IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 147

Suit No 1020 of 2020

Between

Lang Ren Jee Renata Mrs Tay Ren Jee Renata

… *Plaintiff*

And

Toh Yih Wei

… *Defendant*

JUDGMENT

[Damages] — [Assessment]

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Lang Ren Jee Renata Mrs Tay Ren Jee Renata
v
Toh Yih Wei

[2023] SGHC 147

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Lai Siu Chiu SJ
21, 22 February, 13 April, 2 May 2023

18 May 2023 Judgment reserved.

Lai Siu Chiu SJ:

Introduction

1 The claim in this suit by Lang Ren Jee Renata ("the plaintiff") against Toh Yih Wei ("the defendant") arose out of a traffic accident that took place on 7 July 2018 when the defendant's Malaysian-registered vehicle No WQQ 2823 rear-ended the plaintiff's motor vehicle No SKT6671M. As a result of the accident, the plaintiff sustained personal injuries which were acute whiplash injury to her cervical spine and neck and acute soft tissue injury to her back.[1] She suffers pain and discomfort from her injuries to date.[2]

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1 Plaintiff's Bundle of Documents ("PB") at pp 13–14 (S/N 6 – Specialist medical report by Dr Chang Wei Chun dated 1 April 2020).

2 Notes of Evidence ("NEs") (22 February 2023) at p 147 lines 8–11.

2 The plaintiff commenced this suit against the defendant on 22 October 2020.[3] On 17 August 2021, interlocutory judgment with 100% liability against the defendant was awarded to the plaintiff.[4] The hearing before this court was to assess the damages due to the plaintiff for her injuries arising from the accident.

The assessment hearing

3 The plaintiff testified at the trial together with (i) Dr Chang Wei Chun ("Dr Chang") her medical expert, (ii) her physiotherapist Rujuta Parmanand ("Rujuta") and (iii) Dr Sim Kee Sheng Kevin ("Dr Sim") who was the doctor who treated her immediately after the accident.

4 The defendant had an expert witness in Dr Peter Lee Yew Chung ("Dr Lee"). The defendant initially had no factual witnesses, one reason being it was unnecessary since liability on his part had been admitted at 100%. At the last minute, on the first day of the assessment hearing, the defendant applied (via Summons No 407 of 2023) for leave to file within an extended timeline, the affidavit of evidence-in-chief ("AEIC") of a private investigator Peh Eng Guan ("Peh") which application the court allowed. Peh had conducted on the defendant's behalf surveillance on the plaintiff from September–November 2022.[5]

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3 Writ of Summons in HC/S 1020/2020 dated 22 October 2020.

4 Interlocutory Judgment (HC/JUD 388/2021) dated 17 August 2021.

5 AEIC of Peh Eng Guan dated 17 February 2023 ("Peh–1") at para 5.

(i) The plaintiff's case

5 For the assessment hearing, the plaintiff, who is a schoolteacher, filed an AEIC wherein she claimed $34,623.64 for medical expenses which are continuing.[6] She further claimed transport expenses of $30 per round trip for 64 trips amounting to $1,920 which are also continuing.[7] Her last claim was for pre-trial loss of earnings amounting to $2,600.[8]

6 When she took the stand, the plaintiff was questioned by both parties' counsel on her activities of daily living ("ADL") as shown in the surveillance videos taken by Peh on one day in September 2022, three days in October 2022, and one day in November 2022.

7 Peh's surveillance report ("Peh's report") was exhibited in his AEIC. Peh's report noted that on two occasions the plaintiff was able to turn her head once towards the right (on 12 October 2022)[9] and once towards the left (on 19 October 2022) without displaying any signs of pain or difficulty.[10]

8 Questioned by her counsel, the plaintiff explained she had no choice sometimes but to turn her head a little at times and in order to reduce the pain, she would also turn her body as well.[11] The plaintiff testified that Peh's date of 19 October 2022 was incorrect – his surveillance showing she purportedly

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6 AEIC of Lang Ren Jee Renata dated 3 August 2022 ("Lang–1") at para 10.

7 Lang–1 at para 10.

8 Lang–1 at para 12.

9 Peh–1 at p 12.

10 Peh–1 at p 13.

11 NEs (21 February 2023) at p 45 lines 12–16.

visited St Luke's Elderly Care Residence ("St Luke's") that day.[12] She had visited St Luke's on 18 October 2022 which date she corroborated by producing WhatsApp messages.[13] On 18 October 2022, the plaintiff had taken an elderly lady who has no family and of whom she is the caregiver, to St Luke's. She added that when she drives and has to reverse, she would look at her car's rear-view mirror as a guide.[14]

9 The plaintiff was shown in some videos in Peh's report as holding a handphone in her right hand but listening to it using her left ear. She explained that she is ambidextrous but predominantly left-handed and is more comfortable listening with her left ear when she feels a weakness in her right hand.[15]

10 Cross-examined, the plaintiff clarified that although she is predominantly left-handed, she feels pain on both sides of her body and her left side seems to be more affected when she grips her handphone even when using her right hand.[16] She stated she is teaching Primary 1 students in a new school since January 2023 and she has to carry a laptop as well as worksheets without assistance.[17] Teaching causes her intense pain and suffering at times notwithstanding which she soldiers on due to her sense of duty.[18]

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12 NEs (21 February 2023) at p 45 lines 22–30; p 48 lines 24–28.

