IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 189

Suit No 662 of 2014

Between

Tan Hun Boon

… *Plaintiff*

And

(1) Rui Feng Travel Pte Ltd
(formerly known as Cheery
Travel Pte Ltd)
(2) Md Ismail Bin Pungut

… *Defendants*

JUDGMENT

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

TABLE OF CONTENTS

Tan Hun Boon
v
Rui Feng Travel Pte Ltd and another

[2017] SGHC 189

High Court — Suit No 662 of 2014
Pang Khang Chau JC
21, 22, 23 September 2016; 9 November 2016

31 July 2017 Judgment reserved.

Pang Khang Chau JC

Introduction

1 On 23 June 2011, the Plaintiff stopped his car along the road shoulder of Ayer Rajah Expressway ("AYE") to render assistance to a distressed vehicle. After helping to change a flat tyre on the distressed vehicle, the Plaintiff walked back towards his car, which was parked in front of the distressed vehicle. At that moment, a bus owned by the 1st Defendant and driven by its employee, the 2nd Defendant collided into the EMAS truck parked behind the distressed vehicle, causing the EMAS truck to collide into the distressed vehicle and the distressed vehicle to collide into the Plaintiff.

2 As a result of the collision, the Plaintiff suffered multiple fractures on his left leg as well as a fractured left hip. The injuries to the Plaintiff's left leg

were such that he had to undergo an above-knee amputation. After the amputation, the Plaintiff developed severe phantom limb pain.

3 As the Defendants did not dispute liability, interlocutory judgment was entered by consent on 10 September 2014 at 100% in the Plaintiff's favour with damages to be assessed. The trial on quantum was heard before me from 21 to 23 September 2016. The amount of damages claimed by the Plaintiff is in the region of $2.2 million while the Defendants took the position that the Plaintiff is entitled to just over half a million in damages.

Undisputed items of damages

4 At the commencement of the trial, parties informed the Court that they had reached agreement on the following items:

(a) General damages for future medical expenses in relation to medical consultations and pain medication at **$137,352.00**;

(b) General damages for future costs of waterproof prosthesis at **$49,700.00**;

(c) Special damages for pre-trial medical expenses at **$12,026.05**.

5 Further, there was agreement between parties in their written closing submissions for the award of special damages for pre-trial counselling expenses at **$1,000.00**.

6 The amount agreed at [4(a)] above does not include the Plaintiff's claim for an item of future medical treatment known as "spinal cord stimulation". This item is explained at [26] below.

Disputed items of damages

7 The following are the heads of claim in dispute:

(a) General Damages:

(i) pain and suffering (inclusive of loss of amenities);

(ii) future costs of spinal cord stimulation treatment;

(iii) future costs of everyday prosthesis;

(iv) future transport expenses for follow up treatment;

(v) loss of future earnings / loss of earning capacity;

(b) Special Damages:

(i) Pre-trial loss of earnings;

(ii) Pre-trial transport expenses;

(iii) Loss of personal effects.

Pain and suffering

8 The Plaintiff claims $130,000 for his left lower leg injuries and $25,000 for his left hip / upper left leg injury. The Defendants submit that a global award of $120,000 should be made for the injuries to the left leg and hip. In addition, the Plaintiff claims $2,000 for abdominal injury. The Defendant's position is that no separate award should be made for abdominal injury.

Injuries to the left leg and left hip

9 The Plaintiff sustained the following injuries to his left leg and hip:

(a) comminuted proximal tibial fracture;

(b) displaced transverse proximal fibular fracture;

(c) displaced foreshortened transverse facture of the left femur at the mid shaft; and

(d) left incomplete acetabular fracture.

The first two items were classified by the Plaintiff as part of the lower left leg injuries while the latter two items were classified by the Plaintiff as part of the left hip / upper left leg injury.

10 On arrival at the National University Hospital ("NUH"), the Plaintiff was observed to have sustained a near complete amputation of his left lower limb below the knee. He went into emergency surgery where a left *above-knee* amputation was performed because the doctors were not able to detect blood flow to the left foot. A subsequent surgery was performed three days later for wound exploration and debridement of the stump wound.

11 The Plaintiff was discharged after staying in the hospital for 11 days. He was fitted with a prosthesis only in May 2012 (almost a year after his injury), after his hip fracture has healed. Prior to that, he had to ambulate with crutches. He also underwent 27 sessions of physiotherapy from 19 August 2011 to 1 July 2013. A stump revision surgery was carried out in 2013 due to bone spur affecting the fit of his prosthesis. He then underwent a replacement of the socket of his prosthesis.

12 Relying on the prosthesis, the Plaintiff now walks with a noticeable limp. The Plaintiff's evidence is that he is not able to run, squat or kneel at all. As the prosthesis is attached to his left hip, he would develop pain in the lower

back and left groin if he walks for long distances. He would also develop pain in the right knee occasionally from compensating for the lost left limb.

13 Following the above-knee amputation, the Plaintiff developed severe phantom limb pain. He requires high doses of pain medication to make it through the day. But the medication does not take the pain completely away. The constant dull pain (even under medication) combined with the effect of the pain medication, affects the Plaintiff's concentration and causes him to be easily fatigued. The pain also affects his sleep at night.

14 According to the Defendants' medical expert, the orthopaedic specialist Dr Sarbjit Singh, the Plaintiff has already developed moderate osteoarthritis in his left hip and the osteoarthritis is likely to get worse over time. He noted that any fracture involving the hip joint predisposes the joint to osteoarthritis and that the resting of the body's weight on the prosthesis through the left hip will aggravate the osteoarthritis over time.

15 The Defendants arrive at the global quantification of $120,000 by allowing:

(a) $80,000 for injuries to the lower-left limb leading to the above-knee amputation;

(b) $18,000 for injury to the left hip subject to an adjustment for inflation at the rate of 3% per year in light of the age of the authority relied on – *Fadhil bin Kassim v Lau Cheong Wai* (DC Suit No 1576 of 1995) cited in *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) (the "*Guidelines*") at p 45, fn 93;

(c) $5,000 for the early onset of osteoarthritis, based on the award *Zakaria bin Putra Ali v Low Keng Huat Construction Co (S) Pte Ltd* [1993] SGHC 277 ("*Zakaria*").

16 In coming up with the $80,000 figure at [15(a)] above, the Defendants rely on the damages award of $80,000 in *Rahmam Lutfar v Scanpile Construction Pte Ltd and anor* [2016] SGHC 41 ("*Rahman Lutfar*") and *Quek Yen Fei Kenneth v Yeo Chye Huat* [2017] SGCA 29 ("*Kenneth Quek*").

17 The Plaintiff similarly relies on *Rahman Lutfar* and *Kenneth Quek* as the starting point for the damages for the injuries to the Plaintiff's lower-left limb. The Plaintiff notes that *Rahman Lutfar* concerned an above-knee amputation *without* the complication of phantom limb pain while *Kenneth Quek* concerned a *below-knee* amputation with phantom limb pain.

18 Dr Sarbjit Singh's evidence is that a below-knee amputation disables the patient to a lesser extent than an above-knee amputation because a patient with a below-knee amputation still has his knee and can bend the knee for various activities when fitted with a prosthesis. Similarly, the evidence of the Plaintiff's prosthetist, Mr Trevor Binedell is that the prosthetic needs of a patient with below-knee amputation is simpler because he can control his walking gait with his knee and residual calf stump.

19 The Plaintiff therefore submits that an appropriate award for the lower-limb injury must be above $80,000 in order to take into account *both* the above-knee amputation and the phantom limb pain. In this regard, the Plaintiff highlights that the *Guidelines* provides a range of $20,000 to $35,000 for severe chronic pain syndrome.

20 The Plaintiff next refers to the case of *Mei Yue Lan Margaret v Raffles City (Pte) Ltd* [2005] SGHC 168 ("*Mei Yue Lan Margaret*") in which $100,000 was awarded for pain and suffering to a victim who sustained a deep and traumatic laceration to her right ankle with reflex sympathetic dystrophy. She suffered persistent and excruciating pain for several years after the accident, during which she underwent 10 surgeries including one for trial implantation of a spinal cord simulator and one for permanent spinal cord simulator implantation. Woo Bih Li J observed at that, even though the victim's injury "was not life-threatening and she did not lose her right foot, the pain and suffering she had to go through was more severe and for a longer period than an amputee's" (at [54]). The Plaintiff therefore submits that there should be a composite award comprising $100,000 for pain and suffering for the injury resulting in amputation and a separate amount of $30,000 for the resultant phantom limb pain.

21 While I agree with the Plaintiff's submission at [19] above that an award of $80,000 for the lower limb injuries would be inadequate, I cannot accept the logic of the Plaintiff's submission at [20] above. The award of $100,000 in *Mei Yue Lan Margaret* already takes into account the severe chronic pain suffered by the victim. It would therefore be double-counting to add another $30,000 on top of that for phantom limb pain.

22 The correct approach is to use the award of $80,000 in *Rahman Lutfar* (a case concerning above-knee amputation) as the starting point and add another $20,000 to $35,000 to account for the severe phantom limb pain suffered by the Plaintiff. In other words, the appropriate award for pain and suffering for the left lower limb injury should range from $100,000 to $115,000.

23 With regard to the left hip / upper leg injury, the Plaintiff relies on the same authorities cited by the Defendants at [15] above ($18,000 for injury to the left hip and $5,000 for early onset of osteoarthritis), as well as the award of $13,000 in *Rahman Lutfar* for the risk of developing osteoarthritis to justify an award of $25,000 for the Plaintiff. I note that the figure of $25,000 put forth by the Plaintiff is lower than the amount which the Defendants allow for the left hip / upper leg injury. As explained in [15(b)], the Defendants allow $18,000 subject to adjustment for inflation at 3% per year from 1995 for the hip injury. This translates to roughly $25,000 today. On top of that, the Defendants allow an amount of $5,000 for the early onset of osteoarthritis (see [15(c)] above), making a total award of $30,000 for the left hip / upper leg injury.

24 Putting the figures at [22] and [23] above together and taking a global approach, I award **$140,000** for pain and suffering for the injuries to the left leg and hip.

Abdominal Injury

25 The Plaintiff was found to have a small amount of ascites in the peritoneum. The Plaintiff accepts that this injury appears minor in nature and had resolved with no long term sequelae but submits that an award of $2,000 should be made for this item. The Defendants submit that, given its minor nature, this injury should be taken collectively with the pain and suffering for the other injuries and thus no separate award should be made or, at most, a nominal award of $1,000 should be made. I agree with the Defendants on both counts and therefore make no separate award for this item.

Future costs of spinal cord stimulation treatment

26 Spinal cord stimulation ("SCS") is a form of treatment for severe chronic pain. It involves the implantation of electrodes to deliver electrical stimulation to the spinal cord in order to block the pain signals from travelling up the spinal cord to the brain. The procedure is performed in two stages. The first stage involves trial implantation to assess the extent to which the patient is able to benefit from SCS ("Stage 1"). If the patient derives significant pain relief during the Stage 1, the patient may proceed to the second stage for permanent implantation ("Stage 2"). Generally, about half of the patients who completed Stage 1 proceed to Stage 2.

27 Stage 1 costs about $10,000. The cost of Stage 2 is estimated by the Defendants' pain specialist expert witness, Dr Nicholas Chua, to be $65,500 and by the Plaintiff's pain specialist expert witness, Dr Bernard Lee, to be $76,750. There will also be long term recurrent costs - in addition to regular consultation and review (estimated by Dr Bernard Lee to cost about $5,000 per annum), the battery of the spinal cord stimulator would need to be replaced every 10 years or so at an estimated cost of between $35,000 and $48,000 (this includes both the cost of the battery and the cost of the surgery to replace the battery).

28 All three pain specialists who gave evidence at trial (the third being the Plaintiff's treating pain specialist at NUH, Dr Tay Kwang Hui) agree that the Plaintiff is a good candidate for the treatment of SCS. Dr Lee saw the Plaintiff in 2014 and recommended that the Plaintiff go for SCS. During cross-examination, Dr Tay said that, when the Plaintiff sought his opinion on Dr Lee's recommendation, Dr Tay told the Plaintiff that Dr Lee was correct. Dr Chua indicated that he supported the Plaintiff going for trial of SCS.

29 For this item, the Plaintiff claims $10,000 (the cost of Stage 1) plus $35,000 (50% of the estimated cost of Stage 2, having regard to the fact that about half the patients who undergo Stage 1 proceed to Stage 2). The Plaintiff did not make any claim for the recurrent costs alluded to above.

30 The Defendants' position is that no award should be made for SCS because:

(a) the evidence suggests that the Plaintiff has no intention at all to go for SCS; and

(b) it is unreasonable to ask the Defendants to compensate the Plaintiff for a procedure that has too many variables to determine success in relieving the Plaintiff's phantom limb pain.

Whether the Plaintiff intends to go for SCS

31 The Plaintiff's evidence is that he intends to undergo SCS treatment eventually. While he acknowledges that his phantom limb pain is currently managed adequately by pain medication, he is concerned that, as the pain may continue to worsen and as his tolerance for the pain medication increases, he will need higher and higher dosages of the pain medication, with the attendant side effects. The Plaintiff therefore believes that he will need to try SCS at some stage in future. The Plaintiff also gave evidence that he had put off trying out SCS thus far because:

(a) he wanted to keep SCS as a last resort given the invasiveness of surgically implanting electrodes on his spinal cord;

(b) if the SCS trial (Stage 1) is successful, he would have to immediately decide whether to make the implants permanent (Stage 2); and

(c) he was actively canoeing and the twisting of his torso during canoeing risks dislodging the SCS electrodes.

32 The Defendants point out that the Plaintiff had known about SCS since 2014 and yet took no steps towards SCS treatment, not even the exploratory step of undertaking Stage 1 to assess if SCS would work for him. Given that Stage 1 costs only $10,000 and the relevant medical experts have advised that SCS is a safe procedure, the Defendants submit that this betrays a lack of intention on the part of the Plaintiff to pursue SCS treatment. The Defendants also take issue with the Plaintiff's reasons for delaying SCS treatment. First, the Defendants point out that the Plaintiff's concern at [31(b)] is not supported by the medical evidence. All three experts agreed that the trial electrodes would be removed at the end of Stage 1 and the patient could take his time to decide whether to proceed with Stage 2. Secondly, the Defendants note that there was no consensus between Dr Lee and Dr Chua on the point raised at [31(c)] above. In any event, as the Plaintiff stopped canoeing for the entire year in 2015, the Defendants consider that the Plaintiff could have gone for a SCS trial during this temporary hiatus in his canoeing activities.

33 Overall, I accept the Plaintiff's evidence that he intends at some stage to go for SCS treatment. First, the Plaintiff's evidence concerning the side effect of pain medication and the need for higher dosages of pain medication in future is borne out by the medical evidence adduced at trial. Secondly, the reason given by the Plaintiff at [31(a)] is consistent with the evidence of the medical experts. Specifically, the Defendants' expert Dr Chua agreed that it was not wrong to

leave SCS as a last course of action. Dr Chua also said that there was no scientific evidence that SCS would work better on a recent injury as opposed to an older injury. Thirdly, while the reason given by the Plaintiff at [31(b)] above may have been based on a misapprehension of the medical advice he received, it does not necessarily mean that this was not a genuinely held belief having a real impact on the Plaintiff's decision.

34 Fourthly, as for the risk that the Plaintiff's canoeing activities would cause the electrodes to dislodge, the Defendants are incorrect to say that Dr Chua's evidence is that it would not. Dr Chua's evidence is more qualified and less definite. What Dr Chua actually said was:

> I think that risk is pretty low *once you have successful capture in the first 3 months*, and he stays pretty, erm – you know, he doesn't do funny things like *twisting his spine too much in the first couple of weeks*. Things will settle down quite a fair bit, yah.
>
> [emphasis added]

Dr Chua's evidence is not that there is no risk but that the risks would be low if certain conditions are met. At the end of the day, the issue before this court is not whether Dr Chua's or Dr Lee's risk assessment is to be preferred but whether the Plaintiff's reason for delaying a SCS trial is reasonable and believable. In the circumstances, it was entirely reasonable for the Plaintiff to rely on Dr Lee's advice that the chance of dislodgment is high and, for that reason, to have delayed going for a SCS trial.

35 With regard to the Defendants point that the Plaintiff could have gone for a SCS trial in 2015 (the one year during which the Plaintiff was not canoeing), I am of the view that once it is accepted that the Plaintiff genuinely held the belief referred to at [31(b)] above, it would not be fair to fault the Plaintiff for not undergoing a SCS trial during the temporary hiatus in canoeing

activities in 2015. There is no evidence that, when the Plaintiff stopped canoeing in 2015, he believed he would never pick up canoeing again.

36 For the foregoing reasons, I find on the balance of probabilities that the Plaintiff will eventually incur the cost of *at least* