Mark Amaraganthan Selvaganthan *v* Cheung Man Wai
[2015] SGHC 253

Case Number : Suit No 485 of 2013

Decision Date : 30 September 2015

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Robert Leslie Gregory (L G Robert) for the plaintiff; Ramesh Appoo and Rajashree Rajan (Just Law LLC) for the defendant.

Parties : MARK AMARAGANTHAN SELVAGANTHAN — CHEUNG MAN WAI

Tort – negligence – causation

Tort – negligence – contributory negligence

Tort – negligence – damages

30 September 2015 Judgment reserved.

Judith Prakash J:

Introduction

1 In this action, the plaintiff claims damages arising out of a road traffic accident ("the Accident"). At the time of the Accident, the plaintiff was driving a BMW 530i and the defendant was driving a Hyundai Getz.

Background facts

2 The plaintiff, Mark Amaraganthan Selvaganthan, was working as a "Chief Operating Officer/Line Business Manager" for Credit Suisse AG ("Credit Suisse") at the time of the Accident. His job was in financial and human resource management and involved long hours in front of a computer.

3 At the time of the Accident, the plaintiff and his wife were on their way to pick up their children while the defendant, Mdm Cheung Man Wai, had her daughter with her.

4 The Accident took place on 1 August 2010 at about 6.50pm. Parties had differing accounts as to whether it was still raining at the time of the incident. In any case, both recalled that the road surface was wet at that time and that visibility was not impaired. The plaintiff's vehicle had exited the Pan-Island Expressway via a slip road branching out into two lanes turning left leading to Jalan Eunos in the direction of Eunos Link, and another three lanes turning right towards Jalan Eunos in the direction of Still Road. The plaintiff had stopped his vehicle on the right lane of the two lanes turning left and was waiting for traffic along Jalan Eunos in the direction of Eunos Link to clear. While his vehicle was stationary, the front of the defendant's vehicle hit the rear of his vehicle.

5 The Accident was not the first road traffic accident that the plaintiff was involved in, nor was it his last. In November 2002, the plaintiff was involved in an accident which caused him a flexion-extension injury. He was also involved in at least two other minor accidents in 2014 and one more in

2015.

The parties' accounts

The plaintiff

6 The plaintiff stated that his vehicle had come to a complete stop in the right lane of the slip road and had not started moving again when the defendant's vehicle collided into it. At that time, he was leaning forward and looking to his right to ascertain whether the traffic along Jalan Eunos was clear, and his head hit the window on the driver's side upon the collision. Prior to the collision, he had inspected his rear mirror periodically but had not seen any vehicle behind him.

7 This impact on his head caused him to lose consciousness for a few seconds and, when he came to, he exited his vehicle and walked to its rear to check on the other driver. At that point in time, he saw the licence plate of the defendant's vehicle on the road, broken into pieces. He also observed that the rear bumper of his vehicle had two indentations corresponding to the width of the defendant's vehicle's licence plate. The plaintiff suggested to the defendant that they move their vehicles in order not to block traffic along the slip road and they then shifted their vehicles to the side of Jalan Eunos. The plaintiff also called for both the police and an ambulance at around this point in time, though he cannot recall if he did so before or after moving his vehicle. The plaintiff stated in court that his wife did not come out of his car at all during the incident and, as she could not drive, he was the one who had driven it to the side of Jalan Eunos.

8 When the ambulance arrived, the plaintiff received some treatment from the paramedics and he was then taken to the Accident and Emergency Department ("A&E") at Changi General Hospital ("CGH"). He was physically examined and also underwent an X-ray examination, and was discharged after a few hours with four days' medical leave and a referral for orthopaedics specialist review. The plaintiff returned to work on Monday, 2 August 2010. However, as he was troubled by the pain and could not wait until the scheduled appointment date, on 3 August 2010, he went to see a general practitioner, who referred him to a neurosurgeon, Dr Lee Kheng Hin ("Dr KH Lee").

