Tan Juay Mui (by his next friend Chew Chwee Kim) *v* Sher Kuan Hock and another (Liberty Insurance Pte Ltd, co-defendant; ; Liberty Insurance Pte Ltd and another, third parties) [2012] SGHC 100

Case Number	: Suit No 693 of 2008(Registrar's Appeal Nos 280 and 285 of 2011)
Decision Date	: 08 May 2012
Tribunal/Court	: High Court
Coram	: Judith Prakash J
Counsel Name(s)	: Balasubramaniam (Balasubramaniam & Associates) for the plaintiff; NK Rajarh (M Rama Law Corporation) for the co-defendant Mimi Oh (Mimi Oh & Associates) for the second defendant.
Parties	: Tan Juay Mui (by his next friend Chew Chwee Kim) — Sher Kuan Hock and another (Liberty Insurance Pte Ltd, co-defendant — Liberty Insurance Pte Ltd and another, third parties)

Damages – measure of damages – personal injuries cases

Damages – inadequate damages

Damages – remoteness

Damages – special damages

8 May 2012 Judgment reserved.

Judith Prakash J:

Introduction

1 This case involves an appeal and a cross-appeal against an assessment of damages in a personal injury case.

2 On 15 June 2006, the plaintiff, Mdm Tan Juay Mui, who was then almost 48, was knocked down by a bus driven by the first defendant. The second defendant is the employer of the first defendant. After proceedings were commenced, the defendants consented to judgment being entered against them for damages to be assessed on the basis that they were fully responsible for the accident.

3 Initially, the plaintiff suffered the following serious injuries:

(a) A severe injury to her left foot with an extensive section of her skin torn off the underlying tissue, severing the blood supply; and

(b) Severe brain injury with blood collecting between the layers of the brain.

She was admitted to hospital and underwent emergency surgery to remove the blood in the brain. A right intracranial pressure monitor was inserted in her head during the operation because her condition had deteriorated and the size of the haematoma had increased. Due to the serious nature of the

injury to her left foot, it could not be saved despite extensive wound debridement and, on 17 June 2006, the plaintiff underwent an amputation of her left leg below the knee in order to save her life.

4 I will detail the further treatments administered to the plaintiff and her subsequent complaints and ailments later in this judgment. It is important to note here, however, that the plaintiff lost her ability to manage herself and her affairs and her husband had to be appointed her litigation representative to undertake and conduct the proceedings on her behalf.

Decision below and appeals

5 After a lengthy hearing, Assistant Registrar Ang Feng Qian ("the AR") made the following awards of damages in favour of the plaintiff:

1. Pain and suffering and loss of amenity: $230,000.00	
a. Head injury	$170,000.00
b. Leg injury	$60,000.00
2. Special Damages: $167,639.01	
a. Loss of earnings before trial	$15,500.00
b. Caregiving arrangements before trial	$86,000.00
c. Pre-trial medical expenses	$32,897.87
d. Transport expenses	$3,829.65
e. Renovation	$3,250.00
f. Pre-trial nursing costs	$4,518.64
g. Medical equipment and consumables	$9,609.05
h. Legal costs of obtaining Order for Appointment of Committee of Person	$12,033.80
3. Future expenses: $493,030.00	
a. Loss of future earnings	$24,000.00
b. Costs of future care: (components are listed as annual costs with multiplier of 17)	$469,030.00
(i) Costs of hiring maid and daycare	$18,888.00
(ii) Future medical expenses	
1. Medication	$1,200.00
2. Laboratory tests	$400.00
3. Costs of consultations	$200.00
4 . Diapers, wipes and underpads	$1,300.00

5 . Wheelchair and servicing	$200.00
6 . Prosthesis and servicing	$1,140.00
7. Commode and special chair	$417.00
8. Quad stick	$5.00
9 . Physiotherapy and psychological therapy	$2,400.00
1 0 . Diabetes-related expenses (excluding medication)	$1,200.00
(iii) Future transport expenses	$240.00
Total Award is	$890,669.01

6 The plaintiff's appeal is for the following:

(a) An increase in the amounts awarded for the head and leg injuries;

(b) An award to be made in respect of the plaintiff having become a diabetic after the accident;

(c) An award to be made in respect of the loss of housekeeping services/cost of a maid prior to trial;

(d) Variation of the award made in respect of care-giving arrangements before trial;

(e) Variation of the award made in relation to pre-trial nursing costs;

(f) An increase in the multiplier for the cost of future care;

(g) An increase in the amount awarded in respect of the future costs of hiring a maid and providing day care;

(h) An increase in the amount provided for future medical expenses; and

(i) That an award for provisional damages be made.

7 The defendants' appeal is for the awards for pain and suffering, special damages and future expenses to be reviewed downwards to more reasonable sums.

Medical Evidence

8 Five medical experts gave evidence on behalf of the plaintiff. They were Dr Pauline Sim Li Ping, a psychiatrist, Ms Zena Kang, a clinical psychologist, Dr Karen Chua, a rehabilitation specialist doctor, Dr Ernest Wang, a neurosurgeon, and Dr Lee Chung Horn, an endocrinologist. There were also two doctors who testified for the defendants, Dr R Nagulendran, a psychiatrist and Dr Lee Soon Tai, an orthopaedic surgeon.

9 According to the medical reports, when the plaintiff was first admitted, urgent CT scans of her brain showed an acute right frontal subdural haematoma with multiple hemorrhagic contusions in the right frontal and right temporal lobes without skull fracture. Dr Wang noted that subsequent to her arrival at the hospital, the plaintiff's condition deteriorated neurologically. A decision was therefore made for a surgical decompression of the acute subdural hematoma with the insertion of an intracranial pressure monitor. This was done on the day of her admission.

10 Subsequent to her treatment for bleeding and swelling in the brain and the amputation of her left leg, the plaintiff's recovery was complicated by sepsis (bacterial infection of the blood stream), low blood pressure, coagulopathy and right-sided posterior and anterior celebral artery and occipital lobar infarction due to increased intracranial pressure which resulted in paralysis of the left side of her body. Due to prolonged artificial ventilation and ICU care, she required an operation to cut open her throat for a tube to be inserted to help her breathe. This was done on 21 June 2006. She was transferred to the general ward the next day but was unable to speak or obey commands. On 30 June 2006, the plaintiff was transferred for in-patient brain injury rehabilitation at Tan Tock Seng Hospital Rehabilitation Centre. On 31 July 2006, she was transferred to Ang Mo Kio Community Hospital for further rehabilitation.

11 At the time the plaintiff entered the Tan Tock Seng Hospital Rehabilitation Centre, she was found to be in a post-traumatic amnesiac state with significant retrograde amnesia, impaired orientation and poor short-term memory. She could not move her left upper and lower limbs and could not see things on her left side. She also had left-sided phantom limb pain. She was incontinent of urine. The vision in her left eye was impaired with a dark patch in the visual field.

12 After spending almost two months in hospital, the plaintiff was discharged from Ang Mo Kio Community Hospital on 7 September 2006. Subsequently, she was readmitted to hospital for a titanium cranioplasty to cover the defect in her skull. This operation took place on 22 November 2006.

13 The plaintiff's husband testified that shortly after the accident, the plaintiff was unable to recognise him and the family and could not recall what had happened. About three weeks later, she was able to talk but could not remember many things. When she became aware of her amputation and paralysis, she became very upset. In the following months she continued to be depressed. After she returned home, she had difficulty sleeping and was often frustrated and depressed about her condition. She was embarrassed about her incontinence, appearance (sunken head, amputated leg, paralysis, blindness) and helplessness. The family noticed personality changes and that she suffered from delusions.