13 Exhibit P2.

14 NEs (21 February 2023) at p 46 lines 27–29

15 NEs (21 February 2023) at p 49 lines 14–27.

16 NEs (21 February 2023) at p 53 lines 11–21.

17 NEs (21 February 2023) at p 53 lines 19–25.

18 NEs (21 February 2023) at p 77 lines 2–10.

11 The plaintiff testified that physiotherapy did help to relieve her of pain although the relief does not last.[19] She would try to go for physiotherapy whenever time permitted and went twice a week during school holidays.[20] She produced a table which showed that she went for physiotherapy 14 times between 2 August 2018 to 27 December 2018 averaging more than two times a month.[21]

12 The plaintiff testified that due to work pressure, she opted out of full-time teaching in 2015 and became an adjunct teacher as she loves and wanted to continue teaching.[22] She is paid based on the number of hours she teaches.[23] She produced in court copies of her payslips[24] from the Ministry of Education ("MOE") for the years 2018 to 2022 as well as her CPF contributions history from January 2021 to January 2023[25] and her CPF statements of account from January 2017 to December 2020.[26]

13 Counsel for the defendant suggested to the plaintiff that the accident did not affect her working ability as she worked the same number of hours after as she did before the accident.[27] He also drew the plaintiff's attention to her Notice

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19 NEs (21 February 2023) at p 77 lines 11–18.

20 NEs (21 February 2023) at p 77 lines 27–28.

21 PB at p 35.

22 NEs (21 February 2023) at p 57 line 28–p 58 line 12; p 69 at lines 23–26.

23 NEs (21 February 2023) at p 58 lines 23–24.

24 PB at pp 170–267.

25 PB at pp 167–169.

26 PB at pp 154–166.

27 NEs (21 February 2023) at p 60 lines 1–4.

of Assessment for 2018[28] which showed that she earned more that year despite the accident.[29] Her income for the years of assessment 2019 to 2022[30] showed no drop but in fact increased over the years. The plaintiff disagreed – she said she tried not to take medical leave and would report to her school for work as far as possible.[31] Moreover, MOE had increased teachers' salaries over the years.[32]

14 Counsel for the plaintiff pointed out that evidence of the plaintiff's pre-accident income is not relevant since the plaintiff had only claimed a sum of $2,600 for pre-trial loss of earnings;[33] the court agrees.

15 The court next turns to the medical evidence that was adduced for the plaintiff's case starting with Dr Chang's testimony.

16 Dr Chang first saw the plaintiff on 12 July 2018 and rendered three medical reports on her – the first dated 1 April 2020 ("Dr Chang's first report")[34], the second dated 12 November 2021[35] ("Dr Chang's second report"), and the third dated 30 January 2023 ("Dr Chang's third report")[36] following his last review of her condition on that day. Dr Chang also reviewed on 13 June

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28 PB at p 149.

29 NEs (21 February 2023) at p 69 lines 29–31.

30 PB at pp 150–153.

31 NEs (21 February 2023) at p 60 lines 5–7.

32 NEs (21 February 2023) at p 70 at line 7.

33 NEs (21 February 2023) at p 71 lines 22–30.

34 PB at pp 10–19.

35 PB at pp 24–28.

36 PB at pp 31–34.

2022[37] and gave a report ("Dr Chang's review report") on Dr Lee's medical report on the plaintiff dated 14 February 2022 ("Dr Lee's report").

17 In Dr Chang's first report, he stated he found the plaintiff's spine to be stiff and the plaintiff had complained to him of headaches and almost constant neck and low back pain although there was no neurological deficit in her limbs referable to the spine.[38] He prescribed to the plaintiff an anti-inflammatory analgesic and a muscle relaxant analgesic.[39] Dr Chang stated that due to her teaching full-time, the plaintiff was required to stand, mark papers, carry loads such as school books as well as work at her computer, all of which were tasks that aggravated her neck and back symptoms.[40]

18 In Dr Chang's second report, he stated he had reviewed her on 18 September 2020 but found no significant improvement of her symptoms and signs.[41] When he examined her on 22 October 2021 which was 3 years and 3½ months after the accident, the plaintiff complained she still suffered from chronic neck stiffness with painful episodes as well as low back pain.[42]

19 In Dr Chang's review report, he opined that the plaintiff's "continual neck and low back symptoms would be permanent and would require oral medications and physiotherapy for ongoing treatment and for exacerbations".[43]

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37 PB at pp 29–30.

