanation whether he was treating the Plaintiff for any accident-related injury.

170 Plaintiff's counsel contended that Dr Hee had given evidence that he was the "lead doctor" managing the Plaintiff for her conditions arising from the accident and that all the other doctors worked in conjunction with him.[111] This is not borne out by the reference counsel made to para 4 of the AEIC of Dr Hee. All that Dr Hee said was that "[i]n the course of [his] treating the Plaintiff, [he had] referred her to several other medical specialists and health professionals", namely:

(a) Dr Eric Hong Cho Tek, a cardiologist;

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110 DCS at p 129.

111 PCS at para 9.12(i).

(b) Dr Tan Tee Yong, a pain specialist;

(c) Ms Natalie Lim, a clinical psychologist;

(d) Dr Eu Kong Weng, a general surgeon; and

(e) Dr Lee Kim En, a neurologist.

171 He did not claim to be the lead doctor. Neither did he state that he referred the Plaintiff to the doctors *for treatment of her conditions arising from the accident*.

172 In my view, the Plaintiff has not discharged the burden of proof that the said expenses were incurred in treating the accident-related injuries. Dr Hee himself stated in the Joint Experts' Report that it was difficult to prove that hypertension arose from the Plaintiff's injury. Dr WC Chang likewise found no link and suggested the possibility that the Plaintiff's overweight condition might have made her more susceptible to developing high blood pressure.

173 Accordingly, I disallow the claim for reimbursement of Dr Eric Hong's charges.

174 The next set of medical expenses disputed by the Defendants is that rendered by Dr Tan Tee Yong, a pain specialist (listed at Heading 6 in Appendix A).[112] Objections similar to those in relation to Dr Eric Hong's charges were raised in regard to Dr Tan's charges. Dr Tan reportedly had declined the Plaintiff's request to testify at the trial. The Defendants therefore submitted that

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112 DCS at pp 129–130.

there was no explanation as to the need for and relevance of his treatment in relation to the Plaintiff's accident related injury.

175 Dr Hee had referred the Plaintiff to Dr Tan as a result of the Plaintiff's persistent complaints of pain. As earlier recounted, both Dr Hee and Dr WC Chang had opined that after the fusion surgery when the painful vertebral segment was stabilised to stop movement, the pain should have subsided or stopped. Dr Hee qualified his opinion to allow for the possibility of a "failed back syndrome" in some cases but did not go so far as to say that that was the case with the Plaintiff. Both orthopaedic surgeons thought that the pain might in large part be psychological. Dr Hee's words were "There is also a significant psychological component, which psychiatrists would be more qualified to address". Dr WC Chang said "The Plaintiff's chronic pain is not so much organic in nature. It is more psychological in nature".[113]

176 This view of the orthopaedic surgeons as to the psychological origin of the pain was endorsed by Dr Lim, the psychiatrist testifying as Defendants' expert witness. In his AEIC, Dr Lim had also stated that depression can cause pain or worsen feelings of pain.[114] Dr Lim observed at trial that many of the items of medication prescribed by the pain specialist were to treat depression and anxiety.[115]

177 With the exception of plain and obvious cases, in the context of medical expenses, there should be a substantive medical report by the medical specialist. This would enable the defendant to determine whether the expenditure was

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113 Joint Experts' Report at p 5.

114 LYC at para 7.

115 Tr/02.06.17/6/8–13.

reasonably incurred and whether it was reasonable in quantum. It goes without saying that the defendant may well require to cross-examine the medical specialist.

178 As earlier noted, Dr Hee had referred the Plaintiff to Dr Tan because of her persistent complaints of pain. On the face of it, the treatment by Dr Tan was for pain related to the back injury suffered in the accident. However, the quantum of fees charged ($23,700 for inpatient treatment and $8,500 for outpatient treatment) caused the Defendants to question whether the expenses were reasonably incurred.

179 Dr Tan however declined to testify at the trial. Defendants' counsel contends that they have not had "the benefit of his explanation on the type, the need and the relevance of his treatment in relation to the Plaintiff's accident related injury".[116]

180 In the circumstances, I disallow the Plaintiff's claim for the medical expenses incurred in the treatment by Dr Tan Tee Yong.

181 I move next to medical expenses incurred at Thye Hua Kwan TCM Medical Centre (listed at Heading 11 in Appendix A).[117] The Defendants argued that it was not reasonable for Plaintiff to be undergoing physiotherapy and yet also incur expenses for TCM treatment. Erroneously, counsel for Defendants contended that the Plaintiff had not shown that the TCM treatment was recommended by her doctor. In fact Dr Hee's Specialist Report of 13 August

116 DCS at p 130.

117 DCS at p 132.

2012 specifically stated that on 7 June 2012 he sent her for a course of "physiotherapy plus acupuncture"[118] and that on 3 August 2012 "she was asked to continue physiotherapy and acupuncture".

182 I therefore allow Plaintiff's claim in respect of the TCM expenses. In contrast the medical expenses incurred at the Kiong Onn Medical Hall amounting to $436 are disallowed, no explanation having been given what they were for (listed at Heading 15 of Appendix A).[119]

183 I move on next to Dr Eu Kong Weng's two medical bills totalling $214 (listed at Heading 13 of Appendix A).[120] Dr Eu is a colorectal specialist. There is no evidence that he treated the Plaintiff for any accident-related injury. I therefore disallow the Plaintiff's claim for reimbursement.

184 I similarly disallow the Plaintiff's claim for medical expenses in the sum of $1,235.85 for treatment by Dr Mark Hon Wah Ignatius (listed at Heading 14 in Appendix A).[121] Dr Mark is an Ear, Nose and Throat specialist and was not called as a witness. The court has no evidence that the expenses incurred have anything to do with any of the Plaintiff's accident related injuries.

185 Next is the claim for medical expenses in the assessment of $2,483.40 incurred at Lee Kim En Neurology Pte Ltd (listed at Heading 18 of Appendix A).[122] Dr Lee Kim En's ("Dr KE Lee") invoices did not state what the Plaintiff

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118 HHT-2 at p 94.

119 DCS at p 135.

120 DCS at p 133.

121 DCS at p 134.

122 DCS at p 136.

was being treated for. No medical report was tendered and Dr Lee Kim En was not called as a witness.

186 Dr Hee had stated that, in the course of treating the Plaintiff, he had referred her to Dr KE Lee amongst others. I also note from Dr KE Lee's invoices that he had prescribed "Quetiapine" in March, April and September 2016.[123] In the course of cross-examination Dr Lim Yun Chin was ask to identify, from amongst a long list of medication that had been prescribed by her various doctors, which ones were anti-depressants or mood stabilisers. Amongst others, he identified "Quetiapine" as a mood stabiliser used for treating depression.[124] Earlier invoices by Dr KE Lee in April and May and August of 2015 showed that he had also prescribed "Cymbalta".[125] Dr Lim missed picking out this drug which was listed on p 8 of a nine-page list in exhibit P12. Technically there is no evidence as to its use. Nevertheless the parties accept that Cymbalta is used to treat major depressive disorder.

187 One might be excused for inferring from the circumstances that, more probably than not, Dr KE Lee treated the Plaintiff for depression. However, the Defendants' objections are premised upon trite law that the Plaintiff is only entitled to recover in special damages that which he has specifically pleaded and is able to prove. There was no specialist report. Dr KE Lee was not called as a witness to testify that the medical expenses were reasonably incurred in relation to injuries she sustained from the accident. The Defendants had no opportunity to test any evidence he might have given in relation thereto.[126]

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123 3PBD at pp 648, 659, 706.

124 Tr/02.06.17/37/9.

125 3PBD at pp 597, 613; Exhibit P12.

126 DCS at p 136.

188 I therefore disallow this item of claim.

189 Better Life Psychological Medicine Clinic's charges (listed at Heading 20 in Appendix A) was neither expressly disputed nor agreed in Appendix A. However, at para 296 of Defendants' Closing Submissions, the same item listed at Heading 22 was agreed. Therefore I take it as such.

Hospitalisation Expenses

190 I refer to para 269 of Defendants' Closing Submissions and in particular to the grounds of objection in the first table set out after that paragraph. As earlier stated, the fact that certain of the medical expenses were borne by the insurers GE Life under its Supreme Health Plan is no impediment to the Plaintiff making a claim for special damages in respect thereof. It follows that the Defendants' objections on that score in regard to the hospitalisation bills are without merit.

191 On the other hand, hospitalisation charges for inpatient treatment by those medical specialists whose medical fees have already been disallowed as special damages ought similarly to be disallowed and I so decide.

192 Accordingly, my decision on the 14 periods of hospitalisation is as follows:

(a) 1st hospitalisation: claim allowed in full.