14 In May 2007, the psychologist in Ang Mo Kio Community Hospital noticed that the plaintiff had paranoid delusions about her maid. Subsequently, the plaintiff was examined by Dr Sim. In her report of June 2008, Dr Sim noted that the plaintiff was depressed and suicidal, and that she was suffering from post-traumatic personality changes as a result of her traumatic brain injury. Her depression was secondary to the loss of her left lower leg, her immobility and stroke that she had suffered. Dr Sim noted that the plaintiff's husband was her main caregiver as she was suspicious of, and abusive towards, her maids. Subsequently, in May 2009, Dr Sim examined the plaintiff again and reported that her cognitive function had deteriorated. The plaintiff still suffered from post-traumatic personality

change and had paranoid delusion and persecutory ideas. The plaintiff was incapable of managing herself and her financial affairs.

15 Ms Zena Kang conducted a psychometric assessment of the plaintiff. In her report of 12 May 2009, she concluded as follows:

(a) the plaintiff's skills in solving non verbal problems, in working quickly and efficiently with visual information, were classified as being "Extremely Low";

(b) her skills in understanding verbal information, verbal reasoning and expressing thoughts in words were ranked in the ninth percentile, which means that her score was better than only 9% of individuals her age – "Extremely Low";

(c) her performance on the Working Memory Index was classified as "Low Average" to "Average"; and

(d) although the plaintiff's scores on some of the non-verbal (performance) subtests would have been affected by her visual difficulties, there were other subtests, both verbal and non-verbal that indicated that she had difficulties with both concrete and abstract reasoning, logical sequencing etc.

16 Dr Karen Chua was in charge of the plaintiff's rehabilitation. In August 2006, she reported that comprehensive rehabilitation for the plaintiff's major disabilities of traumatic brain injury and left limb amputation had been started. In March 2007, she reported that the plaintiff had developed late scar epilepsy with a fall in February 2007. The plaintiff had low mood and irritability but was not suicidal. She was wheelchair bound. Her residual hemiplegia post brain injury remained dense. She also had prolonged secondary amenorrhea (loss of menstruation). Dr Chua started the plaintiff on antidepressants and anti-seizure medications and recommended that they were to be maintained for a minimum of one year. By October 2007, Dr Chua was able to report that the plaintiff was able to ambulate with minimal assistance using a quad stick and a transtibial prosthesis. She had some motor recovery for the left upper limb but there was severe loss of upper limb dexterity and grip strength. Her residual limb was mature and relatively pain free. She continued to require antidepressants and psychological counselling for treatment of her post traumatic brain injury related depression with organic delusional disorder and generalised anxiety. Routine testing revealed new onset of type 2 diabetes mellitus in October 2007.

17 When Dr Chua came to court in March 2011, she reported that she had last examined the plaintiff on 13 January 2011. She was informed by the plaintiff's husband that the plaintiff had recently been admitted to the Khoo Teck Puat Hospital in a diabetic coma. Dr Chua was able to verify from her records that the plaintiff had been admitted on 10 December 2010 and diagnosed as having diabetic ketoacidosis as a result of which she had required intensive care. Upon discharge, her medications for diabetes were intensified and she required injections of insulin, something that had not been required previously. Other than that, in January 2011, the plaintiff was observed to be continuing to maintain her previous functional levels. She was still able to walk around the home with the assistance walking frame and the prosthetic left limb. She also continued to need minimal assistance with her daily activities and living. Her mental state was quite stable and her husband's report was that her behaviour was under control with the medication that she was taking. Her motor control in her upper limbs was fairly intact and the left leg still had reduced motor power but without significant deterioration over the preceding six months.

18 Dr Lee Chung Horn was called as an expert on diabetes to testify as to whether the plaintiff's

diabetic condition was the result of the accident. I will discuss this evidence later.

19 The plaintiff also adduced the reports of Dr Jeanne Ogle, the senior resident ophthalmologist at Tan Tock Seng Hospital. In her report of 11 March 2009, she noted that the plaintiff had a right occipital infarct which manifested visually as a left homonymous hemianopia. This meant that when she watched television, the left side of the television screen would be obscured and her field of vision would be significantly reduced. She still had navigational vision but the left homonymous hemianopia meant that she was unable to see objects on her left side and might bump into people or things as she moved around.

20 Dr R Nagulendran, a senior consultant psychiatrist, examined the plaintiff in September and October 2010. For the purpose of this examination, he was given copies of the reports of Dr Karen Chua, Dr Ernest Wang, Dr Jeanne Ogle (ophthalmologist from Tan Tock Seng Hospital), Dr Sim Li Ping, Ms Chloe Seow of Ozworks Therapy and Dr K H Ho, a neurologist. Dr Nagulendran stated in his report that on examination, the plaintiff was rational and relevant in her speech. She did not have any thought disorder and did not express any delusion or hallucination. She was calm and did not show any apparent anxiety or depression. She was correctly orientated to time, place and person. Her attention and concentration were impaired. Her memory function was also impaired. She was unable to recall the accident and the events following it. She was then being assisted by her husband and her maid in attending to her daily needs. She was able to take her food herself and attend to her toilet needs but needed help to get into her wheelchair and to fit her prosthesis. Her sleep was normal and her appetite was good.

21 In his report, Dr Nagulendran concluded, *inter alia*:

(a) The Post Traumatic Dementia affecting the plaintiff's memory and intellect and the associated left hemiplegic [*ie* paralysis] and left sided homonymous hemianopia [*ie* loss of vision of one half of the left visual field] were unlikely to be improve and could be considered as permanent defects;

(b) Currently the plaintiff did not suffer from depression;

(c) The plaintiff did not have any evidence of personality changes;

(d) As a result of the Post Traumatic Dementia affecting her memory and intellect, she would not be able to be gainfully employed; and

(e) As a result of the Post Traumatic Dementia affecting her memory and intellect and her physical disability due to her left hemiplegia and left below knee amputation, she would require a caregiver.

22 Dr Lee Soon Tai was appointed by the defendants to do a review of the plaintiff and to opine on what future medical treatment and care she would need. He was supplied with numerous reports from the other specialists who had seen the plaintiff. He examined the plaintiff on 30 August 2010. She was accompanied by her husband and her domestic helper.

Appeal against award for pain and suffering

Head injuries

23 The AR found that though the plaintiff's brain damage prevented her from returning to the

normal activities of daily living, the injury was less serious than that suffered in cases where an injured person ended up in a permanent vegetative state. She noted that the award for the injury would not be only for pain and suffering but also for loss of amenities and pointed out that a person who was in a permanent vegetative state would have a much greater loss of amenities than the plaintiff in this case. She considered that the seriousness of the injury and pain and suffering here was greater than that in *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2010] SGHC 371 ("*Lee Wei Kong*") where the victim made a good recovery and was awarded $160,000. However, in *Ramesh s/o Ayakanno (suing by the committee of the person and the estate, Ramiah Naragatha Vally) v Chua Gim Hock* [2008] SGHC 33 ("*Ramesh*") where the victim was left unable to move or talk and with a shortened life expectancy of ten years, he was awarded $185,000. The AR considered the injuries in *Ramesh* more serious than in the present case. She decided that the plaintiff here would be entitled to an award which was in between the figures in *Lee Wei Kong* and *Ramesh* and therefore came to a figure of $170,000.