38 PB at p 13.

39 PB at p 12.

40 PB at p 15.

41 PB at p 24.

42 PB at pp 24–25.

43 PB at p 29.

20 As regards the plaintiff's treatment, Dr Chang opined that pain medication and physiotherapy would only provide short-term relief.[44] He recommended that the plaintiff:

(a) Consider injections of local anaesthetic and steroids into her left facet joints. These can provide temporary relief of a few months;[45]

(b) If her pain recurs, to undergo a procedure called radiofrequency ablation ("RFA") that heats the nerves (medial branch) which can be repeated if necessary. The duration of relief can be 9–18 months giving the plaintiff some respite from pain. After 2–3 sessions, the pain may not return as nerves regenerate after an RFA;[46]

(c) Do regular exercise to maintain good posture and back care, strength, and flexibility;[47]

(d) Undergo periodic physiotherapy for exacerbations;[48]

(e) Undergo percutaneous nucleoplasty, a form of minimally invasive surgery to decompress her prolapsed disc due to the soft tissue injury to her cervical spine.[49]

21 Dr Chang's first report had stated that RFA injections are performed under fluoroscopy as a day patient under intravenous sedation with an

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44 PB at p 14.

45 PB at pp 14.

46 PB at p 14.

47 PB at pp 15.

48 PB at pp 15.

49 PB at pp 14 and 26.

anaesthetist in attendance, at an estimated cost of $8,000.[50] If the treatment is combined with facet joint injections, the cost would be about $13,000.[51] The estimated cost of undergoing the injections, RFA and percutaneous nucleoplasty (as recommended at [20(a)], [20(b)] and [20(e)]) at Gleneagles Hospital where the plaintiff has had follow-up treatment approximated $15,000.[52] Dr Chang's second report also recommended 30 sessions of physiotherapy per annum for the plaintiff for a period of five years at $150 per session with a monthly provision of $75.00 for pain medication for at least five years.[53]

22 In Dr Chang's third report, he opined that the plaintiff was still significantly impaired from the accident.[54] He added that she continues to suffer chronic neck and lower back pain.[55] Movements of her cervical spine and in the thoracic/lumbar regions of her spine are still restricted and she suffers pain in her neck and lower back with extremes of movement.[56]

23 It should be made clear at this juncture that Dr Chang prepared a fourth medical report dated 19 February 2023 ("Dr Chang's fourth report")[57] after he was extended a copy of Peh's report by counsel for the defendant. He addressed the surveillance conducted on the plaintiff in Peh's report and stated that it did

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50 PB at p 14.

51 PB at p 14.

52 PB at p 15.

53 PB at p 26.

54 PB at p 31.

55 PB at p 32.

56 PB at p 33.

57 Agreed Bundle of Documents ("AB") at pp 10–11.

not change his diagnosis or prognosis on the plaintiff.[58] Dr Chang's fourth report opined that the plaintiff's ADL and demeanour captured in Peh's surveillance were not inconsistent with her having suffered a grade 2 whiplash injury and soft tissue injury to her lumbar spine and aggravating her lumbar spondylosis.[59]

24 During cross-examination, Dr Chang was referred to the MRI done on the plaintiff's spine[60] at Mount Elizabeth Hospital ("MEH") after the accident which *inter alia* showed minimal spondylosis. He opined the condition was not likely caused by the accident but was probably a pre-existing condition in view of the plaintiff's then age of 61.[61]

25 Counsel for the defendant then referred Dr Chang to the plaintiff's MRI done on 12 January 2022 as discussed in Dr Chang's review report and his comment that "there were no significant interval changes since 7.7.18".[62] Counsel inquired whether the comment meant that the plaintiff's current condition was attributable to her pre-existing condition and not to the accident.[63] Dr Chang did not think so as at the time of the accident, the plaintiff did not show symptoms attributable to her pre-existing condition or experience any pain.[64] The symptoms and signs she developed following the accident were due not exclusively to those disc prolapses but due to injury to the soft tissue around

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58 AB at p 10.

59 AB at p 10.

60 PB at pp 4–6.

61 NEs (21 February 2023) at p 15 lines 5–11.

62 PB at p 29.

63 NEs (21 February 2023) at p 15 lines 27–32.

64 NEs (21 February 2023) at p 16 lines 1–10.

the neck such as ligaments, the muscles and facet joints, amounting to whiplash injury grade 2.[65]

26 Counsel described the plaintiff's teaching job as "non-strenuous, non-laborious".[66] Dr Chang however viewed the plaintiff's job as quite laborious because she has to carry loads of books and laptops as well as sit and mark papers with her neck in a prolonged immobile posture.[67] Teaching would aggravate the plaintiff's pre-existing condition.[68] Had it not been for the accident, the plaintiff may well have been asymptomatic to her disc prolapse and her cervical spondylosis.[69] He opined she can continue teaching with a lot of limitations but shorter working hours was not an option open to her.[70] His assessment of her was that she puts up with her pain and disability and soldiers on, taking medication to alleviate her pain[71].

27 Cross-examined, Dr Chang agreed with Dr Lee's report that stated[72] the plaintiff does not require surgery for her cervical spondylosis at present or in the foreseeable future.[73] He recommended injection therapy to her neck which is not a surgical procedure.[74] The injections would lessen her dependency on

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65 NEs (21 February 2023) at p 16 lines 3–6.