9 On 5 August 2010, the plaintiff attended a consultation with Dr KH Lee, during which he complained of headaches, neck pain and numbness in his right little finger. The plaintiff was found to have limited neck movements in all directions and decreased sensation in his right little finger, and he was warded for 12 days in Gleneagles Hospital for an urgent MRI scan to be performed on him. Dr K H Lee's report stated that the plaintiff had lost consciousness for between 10 and 15 seconds after the Accident. While the plaintiff was in hospital, he was treated with physiotherapy, and pain killers. Eventually, as a result of the Accident, he took a total of 119 days' medical leave.

10 The plaintiff continued to undergo physiotherapy after his discharge. However, he continued to feel pain and his work performance suffered due to his absences from work for his physiotherapy sessions and his inability to maintain focus. He was also unable to complete his work tasks as he could not sit down for long periods of time as he was required to do. As a result, he was passed over for promotion to the position of Director, a promotion that would have resulted in a salary increment of $10,000 per month. His performance bonus was also affected.

11 He left Credit Suisse on 3 November 2013 and joined WIPRO, a firm offering professional services such as the upgrading of software, soon after. His pain levels dropped considerably due to the shorter working hours but they escalated after the plaintiff was posted to work in Indonesia for two out of every three weeks. As a result, he resigned from WIPRO in September 2014 and joined Barclays PLC as a vice-president the following month.

12 The plaintiff now claims damages for "loss of earnings or loss of earning capacity as well as future medical expenses".

The defendant

13 The defendant does not deny that her vehicle collided into the rear of the plaintiff's vehicle and that she ought to have kept a proper lookout. However, she submits that the plaintiff was contributorily negligent by not driving off despite the fact that the traffic along Jalan Eunos was clear. According to the defendant, she had come to a halt behind the plaintiff's vehicle along the slip road when she observed that the traffic along Jalan Eunos was clear. Believing that the plaintiff's vehicle would move off, she accelerated, thereby causing the front of her vehicle to collide with the rear of the plaintiff's stationary vehicle.

14 The plaintiff and the defendant immediately got out of their respective vehicles. The defendant asked the plaintiff, who did not appear to her to be injured, if he was fine but he did not respond. They then inspected their vehicles for damage. The defendant did not observe any damage to the plaintiff's vehicle, and her vehicle was similarly unscathed save for the licence plate, which had broken into pieces. It was at this point that the plaintiff said that he would call for an ambulance and only then did parties move their cars. While waiting for the ambulance's arrival, the defendant observed the plaintiff to be pacing up and down while he spoke on his mobile phone. It should be noted that as the plaintiff's wife cannot drive, the plaintiff had telephoned his father to ask him to come to the site of the incident and drive his car away. This information emerged through cross-examination of the plaintiff.

15 When the ambulance arrived, the plaintiff was attended to by a paramedic. The plaintiff was thereafter taken away in the ambulance. At no time did the defendant observe the plaintiff to be unconscious.

16 The defendant was subsequently offered composition in respect of an offence of Careless Driving under r 29 of the Road Traffic Rules (Cap 276, R 20, 1999 Rev Ed), which she accepted.

The issues

17 The plaintiff pleaded in the Statement of Claim that he suffered a flexion-extension injury to his neck with a C5/6 disc prolapse as a result of the defendant's negligence.

18 In his closing submissions, he also claimed to have suffered from the following injuries as a result of the Accident:

(a) intervertebral disc desiccation at C3/4 to C5/6 with loss of disc height at C4/5 and C5/6 levels;

(b) minimal narrowing of the exit foramina at C3/4 levels;

(c) at the C4/5 level, a right facet joint arthropathy contributing to mild narrowing of the right exit foramen;

(d) at the C5/6 level, generalised disc bulge indents on the anterior epidural space with right-sided paracentral protrusion contributing to mild narrowing of right exit foramen;

(e) at the C6/7 level, a mild disc bulge indent of the anterior epidural space;

(f) loss of cervical lordosis;

(g) bilateral occipital neuralgia with back aches radiation from the neck upwards; and

(h) decreased sensation in his right little finger, spreading to this thumb.

19 The injuries at [18(a)] to [18(h)] above may be those identified by one Dr Kenneth Sheah ("Dr Sheah") who examined the plaintiff on 12 March 2015. The plaintiff was referred to Dr Sheah by Dr KH Lee and had sought leave to adduce Dr Seah's report into evidence by way of Summons No 1289 of 2015, which was heard on the first day of the trial. I dismissed the application in view of the prejudice that would be caused to the defendant by the admission of further evidence at that late stage. There is therefore no evidence in the present proceedings that the plaintiff is currently suffering from the stated injuries, though he has adduced sufficient evidence of a spinal condition.

20 The defendant concedes that she was primarily liable for the Accident but submits that the plaintiff was contributorily negligent because he stopped suddenly. Additionally, the defendant submits that the plaintiff could not have suffered any flexion-extension injury to his neck as a result of the Accident and that the symptoms complained of are in fact attributable to the plaintiff's pre-existing cervical spondylosis, a degenerative disc disease of the cervical spine.

21 The plaintiff's case can be characterised as follows – the Accident caused a flexion-extension injury to the plaintiff, who *as a result* suffered the C5/6 disc prolapse as well as the other injuries delineated above at [18]. As the defendant points out, the plaintiff's case as understood from the pleadings does not appear to be that his pre-existing condition of cervical spondylosis, which could account for the above injuries, was *aggravated* by the Accident. I have nonetheless gone on to consider this possibility in my analysis below.

22 The following issues arise:

(a) Was the plaintiff contributorily negligent?

(b) What was the extent of the spinal injuries caused by the flexion-extension injury to the plaintiff?

(c) Did the flexion-extension injury aggravate the plaintiff's cervical spondylosis?

(d) What is the quantum of damages to be awarded?

Was the plaintiff contributorily negligent?

23 The defendant relies on Carolyn Woo *et al*, *Motor Accident Guide: A guide on the assessment of liability in motor accident cases* (Mighty Minds Publishing, 2014), which states at p 91 that the liability of Driver Y should be increased by 10–20% where "Vehicle Y, *having moved forward from a stationary position, stops suddenly* (for example, when entering a major road from a minor/slip road or at a traffic light junction when the light has changed from 'red' to 'green')" [emphasis added]. She relies on the plaintiff's police report in which he stated that the moving accident was "between moving vehicles – head to rear". Therefore, she submits that there is sufficient evidence to suggest that the plaintiff may have moved off slightly before stopping suddenly.

24 There is little merit in this submission. The description of the Accident by the plaintiff, as quoted above, was merely a brief description of the type of the collision and may not have been

intended to be a precise account. When the plaintiff gave his account of the accident in greater detail in the same report, he expressly stated that he had come to a complete stop when the defendant's vehicle collided into his. More importantly, as mentioned above at [13], the defendant herself had stated in her affidavit of evidence-in-chief that she had accelerated her vehicle "in the belief that the [p]laintiff's [v]ehicle would move off". Even by her own account, there is nothing to suggest that the plaintiff's vehicle had started to move off and stopped suddenly.

What was the extent of the spinal injuries caused by the flexion-extension injury to the plaintiff?

The medical evidence

25 The plaintiff sought to rely on the evidence of five medical practitioners. Dr KH Lee is the neurosurgeon whom the plaintiff first consulted on 5 August 2010. Dr Chua Gim Chuah ("Dr Chua") is the radiologist who conducted an MRI of the head and neck of the plaintiff on 5 August 2010 on the instructions of Dr KH Lee. Dr June Chong ("Dr Chong") is another radiologist who conducted an MRI of the plaintiff on 22 February 2011. Dr Geraldine Leong Bao Yu ("Dr Leong") attended to the plaintiff at the A&E at CGH on the day of the Accident, while Dr Shehab Ul Alam ("Dr Shehab") is the Resident Physician of the Department of Orthopaedic Surgery at Alexandra Hospital, which treated the plaintiff after a road traffic accident on 2 November 2002.

26 In August 2010, Dr KH Lee diagnosed the plaintiff with "mild post-traumatic syndrome" and referred him for physiotherapy and prescribed medicine for "whiplash injury and aggravation of cervical spondylosis". Dr KH Lee stated that his use of the term "whiplash injury" was shorthand for a flexion-extension injury to the neck. His diagnosis of a whiplash injury was based on neck spasms and interscapular pain suffered by the plaintiff. This was supported by the MRI that showed signs of trauma by way of loss of cervical lordosis (where the spine is no longer curved normally but is held straight by muscle spasms). However, Dr KH Lee conceded that there were no signs of inflammation, swelling, bruising or any other sign of a soft tissue injury in the MRI. This is corroborated by Dr Chua's evidence and Dr Chong's evidence. Tellingly, there is also no indication of when the plaintiff's loss of cervical lordosis started and whether it could have been caused by the plaintiff's earlier whiplash injury in 2002. Further, as the defendant points out, the notes of Dr Leong and the general practitioner who referred the plaintiff to Dr KH Lee, both of whom saw the plaintiff prior to his first appointment with Dr KH Lee, do not show that the plaintiff had been suffering from muscle spasms.

27 Critically, none of the expert evidence adduced on behalf of the plaintiff pointed to the spinal injuries being *caused* by the Accident. Dr KH Lee did not state affirmatively whether the C5/6 disc prolapse was caused by the Accident or was a pre-existing condition, while Dr Chua opined that the disc protrusions at C5/6 could equally have been due to disc degeneration as well. The question of whether these injuries could have been *aggravated* by the Accident is discussed below.

28 Dr KH Lee also does not state in his report the extent of the whiplash injury. Dr Lee Soon Tai ("Dr ST Lee"), the consultant orthopaedic surgeon engaged by the defendant who conducted a medical examination of the plaintiff on 27 September 2013, testified that there are in fact four grades of whiplash-associated disorders ("WAD"). Grade 1 injuries involve tenderness while Grade 2 injuries involve tenderness with loss of motion. Grade 3 injuries involve neurological deficits (*ie*, loss of muscle tone and reflex), and Grade 4 injuries involve fracture dislocation that can be detected via X-ray. The plaintiff's claimed symptoms appear to be indicative of a Grade 3 injury but it is unclear if the whiplash injury that Dr KH Lee diagnosed the plaintiff with was in fact a Grade 3 injury.

29 Dr ST Lee's opinion was that the plaintiff was unlikely to have suffered even a Grade 2 WAD

given that Dr Leong had observed that the plaintiff had a full range of cervical spine movements. He opined during cross-examination that classical whiplash injury could not be caused by an oblique force, as would have been the case here given that the plaintiff was purportedly looking to his right when the impact occurred. He also appeared to suggest in his report that the plaintiff was malingering:

> The limitation in the range of motion of the cervical spine was excessive for the degree of cervical spine degeneration. I am of the opinion that the limitation was exaggerated voluntarily since the upper limbs did not reveal any weakness, muscle wasting or diminished reflexes.

30 Dr ST Lee also stated that "[i]t is interesting to note that Dr Geraldine Leong recorded that [the] 'patient kept insisting [on] having a cervical collar … [and] requested for Ortho TCU'". The plaintiff's counsel submits that the plaintiff's restricted range of motion at the examination was attributable to a stiff neck which had been communicated to Dr ST Lee. Even so, this does not account for the plaintiff's insistence on wearing a cervical collar when examined by Dr Leong or Dr ST Lee's evidence that the progression of the plaintiff's symptoms from the Accident on 1 August 2010 up to 5 August 2010 was not consistent with soft tissue injuries or WAD cases, where the period of most severe pain and loss of function would be at the time of the injury or soon after.

31 Finally, Dr ST Lee also concluded that the change in velocity ("delta-v") of the vehicles as a result of the collision between them must have been very low given the negligible damage to the cars, based on the absence of superficial scratches, deformity or displacement to the front bumper of the defendant's car. It was therefore unlikely that there was sufficient force to generate a whiplash injury. While this appears to go beyond Dr ST Lee's area of expertise, the delta-v of the vehicles is sufficiently addressed by Mr Koay Hean Lye Kelvin ("Mr Koay"), a traffic accident reconstruction expert.

The accident reconstruction report

32 Mr Koay prepared a traffic accident reconstruction report based on a survey of the plaintiff's and the defendant's vehicles which were examined on 16 September 2014 and 13 December 2013 respectively. At the time of Mr Koay's examination, neither car had undergone repairs for damage caused by the accident, save for the replacement of the licence plate of the defendant's vehicle and the plaintiff knocking his bumper back into shape.

33 Mr Koay's evidence is that based on the damage sustained by the plaintiff's and the defendant's cars, the rear-end impact speed of the Accident would have been low and the force would not have been sufficient to cause injury to the plaintiff, at least to the extent claimed. Mr Koay observed that there was a crack in the defendant's vehicle's front bumper sponge but there was no damage or deformation to its front bumper reinforcement, support panel and grille. While he observed many areas of contact damage to the plaintiff's vehicle's rear bumper, he observed no physical displacement of the plaintiff's rear bumper and concluded that the deformation suffered by the rear bumper cover, if any, would not have been sufficient to contact the vertical side of the boot-lid lower edge located eight to ten centimetres further inwards.

34 Taking into account the damage to the vehicles and their respective properties and specifications, Mr Koay calculated the defendant's vehicle to have been approaching the plaintiff's vehicle at a speed of approximately 8.6km/h, with the plaintiff's vehicle experiencing a delta-v of about 3.4km/h. This falls far below the threshold of 8km/h required to cause injuries, even for persons with mild pre-existing spinal degeneration, and would likely have caused little movement to the plaintiff's head and chest. Further, on the worst-case assumption that the defendant's head was

totally unsupported by his vehicle's head-rest (as he claims), he concluded that the maximum reaction force experienced by his head would have been between 1.5kg and 2.3kg, ignoring the dampening effect of the bumper cushions of the vehicles. This again falls far below the forward thrust known to cause back muscle spasms.

35 The plaintiff did not challenge the research and studies that Mr Koay cites in respect of the speed and force necessary to cause whiplash injury. However, the plaintiff questions the credibility of Mr Koay's findings on three grounds. First, he says that the findings were premised on material facts that were not disclosed to or noticed by Mr Koay – specifically, the shattering of the defendant's vehicle's licence plate and a crack in the bumper foam of the plaintiff's vehicle that was not highlighted in the report. Second, he says that the calculation of the vehicles' delta-v is imprecise as it is based on values attributed to a class of vehicles as opposed to the specific models in question. Third, he says that the report comprises "questionable omissions as to the damage to the [defendant's] car". In my view, these are insufficient to impugn the veracity of Mr Koay's findings.

36 In relation to the omissions of material facts set out above, Mr Koay testified during cross-examination that the shattering of the licence plate would not have affected his calculations since they were based on the inward-deformation of the bumper rather than the damage to the licence plate. I am inclined to accept his explanation – indeed, subheading (a) of the "Calculations and Analysis" section of Mr Koay's report is titled "[v]ehicle speed based on deformation". As for the crack in the bumper foam, I understand Mr Koay's evidence to mean that the crack could not have been caused by the accident as it would have required a coupling force which would not have been produced by a head-on impact.

37 In relation to the precision of the calculations, Mr Koay conceded that his calculations were based on stiffness coefficients of the bumpers as provided by the United States National Highway Traffic Safety Administration. The data is specific to types of vehicles based on their individual properties such as weight and wheelbase but is not specific to individual models and makes. Nevertheless, given that this is an approved standard by a United States regulatory authority and that vehicles must still be categorised into sub-classes (presumably having similar properties), I do not think that his calculations should be discredited.

38 Further, the plaintiff does not state what the "questionable omissions" are. I am of the view that Mr Koay sufficiently addressed during cross-examination why certain damage to the car was not considered in arriving at his findings, such as the crack in the bumper foam in [36] above and the dents to the rear bumper of the plaintiff's car. There was no evidence from the plaintiff to refute Mr Koay's explanations which I find to be credible. During cross-examination, the plaintiff suggested that the damage to his vehicle was greater than that identified in Mr Koay's report, alluding to an independent survey report drafted in 2013. However, he was unable to produce any documentary evidence in support of his assertion.

39 Finally, while this was not raised in the plaintiff's closing submissions, I note that Dr KH Lee had during cross-examination disagreed with the findings of Mr Koay on the force generated during the collision on the sole basis of the spasms suffered by the plaintiff. As pointed out in [26] above, there was no record of any spasms suffered by the plaintiff on either 1 August 2010 itself or at any time prior to his visit to Dr KH Lee. I give Mr Koay's findings substantial weight: not only is there no contradictory expert evidence but also Mr Koay's findings and explanation are coherent and consistent with the circumstances of the Accident and the vehicular damage sustained.

The plaintiff's evidence

40 It is appropriate to consider the plaintiff's evidence in respect of the circumstances surrounding the Accident at this juncture. Contrary to the plaintiff's evidence, it was noted in the ambulance case record and the discharge summary from CGH that he had hit the windscreen and not the side window of his vehicle. The ambulance case record states that the description of events comprising the incident was provided by the plaintiff, while Dr Leong also testified that the description of events as recorded in the discharge summary would have been based on what was provided by the plaintiff.

41 I also find his account of the Accident hard to believe. Even if I were to accept that Dr KH Lee had erroneously recorded that the plaintiff was unconscious for 10 to 15 seconds (the plaintiff said in court that it was only one or two seconds), if he had lost consciousness, would the plaintiff's wife simply have stayed in the car thereafter while he came out to inspect his vehicle, particularly since the loss of consciousness took place while the car engine was still running with the vehicle ready to move off from the slip road? Nor did his wife take any immediate steps to call for an ambulance – it was the plaintiff himself who did so, *after* he had inspected his vehicle for damage, and he also had the presence of mind to suggest to the defendant that they move their cars in order not to block traffic. It is also telling that both the ambulance case record and the CGH discharge summary state that there was "no loss of consciousness", which information could only have come from the plaintiff himself. The plaintiff's wife must have seen what happened at, or immediately after, the point of impact. Yet the plaintiff did not call her to testify.

42 Therefore, to the extent that the plaintiff suggests that the impact of the collision was so severe as to cause him to hit the side window at such force as to induce a loss of consciousness, I do not think he can be believed. For the reasons stated above, as well as the fact that none of the other parties involved in the Accident suffered any injuries as a result, I am of the view that the Accident caused, at worst, a Grade 1 WAD. It was certainly not the type of accident that was capable of causing the spinal injuries listed at [18] above.

Did the flexion-extension injury aggravate the plaintiff's cervical spondylosis?

43 In his report dated 5 August 2010, Dr KH Lee confirmed that as of that date the plaintiff was already suffering from mild cervical spondylosis. Spondylosis refers to the degeneration of the spine which everyone suffers but in varying degrees at different times of their lives. This causes, at an early stage, stiffness and tightness of the spine before progressing to pain, numbness or weakness. In severe cases where the spinal cord is affected, there could be paralysis or weakness of the legs and arms. Early signs of cervical spondylosis are the dehydration or dessication of the intervertebral discs which could cause protrusions along the contours of the discs. As the discs degenerate further, the spine will form spurs to repair the damage. Finally, in the later stages of degeneration, neurological problems could arise if the foramina (*ie*, exits) through which the nerves from the spinal cord travel are narrowed or obstructed. All this is part of a process that occurs over years. As such, Dr KH Lee's opinion is that while this condition pre-dated the Accident, it was aggravated by the Accident.

44 Dr KH Lee stated, based on the MRI scans done by Dr Chua and Dr Chong, that the plaintiff's condition had worsened in the period between 5 August 2010 and 22 February 2011, the days on which the MRI scans were conducted by the respective doctors. Dr Chua observed mild central disc protrusions (*ie*, localised bulges along the contours of the intervertebral discs) and early desiccation of the intervertebral discs. However, he noted that there was no cord oedema (*ie*, inflammation or swelling of tissue) or other significant disc prolapse and that the exit foramina were preserved. Dr Chong, who did not compare her findings against the earlier scan done by Dr Chua, also observed in her report disc protrusions at the C4-5 and C5-6 level.

45 Pertinently, there is no objective basis for any comparison between the plaintiff's condition

before and after the Accident. This is particularly important given that the degeneration of the spine, as Dr KH Lee points out, is an ongoing process that could be accelerated by spending long hours at a desk before a computer, as the plaintiff was required to do. Even if we are to accept that the plaintiff's condition had degenerated in the period of time between the MRI scans performed by Dr Chua and Dr Chong, there is no evidence to show that his degeneration that occurred at an *accelerated* rate after the Accident, let alone that it is attributable to the Accident.

The quantum of the damages to be awarded

46 The plaintiff's claim for damages is largely based on loss arising out of his spinal injuries and not the flexion-extension injury alone. Having found above that the spinal injuries were not caused or aggravated by the flexion-extension injury resulting from the Accident, all that remains is to consider the damages for the pain and suffering arising from the flexion-extension injury itself.

Pain and suffering

47 It is not entirely clear from the plaintiff's closing submissions but it appears from the cases cited at paras 39 to 52 that he is seeking $25,000 in damages for pain and suffering. The defendant submits that only $2,500 should be awarded instead.

48 The plaintiff was only able to identify one case in which damages amounting to $25,000 were awarded – in *Yao Zhong Ping v Teambuild Construction Pte Ltd* [2003] SGDC 326, the District Court awarded $25,000 to a carpenter who underwent a discectomy as a result of a work accident but had to undergo further surgery in order to deal with an infection arising out of the first surgery and a disc protrusion. As a consequence of that further surgery, there would be restriction of movement of his back as three of his vertebrae would be fused and immobile. The plaintiff's condition is much less serious. By his own account, most aspects of his daily life appear to be unaffected. He is able to walk normally, climb stairs and eat using chopsticks. The surveillance conducted by a private investigator engaged by the defendant also indicated that the plaintiff is able to drive and move his head around without displaying any signs of pain, discomfort or constraint. The plaintiff was able to do without physiotherapy for a whole year while he was still working at Credit Suisse.

49 In *Karuppiah Nirmala v Singapore Bus Services Ltd* [2002] 1 SLR(R) 934, where the plaintiff suffered a whiplash injury that aggravated her cervical spondylosis, causing chronic neck-ache and episodic radiculopathy, she was awarded $14,000. The plaintiff here is in a better condition since there was no aggravation of his cervical spondylosis. I consider $7,000 to be a sufficient award for the plaintiff's plain and suffering from the injury he sustained. It may be on the high side for injuries such as his, but I am taking into account the period of hospitalisation and the somewhat lengthy medical leave he was given after the Accident.

The of earning capacity / loss of future earnings

50 Both parties cited the case of *Teo Sing Keng v Sim Ban Kiat* [1994] 1 SLR(R) 340 ("*Teo Sing Keng*"), in which the Court of Appeal approved at [36] the following dictum by Lord Denning MR in *Fairley v John Thompson (Design & Contracting Division) Ltd* [1973] 2 Lloyd's Rep 40 at 42:

> It is important to realize that there is a difference between an award for loss of earnings as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution in earning capacity is awarded as part of general damages.

51 The distinction was further expanded on by the Court of Appeal in *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 at [14] ("*Samuel Chai*"):

> … In other words, loss of future earnings refers to the difference between post-accident and pre-accident income or rate of income. Obviously, if the victim earns a post-accident income or rate of income which is more than his or her pre-accident income or rate of income, no award for loss of future earnings should be made. In contrast, loss of earning capacity, as Scarman LJ indicated, addresses the loss arising from the weakening of the plaintiff's competitive position in the open labour market …

52 In respect of awards for the loss of earning capacity (as opposed to loss of future earnings), the Court of Appeal stated in *Teo Sing Keng* at [40] that they are generally made where the plaintiff is in employment and has suffered no loss of earnings, but there is a risk that he may lose that employment some time in the future and, as a result of his injury, be at a disadvantage in getting another job or an equally well paid job.

53 The plaintiff submits that a sum of $150,000 should be awarded for his loss of earning capacity, as well as $471,466.65 in earnings lost through the loss of promotion opportunities and bonus awards. The plaintiff does not elaborate, but it is clear from the case of *Lee Teck Nam v Kang Hock Seng Paul* [2005] 4 SLR(R) 14 at [41] that claims for loss of promotion opportunity fall within the head of loss of future earnings.

54 I first deal with plaintiff's claim for damages for loss of earning capacity. It is not entirely clear to me how the plaintiff arrived at the figure of $150,000 – he appears to have simply taken a broad average of his yearly income from 2007 to 2013. In any case, it is clear that the plaintiff has suffered no such loss. It is evident from his changes in employment subsequent to the Accident that he has suffered little, if any, disadvantage in getting a higher paying job.

55 As for the plaintiff's claim for loss of future earnings, the plaintiff confusingly concedes that "the appropriate award for damages here is for Loss of Earning Capacity as opposed to a Loss of Future Income as the [p]laintiff has managed to keep himself in employment". The defendant relies on the extract from *Samuel Chai* set out at [51] above, submitting that there can be no loss of future earnings where a plaintiff subsequently earns more than what he was earning at the time of the accident. But that is not what the plaintiff is claiming for; the plaintiff is only claiming for the loss of bonus and a higher salary during his continued employment at Credit Suisse after the Accident.

56 Nevertheless, I do not think there is sufficient evidence to establish, on a balance of probabilities, that the plaintiff would have been promoted. The evidence in support of the plaintiff is the bare assertion of the plaintiff's former boss. There was no documentary evidence that the plaintiff would have been promoted and that his salary and bonus would have been as claimed. The plaintiff did not produce any of his work appraisals and his other boss, who also had an input as to whether he would be awarded bonus payments, was not called to testify. It is also appears that the plaintiff's performance may not have been impeded as greatly as he claims – in the two years subsequent to the Accident, the plaintiff continued to receive bonus payments and was not asked to leave, only leaving Credit Suisse when he volunteered to be made redundant.

57 Further, I agree with the defendant's submission that the plaintiff's bonus would have been dependent on many external factors beyond his personal performance, such as the performance of his peers and the state of the company. This would apply equally to the plaintiff's chances of promotion.

Medical expenses

58 The plaintiff claims the following:

(a) $58,984.78 for medical expenses and the cost of physiotherapy, comprising $50,000 for surgery on his nerve root and $8,984.78 for documented medical and physiotherapy expenses;

(b) $24,900 for future medical costs, comprising $18,900 for his continued need for physiotherapy and $6,000 for neurolysis injections; and

(c) $2,725.00 for transportation costs, comprising his fuel expenses for his visits to the physiotherapists, his doctors and "other place[s] consequent of this matter".

59 This is a departure from what was originally pleaded. There was no mention of the possibility of surgery on his nerve root and neurolysis injections. Similarly, it is purely speculative as to whether the plaintiff may lose his current job and his medical benefits – there is no evidence of any such possibility. His medical expenses have largely been covered by all three of his employers from 2010 until now. The claims for future medical costs must therefore be dismissed.

60 The plaintiff conceded during re-examination that most of his past medical expenses would have been paid for by his company's insurer or from his Medisave account. He also estimated that he would not have been reimbursed for 10% of his physiotherapy expenses but he could not be sure. He was largely unable to specify which items were paid by him and which were paid by the insurer. In respect of items which he claimed to have paid for himself, there was no documentary evidence in support. The only exception is the sum of $4,950 that was charged to his Medisave account for his hospitalisation between 5 and 16 August 2010.

61 As for the transportation costs, I am of the view that the amount of $25 per trip is excessive and arbitrary, and includes costs that have nothing to do with his medical injuries such as visits to his former solicitors.

62 Therefore, the only claim I would allow under this head would be the sum of $4,950 for the hospitalisation fees charged to the plaintiff's Medisave account.

Conclusion

63 There will be judgment for the plaintiff for damages in the sums of $7,000 as general damages and $4,950 as special damages. The plaintiff is awarded interest at the court rate as from the date of the writ.

64 I will hear the parties on costs.