24 The defendants repeated their submission made before the AR that the correct figure for the head injury would be $70,000. Although the plaintiff had suffered brain injuries, she had not suffered any skull fractures. The defendants cited nine cases of brain injuries (including *Ramesh* and *Lee Wei Kong*) and pointed out that in all but two of the cases the injured party had suffered moderate to extensive facial/skull fractures in addition to the brain injuries. The only decisions where brain injuries were suffered without extensive fractures were *Teo Seng Kiat v Goh Hwa Teck* [2003] 1 SLR(R) 333 ("*Teo Seng Kiat*") and *Ang Siam Hua v Teo Cheng Hoe* [2004] SGHC 147 ("*Ang Siam Hua*"). The plaintiff in *Teo Seng Kiat* suffered right extradural and parietal subdural haematomas with residual mild right hemiparesis. His verbal memory and complex calculation skills were impaired and there was a 20% permanent disability in respect of his high level cognitive functions. He was awarded $90,000. In *Ang Siam Hua*, there was a head injury with contusion of the right temporal lobe and resulting memory impairment and post traumatic epilepsy. The plaintiff was awarded $50,000 for the head injury and this award took into consideration the fact that the plaintiff had been in a coma for 16 days after the injury.

25 The defendants also relied on the decision of *Tan Yu Min Winston (by his next friend Tan Cheng Tong) v Uni-Fruitveg Pte Ltd* [2008] 4 SLR(R) 825 where the injured plaintiff was awarded $90,000. He had suffered multiple lacerations over his face with multiple nasal bone fractures and an obital bone fracture. He had a left temporal extradural haematoma with subdural and traumatic subarachnoidale haematoma and brain oedema and brain contusion. His eyes were injured resulting in frequent tearing and poor vision. As a consequence of the injury, the plaintiff had slowed processing and impaired memory retrieval. He had agitated depression and problems with anger management and he had suffered residual cognitive and behavioural deficits following the severe head injury. On assessment, the AR awarded a total figure of $90,000 for the collective injuries to the head region. On appeal (at [21]), Chan Seng Onn J increased the award for pain, suffering and loss of amenities to $173,000 made up as follows:

(a) Head injuries	$90,000
(b) Total loss of smell	$18,000
(c) Vocal cord injury	$10,000
(d) Eye injuries	$40,000
(e) Scars & facial disfigurement	$15,000

26 In his submissions arguing for an award in the region of $280,000 (inclusive of diabetes which

he separately quantified as being $50,000), counsel for the plaintiff emphasised that even if the injury appears identical, each case has to be looked at with regard to its particular overall circumstances (see *Peh Diana and another v Tan Miang Lee* [1991] 1 SLR(R) 22). Counsel also stressed the observations of Choo Han Teck J in *Chong Hwa Yin (committee of person and estate of Chong Hwa Wee, mentally disordered) v Estate of Loh Hon Fock, deceased* [2006] 3 SLR(R) 208 (at [5], [7] and [9]) as follows:

> The *more severe the injury, the more difficult it becomes to place a monetary value to it.* In cases such as Eddie Toon and the present case, we can, perhaps agree that only a sum so low as $10,000 would be thought paltry and insufficient, and although one might readily agree that a sum of, say, $10,000,000 would be satisfactory, one would, nonetheless, hesitate to conclude that that would be the "correct", or even fair, compensation for pain and suffering the injured endured. *It is also relevant to note that compensation for pain and suffering is predominantly the compensation for the pain and suffering endured while it lasts. What sort of pain is felt and how long it lasts depends on the facts of each case.* This is why it is artificial to treat loss of amenities as a separate head for pain and suffering. Hence, a person who is brain dead feels no pain while a quadriplegic, who is fully alert, suffers the pain and frustration of a life without participation, and such a pain is not only of the deepest, it also lasts as long as his mind lasts. ...
>
> *The severity of pain and suffering escalated according to the length of time the plaintiff would continue to feel the pain or suffer from it. And that naturally, would depend on whether the plaintiff was conscious of the pain or suffering.* ...
>
> [emphasis counsel's]

27 The plaintiff noted that in *Toon Chee Meng Eddie v Yeap Chin Hon* [1993] 2 SLR(R) 536 ("*Eddie Toon*"), the plaintiff, a 7 year old boy, was awarded $160,000 for pain and suffering and loss of amenities. He suffered severe brain damage; he was paralysed on the right side and had intermittent involuntary movements of various parts of the body and needed to take anti-epileptic drugs for life. He was unable to speak and needed assistance to micturate and defecate and had the intellectual ability of a 1 year old child. The plaintiff submitted that an award of this amount would be too low for the plaintiff because unlike Eddie Toon, who had minimal awareness, the plaintiff was fully aware of her disabilities and suffered from depression and suicidal thoughts as a result of them.

28 The plaintiff distinguished *Ramesh* ($185,000) and *Chen Qingrui v Phua Geok Leong* (Suit No 937 of 2000) on the same basis. Unlike the plaintiff, neither the injured person in *Ramesh* or in *Chen Qingrui* remained mentally active and alert. In the latter case, a 18 year old woman was awarded $165,000 for brain injury. She had generalised spasticity and minimal awareness; she was blind and unable to speak. The plaintiff on the other hand was conscious of her disfigurement and avoided friends and colleagues and it was submitted that her suffering was of the deepest kind and would last as long as her mind lasts.

29 This argument, that the plaintiff's suffering was greater than those of accident victims who had lost their awareness, was rejected by the AR. She was of the view that the Court of Appeal had indicated that the greatest loss of amenities would be suffered by victims who entered a vegetative state. In *Tan Kok Lam (next friend to Teng Eng) v Hong Choon Peng* [2001] 1 SLR(R) 786, Chao Hick Tin had said (at [28]) that "there is no greater injury or loss, as far as a living person is concerned, than to be turned into a cabbage".

30 However, it should be noted that the Court of Appeal was in that passage dealing with the quantification of an award for loss of amenities. It was rebutting the argument that because the

plaintiff there could no longer appreciate any loss due to her unconsciousness, the sum awarded for pain and suffering and loss of amenities should be moderate. Counsel for the defendant there had argued that just as no damages are allowed for pain and suffering which is not felt, similarly no damages shall be allowed for loss of amenities which is also not felt. The Court rejected that argument and to appreciate its reasons for doing so, it is helpful to set out the entirety of [28] of its judgment:

> We recognise and accept that for a claim for pain and suffering, unconsciousness on the part of the victim would negative that claim and thus render an award in respect of that claim inappropriate. A claim for pain necessarily suggests that the victim has consciousness, otherwise there is no question of him enduring any pain for which he should be compensated. However, the same cannot be said for loss of amenities. Whether or not there is loss of amenities is an objective fact. It cannot and should not depend on an appreciation of the loss by the victim. Perhaps the point can be better illustrated by a simple example, where in an accident the victim not only loses a leg, he also loses his mental faculty. Are we to say that because the victim cannot appreciate his present condition, no substantive award should be made even for the loss of the leg? We should think not. Has he not lost the ability to move about freely, even with the help of an artificial limb? And if a substantive award should be made for the loss of the leg, why should it be otherwise for the complete loss of the mental faculty? While it might be thought that we are treading on dangerous ground to make comparisons between injuries, we think there is no greater injury or loss, as far as a living person is concerned, than to be turned into a cabbage.

Thus, what the Court of Appeal was saying was that the greatest loss of amenities that a living person can suffer was to be put into a vegetative state and such loss must be properly compensated although the sufferer would not be entitled to a substantial award for pain and suffering due to his inability to feel the same. The Court of Appeal was not dealing with the situation where the injured person could still move around and still suffer pain and appreciate his physical limitations. Therefore, I do not think that the reasoning there supports the conclusion drawn by the AR, to wit, that the award for pain and suffering and loss of amenities in respect of a person who is not in a vegetative state must always be for less than the amount awarded to the unconscious victim. After all, unlike the case before the Court of Appeal where only an award for loss of amenities was being made, pain and suffering being out of the equation, in a case where all three elements are present the particular facts may very well justify a higher award.

31 The plaintiff also relied on *TV Media Pte Ltd v De Cruz Andrea Heidi and another appeal* [2004] 3 SLR(R) 543 ("*De Cruz*") and *Tan Hun Hoe v Harte Denis Mathew* [2001] 3 SLR(R) 414 ("*Harte*") both of which were cases which did not involve brain injuries. The plaintiff in *De Cruz* lost the use of her liver at 27 and had to undergo a liver transport. As a result, she was susceptible to illnesses and the risk of liver failure. She was awarded $150,000 in 2004. In *Harte*, botched medical treatment made it very unlikely that the plaintiff would be able to father any children. The Court of Appeal awarded him damages of $120,000 in 2001. The plaintiff argued that the injuries in *Harte* and *De Cruz* were less severe than those that she had suffered. *Harte* did not seem to have difficulties with activities of daily living whilst *De Cruz* was able to resume more of a normal life than the plaintiff. Therefore, the plaintiff argued, the award to her should be increased.

32 In *Ramesh*, the court was also referred to *De Cruz* and *Harte*. Kan Ting Chiu J, in arriving at his decision, made the following comments at [8]-[9]:

> 8 Of the cases cited, *Hori, Toon* and *Chen* are brain damage cases. *Hori* offers little guidance as the extent of the brain damage is not described. The injuries suffered in *Toon* and *Chen*, although not identical to those suffered by the plaintiff here (such injuries are rarely identical),

are comparable in that they left the subjects in a semi-vegetative state, dependent on the assistance of others. While *De Cruz* and *Harte* are not brain injury awards, they are relevant as indicators of the levels of severity of injuries and disabilities for which awards of $150,000 and $120,000 have been made by the Court of Appeal. They are also recent awards of 2004, whereas the brain damage awards are older.

9 Reviewing the cases, I am of the view that the $170,000 award is low, being only $5,000 higher than the 2001 award in *Chen*, and $10,000 higher than the 1993 award in *Toon*, and when compared with the awards of $120,000 and $150,000 for the testicular injury in *Harte* and liver injury in *De Cruz* respectively which are significantly less severe than the injuries suffered by the plaintiff. I will increase this award to $185,000.

33 Considering all the cases that have been cited, I am of the view that the fact that the plaintiff did not suffer any fractures of the skull does not mean that the award should be reduced. The plaintiff's brain injuries were severe and the treatment that she had to undergo was prolonged and intensive. She needed operations on her brain and while she may not have had the initial pain of the skull fractures, she definitely experienced pain from the procedures that were carried out on her skull. Apart from the prolonged treatment for her brain injury, the plaintiff suffered loss of vision, extensive scarring and paralysis. She also lost substantial use of her upper left limb and needed extensive rehabilitation to regain the ability to use it. In all these aspects, she appears to me to have suffered more intensively than the plaintiffs in the brain injury cases cited by the defendants.

34 There is also the effect on the plaintiff's cognitive abilities and her personality. Both psychiatrists were agreed that the plaintiff's cognitive abilities had been impaired by her brain injuries and that the deficits were permanent. Where they differed was in relation to depression and personality changes. As far as depression was concerned, there is no challenge to Dr Sim's evidence that the plaintiff did suffer from depression at the time she was seen by Dr Sim. However, Dr Sim last saw her on 6 May 2009 and Dr Nagulendran saw her for the first time on 17 September 2010. By that time, the plaintiff no longer exhibited signs of depression. This may have been because she had been placed on antidepressant drugs. Dr Nagulendran also testified that she did not have personality changes. However, his evidence on this aspect was less convincing since he did not see her over a period of time. In this respect, the evidence of Dr Sim and the plaintiff's husband who was aware of her pre-accident personality and had constant contact with her after the accident must be preferred. The husband's evidence as to the plaintiff's personality changes was consistent over a period of time because he not only testified but also reported to the various doctors how she was doing at various times.

35 Counsel for the plaintiff submitted that her case was unique in that it involved a brain injury which affected her vision and caused the onset of a disease, namely, diabetes. The existing precedents were only relevant to establish a base point before adding on. Disregarding diabetes for the time being, I agree that the plaintiff's injuries were more serious than those in *Harte* and *De Cruz*. Of all the cases that have been cited, the one that came closest to the plaintiff's case is *Lee Wei Kong*. The plaintiff there sustained severe traumatic brain injury. He underwent emergency craniotomy and removal of blood clots in the brain. He was found to suffer from post traumatic amnesia and his cognitive language and motor skills were impaired. He also had a homonymous hemianopia. After discharge, the plaintiff received all the treatment and help that he needed and within five years, he made an exceptional recovery. He was able to walk, swim, engage in recreational sports, travel by public transport, make simple money transactions and socialise. He also became a full time student despite some remaining disabilities. As stated above, *Lee Wei Kong* was awarded $160,000 for his injury. The AR taking the view that the plaintiff's injuries involved more pain and suffering because her recovery was much more limited thought that she should get more than *Lee Wei Kong* but less than

Ramesh because in the latter case, the plaintiff was left unable to move or talk and that is how the AR came up with $170,000.

36 I agree with the parameters adopted by the AR and consider that she made a fair assessment in the case of the plaintiff. Whilst she could have nudged the award in favour of the plaintiff closer to the *Ramesh* figure in that although the plaintiff was able to move and talk, her ability to resume a normal social and domestic life had been substantially curtailed and she had an awareness of how her life had changed, that does not mean that the amount awarded to the plaintiff was inadequate. An appeal court does not interfere with an award of damages unless the amount awarded was clearly inadequate or clearly excessive. In this case, I do not think that the amount of $170,000 for the plaintiff's head injuries, including the paralysis and the loss of vision and loss of amenities, is either clearly inadequate or clearly excessive. Therefore I will not interfere with the award.

Diabetes

37 The plaintiff claimed that her diabetic condition had developed after the accident and was brought on by the medication that she had to take to deal with the side effects of her injuries. The defendants disputed this on the basis that the plaintiff's diabetes was a pre-existing condition. The AR agreed that, on the evidence, the diabetes had developed after the accident and that there was no evidence to suspect that she might have had undiagnosed diabetes before March 2008. The AR, however, declined to make a separate award in relation to the pain and suffering and loss of amenities resulting from diabetes since it was a secondary injury and there was no evidence as to the degree of pain and suffering and loss of amenities.

38 The plaintiff appealed against the decision not to make any award in respect of diabetes. The defendants' rejoinder was that this decision was correct because in fact the plaintiff's diabetes was not a result of the accident and, in any event, it was too remote and could not have been foreseen by them. The defendants also agreed with the AR that there was no pain and suffering or loss of amenities. Therefore, three sub-issues arise in this connection:

(a) Causation;

(b) Remoteness; and

(c) Quantum.

Causation

39 The defendants submitted that the AR had erred in her evaluation of the medical evidence for the following reasons:

(a) The plaintiff's expert endocrinologist, Dr Lee Chung Horn, had testified that the plaintiff could have had the onset of diabetes in March 2007 when Dr Chua found elevated blood sugars. The defendants pointed out that Dr Lee had no idea of the plaintiff's weight in March 2007 though when he saw her in March 2011, it was 80kg. Whilst there was no evidence of obesity as at March 2007, Dr Lee had agreed that obesity was not in itself a conclusive contributing factor and many thin patients had developed diabetes.

(b) In his report, Dr Lee stated that the medication prescribed to the plaintiff in March 2007 to control her behavioural problems was a contributory cause to the emergence of diabetes in October 2007. He testified that the drug Risperidone could bring up undiagnosed diabetes and

also cause diabetes, and the drug Lexapro may have the side effect of causing diabetes though this is not established. The defendants argued that the AR had failed to note that the antidepressants were only prescribed to the plaintiff from 6 March 2007 and therefore could not have contributed to the diabetes since Dr Lee considered that its onset was possibly in March 2007.

(c) Dr Lee had stated that diabetes is often an asymptomatic condition and it is certainly possible for persons to have diabetes without knowing of its existence. The defendants argued that in that context, there was every probability that diabetes may have set in at any time after the accident and before March 2007 when the drugs were administered. The only way to exclude that possibility would be to have sight of the blood sugar reports of the plaintiff from Tan Tock Seng Hospital and National University Hospital where she was treated for her injuries after the accident. Whilst the defendants had applied for these reports, the AR had not allowed their production on the basis that there was no issue of diabetes before the accident.

40 It should be noted that the defendants did not call any expert on the issue of diabetes and therefore their attack on the AR's finding had to be based on pointing what out they considered to be flaws in Dr Lee's evidence or areas in which it supported their position.

41 The plaintiff responded that the defendants' case was based on conjecture and speculation. The evidence before the court was that the plaintiff did not have diabetes before the accident and she was started on antidepressant drugs (which had the effect of enhancing blood sugar levels) in March 2007. Then in October 2007, her diabetes was confirmed by Dr Chua. Dr Lee's evidence, which was not challenged by another expert, was that whilst it was possible that the plaintiff's diabetes may have been present before the accident, it was also entirely reasonable and more plausible that it had arisen at some point after the accident and injury. This was the more likely situation as without any laboratory evidence to show the presence of high blood glucose at a time before June 2006 it was not plausible to surmise that the diabetes was present before June 2006. He also suspected that between June 2006 and October 2007, her glucose levels would have been measured during her periods of hospitalisation as the blood glucose level is a component of many laboratory tests. The fact that no glucose levels were high until October 2007 was good *prima facie* evidence that glucose levels only became abnormal around then. Dr Lee considered that the factors that caused the plaintiff to develop diabetes included immobility due to her injuries, the medication prescribed for her behavioural problems and obesity.

42 In the light of all the evidence, I hold that the AR's finding that the diabetes developed after the injury and as a result of factors associated with it, cannot be disturbed.

43 The plaintiff took issue with comments by the AR that she had refused to follow instructions in terms of exercise and diet after the accident and this led to the development of diabetes. She also suggested that the plaintiff should control her diet and exercise more. The plaintiff pointed out that the evidence before the court did not justify any inference that she had by choice wilfully refused to control her diet and to exercise despite comprehending full well the consequences of diet and exercise on diabetes care. The plaintiff suggested that the following evidence had been overlooked:

(a) Dr Lee's testimony that she did not understand what it took "to do a good job" in controlling her diabetes and that it was difficult for her family to be "100% strict with her at all times".

(b) Dr Chua's testimony that the plaintiff had problems making lifestyle adjustments for her diabetes due to her cognitive and psychiatric problems.

(c) The fact that the plaintiff had difficulty with visual perceptual function, spatial judgment and concrete thinking and her planning ability was impaired.

I accept the plaintiff's submissions in this regard and do not hold the plaintiff responsible for causing or exacerbating her diabetic condition. The plaintiff was not capable of understanding what she had to do to control her condition and also had difficulty exercising in view of her physical condition.

Remoteness

44 The defendants contended that they could not be liable for the diabetic condition of the plaintiff as it was too remote and could not have been foreseen by them.

45 The test for remoteness of damage is the test of reasonable foreseeability established by the House of Lords in *Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (The Wagon Mound)* [1961] AC 388. The Court of Appeal reaffirmed the application of this test in Singapore in *Ho Soo Fong and another v Standard Chartered Bank* [2007] 2 SLR(R) 181 ("*Ho Soo Fong*") and *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR(R) 782. In *Ho Soo Fong*, the court observed at [39] that *The Wagon Mound* principle had been clarified subsequently by Lord Reid to indicate that what was required was whether a reasonable man would foresee a "real risk" of the damage occurring. There would be a real risk if it was one that would occur to the mind of a reasonable man in the position of the defendant and which would not be brushed aside as being far-fetched. At [42] of the judgment, Chan Sek Keong CJ observed:

> With respect, we do not agree that the reasonable foreseeability test requires the tortfeasor to have actual knowledge of the ultimate cause or kind of the losses suffered by a claimant. No authority has been cited to us, and the judge has referred to none, that foreseeability as a factual element requires actual knowledge of the specific cause or kind of the loss. This approach is contrary to current jurisprudence on remoteness of damage in tort law. In our view, constructive knowledge of the kind of losses suffered is sufficient to satisfy the foreseeability test of remoteness of damage. This may be contrasted with the corresponding test of remoteness in contract, where actual knowledge is required but, even then, only for extraordinary as opposed to ordinary loss.

46 In this respect, the defendants relied on the Australian case of *Commonwealth of Australia v W L McLean* [1996] NSWSC 657 ("*McLean*"). There, the plaintiff, a seaman, suffered nervous shock when the naval vessel on which he was on board was involved in a collision in 1964. As a consequence, the plaintiff developed post traumatic stress disorder ("PTSD"). He claimed that the PTSD caused him to drink alcohol and smoke tobacco to excess and this had caused his throat cancer which was diagnosed in 1995. He sued his employer for damages and the response was that the throat cancer was not foreseeable and was too remote. In the view of the defendants here, this case stood for the proposition that the egg-shell skull rule only applies to damage of the same kind as that which is foreseeable. The defendants then submitted that diabetes was not in the same category as the initial head and leg injuries sustained by the plaintiff and therefore did not meet the remoteness rule as applied in the law of tort.

47 I think that the defendants misread *McLean*'s case. Although the court did limit the application of the egg-shell skull rule, that was not all that the case stood for. In fact, what it held was that foreseeability was a question of fact for the jury and that the plaintiff was only entitled to recover for the further damage of the throat cancer if the jury found either that it was damage of the same kind as the foreseeable stress disorder or if they found that it was reasonably foreseeable. Therefore, the issue went back to foreseeability and the fact that the throat cancer was damage of a different

nature to the stress disorder did not in itself mean that the plaintiff could not recover.

48 In this case, the plaintiff submitted that for her to succeed in her claim, the foreseeability test did not require proof of actual knowledge of the specific kind of loss (diabetes) on the part of the defendants. As indicated in *Ho Soo Fong*, constructive knowledge of loss would be sufficient to satisfy the test of remoteness. The defendants knew that the accident had caused the plaintiff serious injuries and a reasonable man in their shoes would know that she would have to endure significant pain and suffering as a result. The pain and suffering would include all medical problems arising from the injuries and treatment. A reasonable person would also know that drugs administered to solve one medical problem can cause another medical problem. It should be noted that Dr Chua had testified that it was well-known that patients who had severe disabilities which caused them to lose mobility were likely to develop a whole host of conditions after the injury like diabetes, cardiac disease, obesity and high cholesterol.

49 I accept the plaintiff's argument. I find that it was reasonably foreseeable that the serious injuries sustained by the plaintiff could cause her to develop other conditions like diabetes. I therefore find that the damage is not too remote.

Pain and suffering/quantum

50 The AR did not make a separate award under this head for the diabetes because she considered there was no evidence of pain and suffering and loss of amenities associated with it. I agree with the plaintiff that the AR overlooked the fact that the plaintiff had entered into a diabetic coma and had to be hospitalised in December 2010 due to her diabetes. Further, there would be some loss of enjoyment of life due to the requirement to restrict her diet and take medication. Having said that, I accept that diabetes is not generally a painful condition and may be asymptomatic for quite a while. However, I do consider that an award should be made under this head.

51 The plaintiff submitted that an appropriate award would be in the region of $55,000. She relied on the case of *Attorney General v Ho Tee Ming* [1968–1970] SLR(R) 382 where the plaintiff was awarded $14,000 for the onset of rheumatoid arthritis. This was a 42 year old case and looking at the Singapore inflation rate of 2.73% per annum, the plaintiff submitted that on the basis of today's figures, $55,000 was appropriate. In my judgment, that figure is too high. Arthritis is a much more painful and disabling condition than diabetes. I award the plaintiff $20,000 under this head.

Leg injury

52 The award here was $60,000. The plaintiff submitted this should be increased to $80,000. She cited *Pang Teck Kong v Chew Eng Hwa* [1992] SGHC 31 ("*Pang Kong Teck*") where the plaintiff was awarded $50,000 for the amputation of his right leg, below the knee. She also relied on *Mei Yue Lan Margaret v Raffles City (Pte) Ltd* [2005] 4 SLR(R) 740 where the plaintiff suffered severe injury to her right leg and was awarded $100,000 although the leg was not amputated.

53 The plaintiff submitted that since *Pang Teck Kong* was almost 20 years old the award had to be updated to keep up with inflation. The other case could offer some guidance although different on facts. Here, her leg injury was severe and life threatening. It had an impact on her psychological well being in that it made her feel useless and depressed. It had a great impact on her physical well being as it made her less mobile, transforming her from an active 50kg person to an 80kg obese person.

54 I do not agree that the award is clearly inadequate. The plaintiff's lack of self esteem and increase in weight were due to many factors, not just the loss of her leg. The plaintiff has a

prosthesis and would be able to get around fairly well if it were not for her weakness in the left side (which has nothing to do with the leg) and her impaired vision. I cannot attribute all the side effects the plaintiff has suffered to the loss of the leg. I will not interfere with this award.

Special damages

Costs of maid assistant/housekeeping services (pre-trial)

55 The plaintiff claimed $60,427.40 for loss of housekeeping services and the cost of a maid prior to the trial. The AR made no award under this head. She stated at page 9 of her judgment:

> I note that the evidence is that the Plaintiff used to work part-time and also did the housework, hence hiring a full-time maid for housekeeping is not warranted. There is no evidence before me as to how much a part-time maid would have cost in this situation, and hence I am unable to give an award in relation to additional costs of housekeeping incurred before the assessment. I therefore make no award in this respect.

56 The plaintiff appealed. She argued that having accepted the evidence that she had done the housekeeping before the accident and was unable to continue doing so after the accident, the AR was wrong to deny an award for housekeeping. This was especially so when there was incontrovertible evidence that maids were actually employed after the accident to do the housekeeping. Apart from housekeeping, the evidence showed that the maid went with the plaintiff when she had her physiotherapy sessions and assisted the plaintiff's husband in transferring the plaintiff from her bed to bathe, clothe or move her.

57 The plaintiff cited *Daly v General Steam Navigation* [1981] 1 WLR 120 in support. In that case, the English Court of Appeal awarded the plaintiff housewife loss of housekeeping services after she became incapable of undertaking household duties following the accident.

58 Having accepted the evidence that the plaintiff was the housekeeper for her family, the AR's main objection to making an award under this head was that there was no evidence as to how much a part-time maid to undertake the plaintiff's duties would have cost. However, there was evidence before her as to the actual amounts paid to the maid employed after the accident. I think that she should have used these figures to make her award. Expenses have been incurred which would not have been incurred had the plaintiff remained able to do the chores. The figure of $60,427.40 given by the plaintiff included not only the salaries of the full-time maids engaged but also the levy paid, food and other expenses. The levy and other expenses would not have been incurred had a part-time maid been employed. The figure for salaries and agency fees alone comes to $33,724.40 over a period of some four years or some $702 per month. I do not think that a part-time maid who came in every week day would have cost any less than this. I therefore award the plaintiff the sum of $33,724.40 for the cost of employing a maid to do the housekeeping.

Loss of income of caregiver – husband (pre-trial)

59 After the plaintiff's accident, her husband, Mr Chew Chwee Kim, gave up his job in order to take care of her. The plaintiff claimed his loss of income as part of the special damages claim. The AR found that Mr Chew was directly caring for the plaintiff at the material time and awarded a sum of $86,000 as his loss of income.

60 Two small points arise out of this award. The first, made by the plaintiff, is that since the pre-trial loss of income was $1,400 per month and the period of the loss was 62 months from 15 June

2006 to 15 August 2011, the amount awarded should have been $86,800 instead of $86,000. This appeared to be a computational error and the plaintiff asked for it to be corrected.

61 The defendants accepted the AR's findings on the amount. They had only one quarrel and that was with the period. The plaintiff was in a nursing home for one month during the 62 months and the defendants considered that that period should not have been included for the loss of income claim. I do not agree. If the plaintiff had been in the nursing home for a longer period then of course the husband should have gone back to work and should not have been compensated for loss of income. The period of one month was too short for such a calculation. One would expect that it would take him some time to find a job or be sure that she would settle down in the nursing home so that he was free to resume gainful employment. I am not minded to allow the defendants' appeal on this basis.

62 As for the plaintiff's appeal, I amend the award to $86,800 to reflect the correct computation.

Nursing costs (pre-trial)

63 This is again a situation of computational error. The AR awarded $4,518.64. In the appeal, the plaintiff pointed out that the total nursing costs incurred before the trial were $4,518.64 for the Nightingale Nursing Home and Econ Nursing Home and $704.05 for the cost of day care at St Luke Elder Care for one week from 9 June 2011. The defendants did not appeal against the award. I amend the award to $5,222.69 to reflect the actual costs incurred.

Legal costs

64 The plaintiff claimed $12,033.80 as legal costs in relation to the order for appointment of a committee of the person. Before the AR, the defendants did not object to the claim except as to quantum and plaintiff's counsel explained that was why the bills had been taxed. The AR then awarded the costs as taxed. At the appeal, the defendants pointed out that the costs included a sum of $2,315.60 in respect of an application for leave to sell the plaintiff's HDB flat and submitted that this amount should not be allowed as it was related to the application for an appointment of committee of the person.

65 The plaintiff's response was that this application would not have been necessary but for the accident and the plaintiff's resultant disability. Secondly, the application was related to the appointment of the committee because a court would not give blanket authorisation to the committee to deal with a patient's assets, including her immovable property, from the beginning. The application could only be made when circumstances justifying the sale arose and in this case, that only happened nine months after the appointment of the committee of the person. The application was filed because the Housing and Development Board required an order that was specifically tailored to its requirements.

66 I accept the plaintiff's arguments and will not interfere with this award.

Future expenses

Multiplier for future care

67 The AR fixed the multiplier for the cost of future care at 17 years. Both parties appealed against this decision. The plaintiff contended it should be 20 years whilst the defendants said that it should be 15 years.