66 NEs (21 February 2023) at p 17 line 32.

67 NEs (21 February 2023) at p 18 lines 2–6.

68 NEs (21 February 2023) at p 18 lines 15–16.

69 NEs (21 February 2023) at p 18 lines 20–26.

70 NEs (21 February 2023) at p 18 line 29–p 19 line 5.

71 NEs (21 February 2023) at p 19 lines 4–5.

72 Defendant's Bundle of Documents ("DB") at pp 1–5.

73 NEs (21 February 2023) at p 19 lines 21–22.

74 NEs (21 February 2023) at p 19 lines 22–23.

medication as long-term medication for pain is not something that should be continued.[75] Dr Chang doubted after 4½ years that the plaintiff's condition is curable.[76] It was more a matter of controlling her symptoms so that she can function effectively with no great symptoms.[77]

28 In re-examination,[78] Dr Chang elaborated on his recommendation of injection therapy.[79] He explained that it is an invasive procedure to the cervical and lumbar spine which is carried out in the operating theatre when conservative treatment such as medication and physiotherapy does not assist the patient.[80] This is premised on the fact that pain in the neck and lumbar are due to injury to the facet joints.[81] Because of that, the facet joints are injected with local anaesthetics and steroids and radiofrequency burning is performed on the nerves in the hope of getting rid of the pain generator.[82] He confirmed the plaintiff had undergone one such procedure and it gave her relief for 9 months.[83]

29 The plaintiff's physiotherapy charge of $150 per session was confirmed by Rujuta of Synergy Physiotherapy and Sports ("Synergy") to whom Dr Chang referred the plaintiff.[84] In her AEIC, Rujuta stated she had been treating the

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75 NEs (21 February 2023) at p 20 lines 25–29.

76 NEs (21 February 2023) at p 20 lines 19–21.

77 NEs (21 February 2023) at p 20 lines 19–21.

78 NEs (21 February 2023) at p 32 lines 9–16.

79 PB at p 30.

80 NEs (21 February 2023) at p 32 lines 9–11.

81 NEs (21 February 2023) at p 32 lines 11–12.

82 NEs (21 February 2023) at p 32 lines 12–15.

83 NEs (21 February 2023) at p 32 lines 19–20.

84 NEs (22 February 2023) at p 120 line 22.

plaintiff since 7 September 2018.[85] She added that the plaintiff's physiotherapy sessions in 2021 were mainly for pain management rather than strengthening due to the plaintiff experiencing more pain.[86] Rujuta affirmed that the plaintiff's pain intensity from her neck and lower back increased with prolonged sitting, carrying objects with her hands and her work such as marking papers.[87] Rujuta recalled[88] that the plaintiff would visit Synergy whenever there was exacerbation of her symptoms and when she experienced more pain – it was not a preventive but a curative measure to have pain relief.

30 In cross-examination,[89] Rujuta clarified that physiotherapy does not "fix" the plaintiff's problem as was suggested by counsel for the defendant. Instead, physiotherapy helps to reduce the plaintiff's pain and reduce/manage her symptoms as well as assist her mobility, while strengthening exercises for her neck and back injuries would improve her functionality.[90] Strengthening exercises would involve carrying weights which are gradually increased to improve the plaintiff's load-bearing capacity. Rujuta pointed out that carrying of weights by the plaintiff also involved endurance. It was not only a question of *how much* weight the plaintiff can carry but *how long* she can carry the loads.[91]

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85 AEIC of Rujuta Parmanand dated 28 December 2022 ("Parmanand–1") at para 2.

86 NEs (22 February 2023) at p 120 lines 28–30; p 121 lines 16–18; Parmanand–1 at p 5.

87 NEs (22 February 2023) at p 120 lines 19–21; Parmanand–1 at p 4.

88 NEs (22 February 2023) at p 120 lines 19–21.

89 NEs (22 February 2023) at p 109 lines 16–22.

90 NEs (22 February 2023) at p 109 lines 20–22; p 110 lines 10–12.

91 NEs (22 February 2023) at p 115 lines 14–27.

31 Nothing turns on the evidence of Dr Sim who as stated earlier (at [3]) was the first doctor to attend to the plaintiff after the accident. Quite understandably, Dr Sim could not recall the specifics of this case – he handled the case about five years ago as a doctor on duty at the Accident and Emergency unit of MEH to which hospital the plaintiff was sent after the accident.

(ii) The defendant's case

32 When he testified, Peh confirmed to counsel for the plaintiff that he was tasked to investigate the plaintiff's ADL to see if she showed signs of exaggerating her injuries.[92]The court will return to Peh's report later in the judgment (at [58]).

33 Dr Lee was the defendant's second and last witness. He was shown the surveillance videos in Peh's report. Dr Lee only examined the plaintiff once on 11 January 2022, more than a year before this trial. In cross-examination, Dr Lee agreed that as the plaintiff's treating doctor who managed her case soon after the accident until now, Dr Chang's prognosis should be accorded more deference on the kind and extent of care the plaintiff needs.[93]

34 It should be noted at this juncture that Dr Lee's report did not state that he disagreed with Dr Chang on the nature of the plaintiff's injuries/condition. Dr Lee had been provided with Dr Chang's first and second reports for reference when he examined the plaintiff. Indeed, Dr Lee's report agreed with Dr Chang's second report that the plaintiff may require oral medication and physiotherapy in the future for exacerbations of her cervical and lumbar spondylosis. His report

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92 NEs (22 February 2023) at p 130 lines 16–18.

93 NEs (22 February 2023) at p 144 lines 18–23.

added that the plaintiff showed varying degrees of restriction in her movements, with, for example, 40 degrees of cervical extension[94] against what he agreed during cross-examination to be a norm of maximum 70 degrees.[95] In essence, he agreed roughly with Dr Chang's assessment that the plaintiff's range of motion had been reduced by one-third.[96]

35 Dr Lee testified he disagreed with Dr Chang on RFA as he thought it was unusual for patients with neck and lower back problems to have the quantum of radiofrequency injections that Dr Chang recommended.[97] Questioned by the court subsequently,[98] Dr Lee estimated that two sessions of RFA would suffice for the plaintiff.

36 Dr Lee did agree with Dr Chang's view that the mere presence of cervical spondylosis does not mean the person who has it is symptomatic; it could be asymptomatic. He described the plaintiff's pain as "episodic",[99] as it comes on and off and she has good and bad days, quoting from the words from Dr Chang's fourth report. Dr Lee noted that physiotherapy provides the plaintiff with temporary relief.[100] He agreed her symptoms were consistent with cervical spondylosis and soft tissue injury which will cause her discomfort to varying degrees.[101]

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94 DB at p 2.

95 NEs (22 February 2023) at p 149 line 2.

96 NEs (22 February 2023) at p 149 lines 26–32.

97 NEs (22 February 2023) at p 145 lines 26–29.

98 NEs (22 February 2023) at p 158 lines 1–9.

99 NEs (22 February 2023) at p 152 line 31.

100 NEs (22 February 2023) at p 152 line 32.

101 NEs (22 February 2023) at p 153 lines 1–6.

37 The court had referred Dr Lee to Dr Chang's fourth medical report.[102] He agreed with what Dr Chang stated in that report.[103]

38 Questioned further by the court[104] as to whether regular physiotherapy sessions would ameliorate the plaintiff's pain, Dr Lee opined that he had a different philosophy as regards her treatment.[105] He preferred a short course of intensive therapy of maybe 5–8 sessions. Thereafter, he hoped the plaintiff would do more self-therapy in terms of exercise and muscle strengthening to prevent exacerbations of her pain.[106] Dr Lee included physiotherapy as part of the plaintiff's treatment but not to the extent advocated by Dr Chang. He opined the plaintiff should have 2–3 sessions of intensive therapy and the rest of the sessions would be to exercise under supervision to achieve strengthening goals.[107]

The submissions

(i) The plaintiff's submissions

39 The parties filed closing submissions at the conclusion of the trial. The plaintiff argued in her Closing Submissions dated 13 April 2023 ("PCS") that she should be awarded damages amounting to $285,889.09 based on the following breakdown:[108]

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102 NEs (22 February 2023) at p 160 line 20–p 161 line 8.

103 NEs (22 February 2023) at p 161 line 4.

104 NEs (22 February 2023) at p 158 lines 10–23.

105 NEs (22 February 2023) at p 158 line 24.

106 NEs (22 February 2023) at p 158 lines 26–32.

107 NEs (22 February 2023) at p 159 lines 25–30.

108 PCS at para 4.

No	Head of claim	Quantum
1	Pain and loss of amenities – neck ($15,000) and back ($20,000)	$35,000.00
2	Pre-trial loss of earnings (8 days @ $325 per day)	$2,600.00
3	Medical expenses	$36,803.69
4	Transport expenses (78 trips @ $40 per round trip)	$3,120.00
5	Other expenses – Tempur travel pillows	$965.40
6	Future medical expenses: (i) 4 sessions of injection therapy & RFA ($20,500 x 110% for inflation) to cervical spine and occipital nerves; (ii) 4 sessions of injection therapy & RFA ($20,500 x 110% for inflation) to lumbar spine; (iii) oral and topical medications ($75 per month for 5 years); (iv) physiotherapy sessions (30 sessions per year @ $150 per session for 5 years).	$207,400.00 $90,200.00 $90,200.00 $4,500.00 $22,500.00
7	Future transport expenses (154 trips @ $40 per round trip)	$6,160.00
	Total:	$285,889.09

(i) Pain and suffering

40 In support of item 1 above, the plaintiff in her PCS referred to the innumerable medical reports that were before the court as well as documents evidencing the plaintiff's physiotherapy sessions. As regards the quantum of $15,000 and $20,000 respectively for the whiplash and spine injuries, the

plaintiff relied on the 2010 Guidelines for the Assessment of General Damages in Personal Injury Cases ("the PI Guidelines").[109] Under classification (c)(i) applicable to minor whiplash injury and soft tissue damage, where the symptoms take longer to resolve and there are residual disabilities on a long-term basis, the range of damages is $7,000–$8,000.[110] For moderate injury where there is soft tissue injuries resulting in exacerbation of existing back condition or prolapsed discs and/or permanent or chronic disability, but the injured person is able to cope with the ADL although he may have some difficulty performing his job at the pre-trauma capacity, the range is $10,000–$17,000.[111] The plaintiff submitted that she should be awarded the higher range. Factoring in inflation, the plaintiff submitted $20,000 would be a reasonable sum to award.[112]

(ii) Pre-trial loss of earnings

41 To justify her claim for $2,600, the plaintiff pointed in her PCS to her testimony[113] where she states that she had reported for work late on 17 January 2022 instead of on 5 January 2022 as she was on hospitalisation leave. She was not eligible for paid medical leave under clause 4b[114] of the Terms and Conditions of Casual Employment applicable to her[115] as she had not completed any months of service that year to qualify for medical benefits. The plaintiff's

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109 PCS at para 12.

110 PCS at para 13.

111 PCS at para 14.

112 PCS at para 14.

113 NEs (21 February 2023) at p 74 lines 5–9.

114 PB at p 142.

115 PB at p 141.

loss of earnings at $325 per day for 8 days totalling $2,600 was confirmed in an email from her school dated 18 July 2022 that was exhibited in RL-1 in the plaintiff's AEIC.[116]

(iii) Medical expenses

42 The plaintiff submitted that she had already expended $20,485.96 at Gleneagles Hospital on one session of injection therapy on 28 December 2021 and the claim should be allowed as the procedure ameliorated her pain when it became unbearable.[117]

(iv) Transport expenses

43 The plaintiff pointed out in her PCS that she was neither questioned nor cross-examined on her claim for transport charges at $40 per round trip and therefore her total claim for 78 trips totalling $3,120.00 be allowed.[118] Based on Dr Chang's recommendation (discussed at [46]–[47]), the plaintiff submitted that a claim for future transport expenses of $6,160 is reasonable (taking into account 30 sessions of physiotherapy per year for five years and four sessions of RFA for cervical and lumbar spine).[119]

(v) Other expenses

44 The plaintiff submitted in her PCS that her claim for $965.40 for three Tempur travel-sized pillows should be allowed.[120]

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116 Lang–1 at p 5.

117 PCS at paras 20, 22 and 27; NEs (21 February 2023) at p 79 line 23.

118 PCS at para 23.

119 PCS at para 36.

120 PCS at para 24.

(vi) Future medical expenses

45 The plaintiff in her PCS justified the total claim for $207,400.00[121] not only based on Dr Chang's evidence (which it was argued should be preferred to Dr Lee's) but also because the plaintiff is now 65 years of age and has a further life expectancy of 23 years.[122]

46 The plaintiff argued that while the effect of RFA injections only lasts between 9–18 months, Dr Chang had testified (see [20(b)]) that after 3–4 RFA injections, the pain may fully resolve. Granted, Dr Lee's opinion was that 2 sessions of RFA would suffice (see [35]). The plaintiff submitted however that ultimately, Dr Lee agreed he would defer to Dr Chang's opinion as Dr Chang is the plaintiff's treating physician.[123] Hence, the plaintiff argued, four RFA injection sessions should be allowed. Coupled with a 10% inflation factor, the plaintiff submitted $207,400 would be the appropriate award.[124]

(vii) Medication and physiotherapy

47 The plaintiff pointed out in her PCS that Dr Chang made provision for $75 per month for medication for five years (see [21]) to which Dr Lee did not disagree. Dr Lee disagreed with Dr Chang's provision of 30 sessions of physiotherapy as excessive (see [38]) as he advocated a short course of intensive therapy of perhaps 5–8 sessions. The plaintiff argued that did not mean Dr Chang's recommendation is unreasonable as the plaintiff did find physiotherapy

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121 PCS at para 25–30.

122 Plaintiff's Bundle of Authorities at p 117 (2021 data of the Department of Statistics).

123 PCS at para 26.

124 PCS at para 30.

useful since it alleviated her pain.[125] The court was asked to accept Dr Chang's recommendation.

(ii) The defendant's submissions

48 In the defendant's Closing Submissions dated 13 April 2023 ("DCS"), it was argued that the plaintiff's injuries were pre-existing and were not caused by the accident.[126] Therefore, she cannot claim for the alleged injuries to her neck and lower back. Such a startling submission prompted counsel for the plaintiff to apply to this court for leave which was granted, to file a Reply to the submission.

49 In the plaintiff's Reply Submissions dated 2 May 2023 ("PRS"), the plaintiff pointed out[127] that her entire cause of action is based on negligence, for personal injuries and her consequential loss arising from the accident. Damages are an integral part of her claim and if she did not suffer injury/loss, her entire cause of action must fail for want of causation (citing *Tan Won Thian v PricewaterhouseCoopers Advisory Services Pte Ltd* [2021] 1 SLR 1166).

50 The plaintiff in her PRS pointed out that the defendant's submission in [48] is untenable for two reasons. First, it was never pleaded in the defence that the plaintiff's neck injury was pre-existing and there was a break in the chain of causation (*novus actus interveniens)* for the back injury.[128] Second, the issue of causation should have been raised at the trial on liability and not at the

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125 PCS at para 34.

126 DCS at paras 7–11.

127 PRS at para 2.

128 PRS at para 4.

assessment stage.[129] As interlocutory judgment had been obtained against the defendant on the basis of 100% liability on his part, the plaintiff submitted that the defendant is now estopped from raising at the assessment stage the issue of causation, citing *Salmizan bin Abdullah v Crapper, Ian Anthony* [2023] SGHC 75 ("*Salmizan's Case*").[130]

51 In *Salmizan's Case*, the defendant in an accident case had disputed liability for the plaintiff's injuries arising from a collision between the plaintiff's motorcycle and the defendant's motor vehicle. In the defence that he filed, the defendant had disputed liability on the basis of lack of causation. Notwithstanding his pleaded stance, the defendant subsequently entered into a consent interlocutory judgment wherein he accepted 90% liability for the accident.

52 Amongst the questions which came for determination before the court in *Salmizan's Case* was whether causation can be reserved *in toto* to the assessment of damages ("AD") stage. The court answered the question in the negative. In other words, the defendant cannot challenge the issue of causation at the AD stage. In this case, unlike the defendant in *Salmizan's Case,* the defendant did not even plead in his defence (filed on 4 January 2021) that the accident did not cause the plaintiff's injuries. He merely put the plaintiff to strict proof of her claim.

53 Consequently, the court will disregard those portions in the DCS where the defendant argued that the plaintiff's injuries were not caused by the accident.

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129 PRS at para 4.

130 PRS at para 4.

It does not lie in the defendant's mouth at the assessment stage to mount this submission. In any case, such a submission completely ignores the evidence of Dr Chang, which the court accepts, that the plaintiff could well be asymptomatic as regards her cervical and lumbar spondylosis were it not for the accident.

54 The defendant in his DCS submitted that at best, the plaintiff is entitled to $6,000 for pain and suffering to her neck, which figure is below the range of $7,000–$8,000 in the PI Guidelines at [40] above. The defendant submitted that for the plaintiff's back injury which is minor, she should be awarded $4,000 based on the PI Guidelines of $2,000–$10,000.[131]

55 The defendant did accept the plaintiff's claims for pretrial loss of earnings of $2,600 as well as her medical expenses of $36,434.34 (note that the plaintiff's figure of $36,803.69 is correct) as these claims were documented.[132] For future medical expenses however, the defendant argued that the plaintiff is only entitled to $1,200 for eight sessions of physiotherapy at $150 per session, relying on Dr Lee's evidence in [38] above.[133] The defendant submitted that the plaintiff had not shown that injection therapy is necessary and thus the claim should be disallowed. The defendant pointed out that both parties' medical experts agreed that she would only require oral medication and physiotherapy in the future. Even so, intermittent physiotherapy did not seem to resolve her pain. Hence, Dr Lee's recommendation (see [38]) of a short course of intensive therapy should be preferred.

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131 DCS at para 36.

132 DCS at paras 61 and 63.

133 DCS at para 60.

56 The defendant contended that the plaintiff had failed to provide any evidence of her claim for transport expenses and it should therefore not be allowed.[134] Similarly, it was submitted that she is not entitled to any claim for loss of earning capacity.[135] This submission is unnecessary as the plaintiff did not even make this head of claim.

57 In conclusion, the defendant in his DCS[136] stated the plaintiff is only entitled to the following heads of claim and sums:

No	Head of claim	Defendant's quantification
A	**General damages**	
1	Pain and suffering	Nil (alternatively $6,000 +$4,000)
2	Loss of earning capacity	Nil (alternatively $4,000)
3	Future medical expenses	$1,200
B	**Special damages**	
1	Medical expenses	$36,434.34
2	Pre-trial loss of income	$2,600.00
3	Transport expenses	Nil
	Total	$54,234.34

134 DCS at para 65.

135 DCS at para 44.

136 DCS at para 66.

The findings

58 With the greatest respect, the court does not see how the surveillance conducted by Peh assists the court in its determination of the quantum of damages to be awarded to the plaintiff. In Peh's report, he arrived at the following conclusions from his surveillance:

(a) the plaintiff was able to turn her head to look to her side without difficulty or showing any signs of pain;

(b) she was able to drive and manoeuvre her vehicle with ease;

(c) she was able to squat and stand up (after feeding stray cats) without difficulty;

(d) she walked in a normal manner and was able to cope with her ADL without difficulty.

59 It should be noted that the plaintiff was not disabled physically (fortunately) as a result of the accident – she did not suffer any crippling injury or lose any limbs. Therefore, it serves little/no purpose to engage private investigators to check on the plaintiff to ascertain how well she manages her ADL as that is irrelevant in the assessment of her pain and suffering. The plaintiff has no problems with her ADL. In fact, when the court questioned the defendant's expert Dr Lee,[137] he agreed that the fact a person suffers a whiplash injury does not mean that he cannot carry on with ADL. Dr Lee further agreed that one cannot tell from surveillance how much pain the person who is under

[137] NEs (22 February 2023) at p 160 line 2.

surveillance is experiencing.[138] Hence, Peh's report and evidence is neither helpful nor relevant.

60 It is the court's finding that the plaintiff suffers and will continue to suffer residual pain from her whiplash injury of 4½ years ago. The court reiterates that her injury in itself was not serious or disabling or life-threatening but the plaintiff continues to endure pain resulting therefrom. As Rujuta had confirmed to the court[139] and so too Dr Lee,[140] pain is highly subjective and is dependent on a person's threshold. Thresholds for pain vary from person to person and some people have higher thresholds for pain than others. Neither Dr Chang nor Dr Lee or Rujuta testified that the plaintiff is exaggerating her pain. Indeed, the court finds that she endures the pain as best as she can and she soldiers on because she loves teaching and wants to continue working as a teacher.

The decision

(i) Pain and suffering

61 Consequently, the plaintiff should be compensated for her pain and suffering. The defendant's combined offer of $10,000 for her neck and back injuries is derisory and falls outside the range set out in the PI Guidelines. The court rejects it outright. On the other hand, the plaintiffs' claim for both items totalling $35,000 is excessive. A fair award based on the PI Guidelines and

138 NEs (22 February 2023) at p 160 line 16.

139 NEs (22 February 2023) at p 117 lines 12–13.

140 NEs (22 February 2023) at p 146 lines 4–12.

using the highest quantum in the range would be $8,000 and $17,000 for the neck and back injuries respectively.

(ii) Medical expenses

62 Although Dr Lee disagreed with the treatment as well as the number of sessions recommended by Dr Chang, for RFA, the court is prepared to give the plaintiff an award for this treatment as her one-off session in December 2021 seemed to have benefitted her. However, taking into account both experts' evidence that physiotherapy should continue (even though they differed on the number of sessions required), the court will allow the plaintiff two further sessions of RFA each, for her neck and back in the hope that the treatment, coupled with physiotherapy, will provide her with much needed relief from pain.

63 As for physiotherapy sessions, the court thinks 30 sessions per annum recommended by Dr Chang are on the high side whilst Dr Lee's number of short but intensive sessions may be too few. The court awards the plaintiff 25 sessions per annum of physiotherapy averaging two a month with an additional session as a buffer. Besides pain relief, the sessions will/should enable the plaintiff to start or continue strengthening exercises for her back/lumbar spine.

64 It is common ground between the medical experts (to which the defendant also agreed) that oral medication is required for the plaintiff for five years. The court accepts her claim of $75.00 per month.

(iii) Other expenses

65 The plaintiff's claim for $965.40 for three Tempur pillows is disallowed. No evidence was led on this claim by the plaintiff apart from producing 2

invoices[141] from Metro department store and Harvey Norman respectively reflecting her purchase prices of $319 and $646.40 for the items, with her handwritten comment on the former invoice of "for better neck support". That notation does not suffice as evidence. The documents were not even in the agreed bundle so as to dispense with formal proof.

(iv) Transport expense

66 Similarly, no evidence was led on the plaintiff's claim for transport of $40 per trip for her physiotherapy or other treatment. In her AEIC, the plaintiff claimed $30 not $40 per trip for her transport.[142] No explanation was provided for the increase. The plaintiff in her PCS (see [43]) submitted her claim for $6,160 should be allowed since she was not questioned nor cross-examined on the item, presumably relying on the rule in *Brown v Dunne* (1893) 6 R. 67 that if evidence presented by one party is not challenged by the other, then the evidence stands. However, there was nothing whatsoever in the nature of evidence that was presented to support the claim of $40 or even $30. It had been adduced in evidence that the plaintiff drives her own car to/from work and to go elsewhere. Hence, her claim cannot be for public transport or taxi fares. No information was provided on what the claim of $40 pertained to. Hence this claim (which figure of $6,160 is also incorrect) is disallowed.

67 Bearing in mind the court's comments in [61] to [66], the court arrives at $173,403.69 for the plaintiff's claims as shown in the following breakdown:

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141 PB at pp 120–121.

142 Lang–1 at para 10.

General damages		
1	Pain and suffering (neck and back)	$25,000.00
2	Pre-trial loss of earnings (agreed)	$2,600.00
3	Medical expenses (agreed)	$36,803.69[143]
4	Physiotherapy x 30 per annum x 5 years @ $150 per session	$22,500.00
5	4 sessions of RFA @ $20,500 per session	$82,000.00
6	Oral medication @ $75 per month for 5 years	$4,500.00
	Total:	$173,403.69

68 The plaintiff had claimed an uplift of 10% for item 5 above to take into account inflation. The court disallows the uplift for the reason that the plaintiff is receiving accelerated payment for her future medical expenses.

Costs

69 The plaintiff is however entitled to interest on $25,000 (item 1 above) at the rate of 5.33% from the date of the writ (22 October 2020) until judgment as well as interest on items 2 and 3 above at the rate of 2.67% from the date of the accident (7 July 2018) until judgment.

70 As costs follow the event, the plaintiff is entitled to her costs of the assessment hearing on a standard basis to be taxed unless otherwise agreed. Although her claim could have and did come within the jurisdiction of the State

[143] The defendant's figure of $36,434.34 is incorrect.

Courts of $250,000, the plaintiff pursued her claim in the High Court. However, she should not be penalised in costs being awarded to her on the State Courts scale for doing so. She needed to file her claim in the High Court as a precaution in the event she is required to register her judgment for enforcement in Malaysia under the Reciprocal Enforcement of Foreign Judgments Act 1959. This is due to the possibility of the defendant being a Malaysian as his vehicle bore Federal Territory (*ie*, Kuala Lumpur) licence plates.

Lai Siu Chiu
Senior Judge

Ramasamy s/o Karuppan Chettiar and Mark Ho En Tian (He Entian) (Central Chambers Law Corporation) for the plaintiff;
Fernandez Christopher and Wu Lennon Leong Chong (Tan Kok Quan Partnership) for the defendant.