(b) 2nd hospitalisation: claim disallowed.

(c) 3rd hospitalisation: claim disallowed.

(d) 4th hospitalisation: claim disallowed.

(e) 5th hospitalisation: claim disallowed.

(f) 6th hospitalisation: the hospital charges of $25,008.15 are allowed together with Dr Hee's fees of $14,445 but not Dr Eric Hong's fees nor Dr Tan Tee Yong's fees.

(g) 7th hospitalisation: claim disallowed.

(h) 8th hospitalisation: no claim made.

(i) 9th hospitalisation: claim allowed except for Dr Tan Tee Yong's fee of $1,000 and Dr Eric Hong's fee of $642.

(j) 10th hospitalisation: claim disallowed. The Plaintiff was admitted to the hospital for a sleep study to be made at the Sleep Lab@Hospital.[127] There is no evidence from any doctor that the hospitalisation was related to the accident.

(k) 11th hospitalisation: claim allowed less $749. The Plaintiff checked into hospital for two days complaining of cold sweat, fever and nausea.[128] She was referred to a neurologist, Dr Lee Kim En and also

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127 1PBD at pp 62–64.

128 NLP at para 25.

attended to by Dr Hee.[129] As Dr KE Lee did not give evidence nor provide a medical report, there is no evidence that he treated the Plaintiff for any accident-related issues. Accordingly his fees of $749 are disallowed.

(l) 12th hospitalisation: claim disallowed as the hospitalisation was for colonoscopy and surgery to remove haemorrhoids.

(m) 13th hospitalisation: claim allowed. The Defendants objected to the claim because the bill was marked as "interim". The bill was rendered on the day of discharge (19 March 2017) at 12.05pm. It is likely the hospital was merely reserving its right to render further bills.

(n) 14th hospitalisation: claim not allowed except for Dr Lee Ee Lian's fees of $600. It appears the hospitalisation was mainly for treatment by Dr Eric Hong. As earlier stated, there is no evidence that Dr Hong was treating the Plaintiff for accident-related injuries.

[129] 3PBD at p 594.

Transportation expenses for trips to and from medical appointments

193 The Plaintiff claimed a total of $12,010.98 evidenced by 697 taxi receipts.[130] The Defendants objected to certain of the trips for various reasons more particularly set out in Appendix B of their Closing Submissions at pp 124 to 144. The total reduction sought was $3,322.73. In the main they were objected to either because the trips were in respect of appointments with the doctors earlier mentioned whose fees were disallowed or because there was no medical appointment they were referable to.[131]

194 The Defendants' objections in respect of visits to and from Thye Hua Kwan TCM Medical Centre are overruled since I have found that acupuncture was recommended by Dr Hee. Accordingly, the total reduction of $3,322.73 sought by the Defendants shall be reduced by the fare for taxi trips to and from Thye Hua Kwan TCM Medical Centre totalling $597.52. In the result, I award $9,285.77.

195 Additionally, I allow the following taxi fare incurred in the year 2017:[132]

(a) taxi fare of $14.55 and $6.75 in respect of appointment with the Defendants' psychiatrist, Dr Lim, on 13 March 2017;[133] and

130 PCS at para 9.11; DCS at para 325.

131 DCS at para 325, 327.

132 5PBD at p 816.

133 LYC at para 4.

(b) taxi fare of $22.26 and $25.70 for Occupational Therapy Test with the Defendants' occupational therapist, Ms Heidi Tan, on 21 April 2017.[134]

196 This yields a total of $9,355.03 for transport expenses.

Renovation and other expenses

197 The Plaintiff claimed three items under renovation expenses.[135] They are conveniently listed in p 112 of Defendants' Closing Submissions. The Defendants objected to the second item on the basis that the Clothes Drying System was unnecessary given that the Plaintiff claimed she could not do housework and was allowed the expenses of a full-time maid to do the household chores. However, at para 314 of their Closing Submissions the Defendants accepted that the Plaintiff continued to do some housework, including the washing of laundry. Accordingly, the renovation expenses of $1,357.04 are allowed in full.

198 The other two items of expenses also listed on p 112 totalling $654.10 are agreed and require no comment.

(b) Pre-trial Expenses for employing foreign domestic workers ("FDW")

199 Prior to the accident the Plaintiff did not hire any domestic worker, foreign or otherwise.

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134 HTSK at para 3.

135 PCS at paras 11.1–11.4; DCS at p 112.

200 For a year after the accident, she still had not employed any domestic help. It was only on 27 July 2013 that the first FDW, Ms Omipig Mary Jane Bontoyan, was employed following the fusion surgery the Plaintiff underwent in April 2013.[136]

201 Dr Hee and Dr WC Chang agreed that the Plaintiff required a caregiver after surgery on 20 April 2013 but they differed in their estimate of the time such caregiver was needed. Dr Hee suggested two years while Dr WC Chang thought one year was sufficient.[137] I will allow the average between the two, *ie*, a period of 18 months from the date of the surgery. That will take us up to the end of October 2014. The caregiver was employed for the period 27 July 2013 to 12 September 2014, well within the 18-month period.[138]

202 Accordingly, the total expenses aggregating $15,628.95 should be allowed. This is derived as shown below, where I have allowed living expenses of $360 per month instead of $500 as claimed:[139]

	PERIOD OF EMPLOY-MENT	**LIVING EXPENSES**	**SALARY & OTHER COSTS**	**TOTAL**

136 NLP at para 32; 2PBD at p 370; PCS at p 66.

137 Joint Experts' Report at pp 5–6.

138 2PBD at p 370.

139 PCS at para 7.32.

1st FDW	27th July 2013 to 12th September 2014 (approximately 13.5 months)	$360 x 13.5 months = $4,860	$10,768.95	$15,628.95

203 The second and third FDWs were employed after the 18-month period. The parties disagree on whether the Plaintiff needed a full time foreign domestic worker after the 18-month period. In practical terms the question is to what extent the Plaintiff should be compensated for the expenses incurred in hiring the second and third maids consecutively.

204 The Defendants submit, on the basis of the Functional Assessment Report dated 26 April 2017[140] prepared by Ms Heidi Tan and as explained by the latter in court, that the Plaintiff was independent in most of the Activities of Daily Living ("ADL") but might require more assistance on days she experienced a greater onset of pain. Accordingly, she did not need a full-time caregiver. However, there was still housework to be taken care of. According to the Plaintiff, before the accident she used to do all the housework.[141]

205 Purportedly relying on Ms Heidi Tan's Functional Assessment Report (at p 130) the Defendants contend that in the first year after the accident the Plaintiff had reported for work every day.[142] What the Functional Assessment Report actually said was as follows:

> The client reported that following the accident, there has been a drastic change in her daily lifestyle. In the first year after the

140 2DBD at p 136.

141 DCS at para 305.

142 DCS at para 312(c).

> accident, her husband drove the client to the office everyday as she needed supervision and they had yet to employ the maid. Subsequently, she returned to the office on at a hoc basis [*sic*] to interact with customers. She reported she did not resume the job tasks which require physical and cognitive demands and the tasks were outsourced. They had sold off the workshop earlier this year.

206 In my view, the Defendants' contention is an unwarranted inference from the paragraph quoted. It seems to me quite clear that the "supervision" therein referred to was not in regard to work at the office that she allegedly continued to perform but rather to the assistance that she needed in her physical activities of daily living.

207 The Defendants also suggest that the fact that the first FDW was employed one year after the accident meant that they (*ie*, the family) were coping fine without a maid for one year and that other family members probably did their share of domestic duties as they had always done.[143] The Plaintiff's response was that during that one year period, she had been hospitalised many times during which she was under the care of medical professionals and therefore did not require a caregiver.[144] That does not account for the periods when she was at home in between periods of hospitalisation.

208 Nevertheless even if the family members rallied to her aid it did not follow that she did not need a caregiver. The orthopaedic surgeons on both sides agreed that she did need a caregiver at least for a year if not two.[145] The Defendants' suggestion that the second and third maids were hired to do work

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143 DCS at para 317(a).

144 PCS at para 7.11.

145 Joint Experts Report, pp 5–6.

that the other family members would otherwise have done was mere conjecture on their part.

209 What the Defendants suggest is that, even before the accident, the family members shared the domestic duties between them. If so, the 2nd and 3rd maids would have in part been doing the work which the other family members would otherwise have done. It follows that only part of their salaries and expenses were claimable. This was mere conjecture on the Defendants' part.

210 The Defendants also refer to a video recording taken by a private investigator surveilling the Plaintiff. It shows that the Plaintiff did not always use a crutch although she had it with her.[146] However, it should be noted that on each occasion the Plaintiff walked only a short distance. It does not tell us much. Nevertheless, if the Defendants' purpose is to suggest that the Plaintiff was capable of some household duties, that would be difficult to dispute.

211 The question remains as to how much she was capable of doing at the material time. Dr Hee had conducted a functional assessment on 26 June 2013 and determined that the Plaintiff required help and/or supervision for washing/bathing, dressing, toileting, transferring and mobility.[147]

212 He went on to state that the nature of her impairment was permanent and that the functional status was not likely to improve. He noted that there was only mild improvement in her functional status since 26 June 2013. He ended by saying in the Joint Experts' Report that the Plaintiff definitely needed a maid to

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146 DCS at para 311; 1DBD at pp 69–70, 72–73.

147 Joint Experts' Report p 5.

do the housework (cooking, washing, cleaning *etc*) that she previously did.[148] Dr WC Chang disagreed that the nature of the Plaintiff's impairment was permanent, pointing out that Ms Heidi Tan's Functional Assessment in April 2017 confirmed that the Plaintiff is independent in most self-care tasks and in ADL.[149] He conceded, however, that considering her current psychological state she might need a part time helper to perform the more demanding house chores and heavier tasks like carrying groceries.[150]

213 In response to the Court's question whether he thought she would be able to remain on her feet for long while cooking when she might be obliged among other tasks to fill a pot with water and carry it to the stove, Dr WC Chang conceded that the Plaintiff would probably need more help than what he earlier said.[151]

214 Weighing the evidence, my view is that the Plaintiff did need the services of a domestic help, not so much to assist in taking care of herself as to take on the household chores. Although the Plaintiff was not incapable of performing less demanding household tasks, she was incapable of undertaking tasks which required her to be on her feet for long and especially when she was in pain. Moreover, because of her depression which probably began some time in 2015, her ability to function would also have been curtailed.

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148 Joint Experts' Report at p 6.

149 Joint Experts' Report at p 6.

150 Joint Experts' Report at p 6.

151 Tr/01.06.17/95/10–20.

215 I would therefore allow the expenditure in relation to the second and third FDW's as shown below:[152]

	PERIOD OF EMPLOY-MENT	**LIVING EXPENSES**	**SALARY & OTHER COSTS**	**TOTAL**
2nd FDW	12th November 2014 to 29th November 2015 (approximately 12.5 months)[153]	$360 x 12.5 months = $4,500	$9,728.00[154]	$14,228.00
3rd FDW	28th January 2016 to May 2017 (approximately 16 months)[155] (Still currently employed calculated on a pre-trial basis)	$360 x 16 months = $5,760	$12,500.50[156]	$18,260.50

152 PCS at p 74.

153 PCS at p 68.

154 PCS at p 69.

155 PCS at p 70.

156 PCS at p 71.

216 I have not disallowed the agent's fee of $1,692.50 for change of FDW from the second to the third FDW[157] in the absence of any evidence that it was unreasonable to do so.

Future expenses for engaging FDW

217 The Plaintiff submits that she will require a FDW for the rest of her life.[158] This is clearly excessive and not supported by the medical evidence.

218 One of the findings of Ms Heidi Tan based on the pain questionnaire was that "the impact of chronic pain on [the] emotional and social aspects of her life may have a greater impact on her life than the physical functional aspects".[159] I take that to mean that the chronic pain may have a greater impact on the social and emotional aspects of her life than the physical functional aspects.

219 As was mentioned earlier, Dr WC Chang was of the view that the pain she complained of was not so much organic in nature but more psychological. Dr Hee opined with regard to the pain, that there was a significant psychological component. Dr Lim Yun Chin was of the opinion that if the Plaintiff were treated adequately there was a real possibility that the pain intensity would subside.[160]

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157 PCS at p 70, para 7.30.

158 PCS at para 8.1.

159 HTSK at p 9.

160 2DBD at p 121.

220 Dr Lim also estimated that the duration of time needed for treatment of the Plaintiff for her psychiatric condition was two years from commencement of treatment, *ie*, from October 2016.[161]

221 Dr Lee, who was of the view that the Plaintiff's psychiatric condition was graver (because of PTSD), suggested three to four years.[162] Given that I do not believe the Plaintiff suffered PTSD, I would be more inclined to a treatment period of two years. During this period, she would need a domestic worker. Using the monthly rate applicable to the third FDW, I will allow a sum of $27,390.

Future Medical Expenses

222 Plaintiff's counsel submits that the "Plaintiff's medical expenses show no sign of coming to an end" and "will likely continue to the end of the Plaintiff's life".[163] This is a gross exaggeration unsupported by the medical evidence.

223 On their part, the Defendants' counsel have dealt with the potential future medical expenses one by one. I shall adopt this approach.

(a) Future Surgery – lumbar spine

224 The orthopaedic surgeons on both sides agree that no further surgery will be required.[164]

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161 Tr/02.06.17/44–45.

162 Tr/31.05.17/79.

163 PCS at para 10.1.

164 Joint Experts' Report at p 7; Tr/01.06.17/105/16–25.

(b) Future Surgery – cervical spine

225 With regard to the neck, Dr Hee suggested that if further degeneration occurred in the future, surgery might be required. His evidence was that 10% of cervical spondylosis sufferers require surgery.[165]

226 Dr WC Chang likewise was of the view that surgery was not required at present. He went on to say that cervical spondylosis is a degenerative disease so that degeneration would take place in the ordinary course unrelated to the accident. Even if the accident caused an aggravation, it is unlikely that surgery would be needed in the future as a result of such aggravation.[166]

227 As it appears unlikely that surgery will be required, I make no award in regard thereto. In any event, no cost estimate was suggested, even by Dr Hee.

(c) Future Consultations with Orthopaedic Surgeons

228 Dr Hee suggested ten years of monitoring of Plaintiff's neck and back. Dr Chang suggested one review per year for five years.[167] I will allow ten years monitoring at $220 per year (comprising X-ray fee of $100 and consultant's fee of $120) yielding $2,200. Allowing return taxi fare at $30 per visit, future transport expenses is allowed at $300.

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165 Joint Experts' Report at p 7.

166 Tr/01.06.17/106/1–18.

167 Joint Experts' Report at p 7.

(d) Physiotherapy

229 Dr Hee would defer to the view of the physiotherapist, but subject thereto he suggested ten years. His reason was that the Plaintiff reported that physiotherapy helped to relieve her pain and he would give her the benefit of the doubt.[168]

230 Dr WC Chang on the other hand thought she should be given only one more year of physiotherapy. His reason was that long term physiotherapy has no therapeutic value and tends to erroneously reinforce the Plaintiff's chronic pain. He went on to say she will not need to go for physiotherapy except when there is exacerbation of pain. He further opined that by this time she should be able to maintain good spinal posture and care and to do regular back strengthening exercises as taught by the physiotherapist.[169]

231 This found support in what the physiotherapist, Ms Judee Poh ("Ms Poh"), had said in evidence. Ms Poh said that the Plaintiff was taught core strengthening and stretching exercises and knew how to do them. She would require physiotherapy only if there was an exacerbation of pain.[170]

232 Ms Poh saw the Plaintiff on 11 January 2014 and the first course of therapy concluded on 20 October 2014. By then she was able to competently demonstrate home exercise programme for stretching and managing pain. She was told to see the physiotherapist only if she needed to.[171]

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168 Joint Experts' Report at p 7.

169 Joint Experts' Report at pp 7–8.

170 Tr/31.05.17/28/8–28.

171 AEIC of Poh Judee dated 17 February 2017 ("PJ"), PJ-1; Tr/31.05.17/26/22–24.

233 In 2015 she saw Ms Poh 26 times partly because she sprained her ankle.[172] In 2016 there were ten sessions. In 2017, there were five sessions up to May 2017.[173] It is clear that the frequency of physiotherapy sessions was reducing.

234 Ms Poh said she would work with a patient for a period of three to five years.[174] At the latest, counting 2014 as the first year, the physiotherapy should conclude by 2018. Counsel for the Intervener suggested that it should end by 2019 and allowed for six sessions per year. Ms Poh agreed.[175]

235 Accordingly the Defendants submit that for the rest of 2017 there should be another six sessions and for 2018 and 2019 a total of 12 sessions.[176]

236 I accept that as being reasonable, and therefore allow a total of 18 sessions at $123 each, *ie*, $2,214. In addition I allow transport expenses of $30 per visit for 18 visits, making a total of $540.

Duration of psychiatric treatment

237 Dr Lee Ee Lian opined that she would require to treat the Plaintiff for depression for a period of between 18–24 months.[177] She also said that initially

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172 Tr/31.05.17/31/11–19.

173 DCS at pp 89–90.

174 Tr/31.05.17/53.

175 Tr/31.05.17/53.

176 DCS at para 268.

177 DCS at para 164; Tr/31.05.17/81–82.

the frequency of treatment might be fortnightly or at least once a month and thereafter quarterly.[178]

238 Dr Lim's view was that if the patient was stable for two years on medication, it would be a good time to stop medication.[179]

239 There is not much difference between the evidence of the two psychiatrists. My decision is that there should be two years of future treatment of which there should be monthly consultations in the first year and quarterly sessions in the second year. The total number of 16 consultations at Dr Lee's rate of $250 per session yields an aggregate of $4,000. No figures were suggested for the medication. In the round, informed by Dr Lee's previous invoices, I allow another $4,000.

Conclusion

240 In the result, my award of damages is as follows:

(a) General Damages

(i) Damages for pain and suffering and loss of Amenities

(A)	Lumbar Injury (with Cauda Equina Syndrome)	$23,000
(B)	Cervical Injury	$4,000
(C)	Psychiatric Injury	$12,000

178 DCS at para 165; Tr/31.05.17/76/13–18.

179 DCS at para 166; Tr/02.06.17/44–45.

	Total	$39,000

(ii) Loss of Earnings

(A)	Pre-trial Loss of Earnings – to be computed between counsel following the court's directions.	
(B)	Loss of Earning Capacity	$ 70,000

(b) Special Damages

(i) Pre-trial Medical Expenses

(A)	Incurred at Mt Alvernia Hospital	$821.72
(B)	Incurred at Mt Elizabeth Hospital	$8,988.09
(C)	Incurred at Centre for Spine & Scoliosis Surgery (Dr Hee Hwan Tat)	$2,279.20
(D)	Supplies from Guardian Pharmacy Mount Elizabeth	$252.68
(E)	Integratif Medical Orthotics & Prosthetic Specialist	$941.60

(F)	Centre for Medical Imaging	$872.05
(G)	Shenton Medical Group	$600.00
(H)	Singapore Medical Specialists Centre	$120.00
(I)	Thye Hua Kwan TCM Medical Centre	$1,384.00
(J)	Pinnacle Spine & Scoliosis Centre (Dr Hee Hwan Tat)	$9,158.15
(K)	Health Care Medical Centre (Neighbourhood Clinic)	$210.00
(L)	National Healthcare Group Polyclinics	$63.14
(M)	SMG Specialist Centre	$3,960.00
(N)	Better Life Psychological Medicine Clinic (Dr Lee Ee Lian)	$4,213.65
	Total	**$33,864.28**

(ii) Hospitalisation

1st hospitalisation (25 July 2012 to 28 July 2012)	$6,619.26

6th hospitalisation (20 April 2013 to 7 May 2013) as well as Dr Hee's fee	$25,008.15 $14,445.00
9th hospitalisation (10 January 2014 to 13 January 2014) (claim disallowed except for Dr Hee's attendance fee)	$428.00
13th hospitalisation (13 March 2017 to 19 March 2017)	$11,625.38
14th hospitalisation (14 May 2017 to 15 May 2017) (claim disallowed except for Dr Lee Ee Lian's fee)	$600.00
Total	**58,725.79**

(iii) Transport Expenses $9,355.03

(iv) Renovation and other expenses $2,569.14

(v) Expenses for employing foreign domestic workers ("FDW")

1st FDW	$15,628.95
2nd FDW	$14,228.00
3rd FDW	$18,260.00
Total	**$48,116.95**

(c) Future Expenses

For employment of domestic worker	$27,390.00
Future medical expenses: (a) Consultations with Orthopaedic Surgeons and associated taxi fare (b) Physiotherapy and associated taxi fare (c) Psychiatric treatment	$2,500.00 $2,754.00 $4,000.00
Total	**$36,644.00**

241 If, contrary to my expectation, there is any difference between the parties in the computation of pre-trial loss of income following the directions that I have given, I will hear the parties.

242 I will also hear the parties on costs.

Andrew Ang
Senior Judge

Yap Tai San Paul and Janice Han (Vision Law LLC) for the plaintiff;
Chua Tong Nung Edwin and Cham Xin Di, Cindy (Lawrence Chua Practice LLC) for the defendant;
The third party in person;
Yeo Kim Hai Patrick and Tan Mun Yung, Kenneth (KhattarWong LLP)
for the intervener.