68 The plaintiff relied on the precedent of *Ang Leng Hock v Leo Ee An* [2003] SGHC 240 ("*Ang Leng Hock*"). There a 45 year old man (with a life expectancy of 78 years) was awarded a multiplier of 20 years for future medical expenses. The plaintiff was 51 years old with a life expectancy of 83 years. Both she and the plaintiff in *Ang Leng Hock* therefore had similar life expectancies of 32 to 33 years and therefore, the plaintiff argued, the multiplier should be similar.

69 The defendants submitted that the multiplier should be 15 years and in any event should not exceed the 17 years that the AR had awarded. In *Ong Tean Hoe v Hong Kong Industrial Company Pte Ltd* [2001] SGHC 3030, a 52 year old plaintiff was awarded a multiplier of 15 years. The defendants also cited *Ang Leng Hock* in support of their arguments. They pointed out that at the time of trial, the plaintiff was 52 years old not 51 years old.

70 In the state of the authorities, I see no reason to interfere with the AR's decision to fix the multiplier at 17 years.

Post-trial costs of care

71 The AR, considering that there was consensus between parties that the costs of a maid and day care would be appropriate to provide for the daily care of the plaintiff, awarded $9,288 yearly to cover the costs of the maid and $9,600 yearly to cover the costs of day care. On appeal, both parties were satisfied with the amount awarded for the provision of a maid. However, in relation to the cost of day care, the plaintiff wanted this increased to $24,759.80 yearly on the basis of the quotation from St Luke's Eldercare whilst the defendants argued that the plaintiff could be taken care of at home by the maid alone and did not need day care.

72 The defendants argued that the AR should have rejected the plaintiff's claim for day care because of the family's unreasonable stand. There was evidence from Dr Chua that she had not received recent input from the family of any issues between the plaintiff and the maid and, in any event, medication had been prescribed to control her behaviour. The AR had also failed to consider the evidence of the husband's employer that they had provided him with flexible working arrangements and if there were no containers to clear, Mr Chew could stay at home. Thus, the plaintiff's husband could have explored the option of being employed and placing the plaintiff in a day care centre when he was at work.

73 I do not accept the defendants' submissions. It is not satisfactory to expect the husband to be able to arrange for day care at the drop of a hat as and when his employers call him. It was also Dr Chua's evidence that the plaintiff needed someone to assist her on an almost 24 hour basis and that assistance could come from the husband, the maid and day care facilities or a combination of the same. Dr Chua also testified that the advantage of community day care to the plaintiff would be that she would become more mobile, more independent to a certain level and she would be taken away from the four walls of her home and would have less time to ruminate and be paranoid. It would also help with her diet control and there would be medical staff who could check her condition and report to the Tan Tock Seng Rehabilitation Centre if anything was wrong. Accordingly, I consider that the AR was right in principle to make an award for both a maid and day care.

74 Turning to the quantum of day care, the plaintiff argued that the AR's reliance on Dr Chua's estimated day care charges was misplaced because Dr Chua did not include the costs of physiotherapy and transport. To arrive at the costs of care, they needed to add the physiotherapy costs, transport costs, meals for caregiver and GST to the day care costs. The plaintiff calculated the costs if she attended day care services five times a week, did physiotherapy everyday, and used the transport provided on the basis of Dr Chua's figures and on the basis of figures given by St Luke's

Eldercare. These worked out as follows:

Using Dr Karen Chua's estimates (yearly)

(a) Day care - $800 x 12 months = $9,600

(b) Physiotherapy - $500 (25 x 5 x 52 weeks) = $6,500

(c) Transport - $1,400 (70 x 5 x 52 weeks) = $18,200

Total : $34,300 per year (excluding meals for caregiver and GST)

Using St Luke's Eldercare figures (yearly)

(a) Day care - $35 x 5 days a week x 52 weeks = $9,100

(b) Physiotherapy - $25 x 5 x 52 weeks = $6,500

(c) Transport - $24 x 5 x 52 weeks = $6,240

(d) Meals for caregiver - $5 x 5 x 52 = $1,300

(e) GST - $1,619.80 (7%)

Total : $24,760 per year

75 The plaintiff submitted that the St Luke's Eldercare figures should be accepted because this facility was near their home and it was well maintained and had a large pool of patients. It had a physiotherapist and staff who spoke Chinese and would be able to communicate with the plaintiff. Most importantly, it operated until 6.30pm which would mean that Mr Chew would be able to reach home from work before the plaintiff returns and this would avoid a situation of the maid being left alone with the plaintiff. The alternative, Salem Welfare Services, did not have a Chinese speaking physiotherapist, was smaller and stuffy, had limited activities and patients, and was only open till 5pm. The figures in the Salem invoices (much lower than the St Luke's Eldercare figures) could not be the basis for computing costs of day care for a full day since the plaintiff only had been there for one or two hours during her physiotherapy sessions.

76 On the basis of Dr Chua's evidence, I agree with the AR that there was no need for the plaintiff to have full-time day care every day. Instead, she could go to day care twice or thrice a week to give the maid time to do her chores and also to have physiotherapy and interact with others. There was no evidence that the plaintiff needed to have physiotherapy every day. However, I take the point that Dr Chua's figures did not include transport and probably did not include physiotherapy which she did not specifically mention. If the plaintiff went to day care three times a week, then the cost, based on St Luke's Eldercare figures for three days a week, would not exceed $13,104 a year. I have not factored in the caregiver's meals as the point of going to day care is partly to relieve the caregiver. Adding the GST of 7%, the total would come to $14,021.28 a year which I will round down to $14,000 per year. I have used the St Luke's Eldercare figures on the basis that this is the most convenient day care centre as far as the plaintiff is concerned. Further, there is apparently a subsidy available to the plaintiff and if this is used, the plaintiff may even be able to attend St Luke's Eldercare every weekday though she may not be able to have physiotherapy every day.

77 Accordingly, I increase the award for day care from $9,600 a year to $14,000 per year.

Future medical expenses

78 The AR awarded the plaintiff $1,200 per year for expenses (excluding medication) related to diabetes. The plaintiff submitted that that award was inadequate because the AR's reason for the sum was that the plaintiff had to take some responsibility for the eventual development of diabetes. The defendants on the other hand submitted that nothing at all should have been awarded as the diabetes was not caused by the accident. I have dealt with the arguments of causation and remoteness above. I have found that the diabetes was caused by the accident and that the plaintiff could not be blamed for its development. On that basis, the plaintiff should be able to recover all reasonable expenses which will be incurred because of the diabetes.

79 The plaintiff adduced evidence that she would need to spend $2,905.29 per year which sum would be made up as follows:

(a) Syringe – need two per day – 100 pieces per box at $38.73 - $0.72 per day - $282.73 per year.

(b) Alcohol swab – need six per day – 100 pieces per box at $4.48 - $0.27 per day - $98.55 per year.

(c) Needle (microlet lancet) – for blood test – need four per day – 100 pieces at $20 - $0.80 per day - $292 per year.

(d) Blood test strips – need four per day – 50 pieces per box at $62 - $4.96 per day - $1,810.69 per year.

(e) Insulin – one bottle a month at $9 - $108 per year.

(f) Medical cream - $26.11 per tube per month - $313.32 per year.

The AR noted that these expenses were supported by receipts and that the plaintiff spent about $200 monthly on diabetes related materials. She halved the amount that she would otherwise have awarded because of her finding as to the plaintiff's contribution to her condition. As I have reversed that finding, there is no basis on which to reduce the amount which the plaintiff can claim. I therefore increase the award to $2,905.29 per year for 17 years.

Provisional damages

80 The plaintiff asked the AR to make an order for provisional damages so that she could obtain compensation if she developed arthritis, sustained a functional decline, suffered from seizures, and developed complications from diabetes. The AR considered the possible complications that the plaintiff might suffer and concluded that the conditions for the granting of a provisional damages order had not been satisfied. She therefore declined to make such an order. Before me, the plaintiff repeated her arguments as to why the provisional damages order would be appropriate.

81 Although the courts were given the power as far back as 1993 to "award in any action for damages for personal injuries, provisional damages assessed on the assumption that a contingency would not happen and further damages at a future date if the contingency happens" (see paragraph 16 of the First Schedule of the Supreme Court Judicature Act (Cap 322 2007 Rev Ed) ("Paragraph 16")), they have exercised this power only rarely. I was referred to just two reported cases in which orders for provisional damages had been made in Singapore.

82 The first of these cases is *ACD (by her next friend B) v See Mun Li* [2009] SGHC 217 ("*See Mun*

Li"). This was the decision of Teo Guan Siew AR in connection with the assessment of the damages payable to a young girl who sustained head injuries as a result of a traffic accident. Due to the lack of local authorities, the AR in *See Mun Li* considered the English authorities on a similar provision in England and concluded that in England before such an order could be made, the following considerations had to be looked at:

(a) In England, the "chance" under s 32A of their applicable legislation must be measurable rather than fanciful.

(b) There must be a clear and severable risk rather than a continuing deterioration, *ie*, there must be a clear-cut event that would trigger the entitlement to apply for further compensation.

(c) Account must be had to the degree of risk and the consequences of the risk, *ie*, how severe the nature of the illness or deterioration is and its detrimental effect on the claimant.

(d) A balancing exercise needs to be undertaken to determine whether justice is better served by a once-and-for-all assessment or by giving the claimant the liberty to return to apply for further damages in the future.

(e) A claimant should not be prejudiced if he decides not to utilise the option of applying for a provisional order: the court would do its best in the circumstances to consider the risks of future medical complications in arriving at an award for immediate damages.

The AR considered that the above principles ought, broadly speaking, to be equally relevant in deciding whether or not a provisional order for damages should be made in Singapore. The only caveat was that in applying these principles, the court should have regard to the differences in the wording of the local legislation from that applicable in the UK.

83 In this connection, I would emphasise that the Singapore legislation uses the word "contingency" and refers to damages being assessed on the assumption that such contingency "will not happen", in which case further damages may be given if the contingency "happens" at a future date. In the English legislation, in contrast, in order to get an order for provisional damages there must be proved or admitted to be a chance that in the future the injured person will "develop some serious disease or suffers some serious deterioration" in his physical or mental condition. Our language is considerably wider and does not impose such conditions. Having said that, I agree that not every contingency could justify an award for provisional damages. The contingency must be one of a serious nature in order to prevent legal resources being expended when only insubstantial damages can be recovered.

84 Some two years later, the Court of Appeal in *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] 3 SLR 610 considered Paragraph 16 in the context of making an award for provisional damages in relation to loss of future earnings. The court noted at [50] that Paragraph 16 is drafted much more widely than the English provisions and (at [51]) unlike the English case, it is not limited to the situation where there is a chance that the injured plaintiff will in the future develop some serious disease or suffer some serious deterioration in his or her physical condition. The court went further in [51] to say:

... Undoubtedly, if the contingency relates to a physical or mental condition (that would be a fact which could be objectively determined), the injured plaintiff may ask for additional damages pursuant to the provisional damages order should the contingency occur. However, there is no reason why the contingency could not relate to some other future fact or circumstance, so long

as the occurrence of that fact or circumstance is something which can be objectively determined.

The Court of Appeal did not comment on *See Mun Li* as that position was not relevant to the facts before it, but it appears to me that the court would have taken a rather more liberal approach to a provisional damages award for a physical condition than the English judges are able to do. As long as the contingency can be objectively identified and, subsequently, objectively determined to have occurred, then when it does occur, a provisional damages award may be made. It should be noted that later in its judgment (at [52] – [53]), the court noted that in order to prevent future dispute, one must be able to define the precise contingency upon which further damages should be awarded.

85 The plaintiff submitted that the contingencies that might allow her to make a claim for further damages were complications arising from diabetes, the development of arthritis and the risk of functional decline. I will deal with the latter two conditions first.

86 While Dr Chua had noted that due to the accident, the plaintiff would be at risk of arthritic changes, there was no evidence from an orthopaedic surgeon as to the degree of such risk or when such changes were likely to occur. I think this evidence was not strong enough to support a finding that there was a reasonable likelihood of arthritis occurring within the not too distant future.

87 As for functional decline, Dr Chua's evidence was that the plaintiff was at risk of this happening. The AR accepted that such a decline was not a fanciful prospect but declined to make an award for it on the basis that it was not a clear-cut event. I agree. If you cannot specify at what point the contingency has occurred, then the contingency cannot be objectively determined as the law requires.

88 The third contingency related to possible complications from diabetes. The plaintiff submitted that the medical evidence established the risk of:

(a) Eye complications meaning cataracts, glaucoma, retinopathy, vitreous haemorrhage, retinal detachment, blindness.

(b) Renal complications meaning kidney failure.

(c) Infections meaning conjunctivitis, endophthalmitis, peripheral neuropathy which may predispose her to gangrene and limb amputation.

(d) Coronary heart disease.

89 The conditions described above were derived from the report of Dr Lee Chung Horn, the endocrinologist, who stated that these were complications that could arise from diabetes. In his report he said that the more poorly controlled the diabetes is, the higher the risk of developing complications from the condition. He also said that the time frame for such complications to arise would vary from individual to individual. Persons who do a poor job of controlling their diabetes or who are unable to strenuously apply themselves to the task of control may develop complications in a matter of three to five years. Dr Lee evaluated the plaintiff in March 2011 and found that her diabetes was under control. She did not have kidney complications or heart disease. However, the progression to diabetic ketoacidosis in December 2010 was reflective of the rate of deterioration and difficulty in controlling it in this case. He therefore opined that it would reasonable to conclude that the plaintiff would develop complications in a matter of three to five years.

90 The medical evidence that the plaintiff was at risk of developing complications from diabetes in three to five years was not challenged by any expert evidence adduced by the defendants. It would therefore seem that such a development is a contingency which justifies the making of an order for provisional damages. It is not a fanciful but a clear risk and one that has not been provided for in the assessment of damages for pain and suffering as the plaintiff has not suffered any of these complications so far. The question is which complication should be the subject of an order and what the time frame for the same should be. The plaintiff suggested that the development of any complication from diabetes would be sufficient. I think that is vague and it would be hard for someone assessing damages at a later stage to decide whether the contingency had arisen. I would therefore specify the complications as being renal failure, glaucoma, blindness, gangrene and coronary heart disease as being the serious complications that would allow the plaintiff to apply for an award of damages in the future. As for the period, since both Dr Lee and Dr Chua gave an estimation of three to five years, I would choose the longer period and allow the plaintiff to make an application if any of these complications arise within five years from the date of this judgment.

91 Accordingly, I allow the appeal on this point and make an order that the plaintiff may apply for further damages to be assessed if within five years of today, she develops, as a result of her diabetes, any of the following medical conditions:

(a) Renal failure;

(b) Gangrene;

(c) Blindness and/or glaucoma;

(d) Coronary heart disease.

Conclusion

92 In the result, the plaintiff's appeal is allowed in part and the defendants' appeal is dismissed. I will hear the parties on costs.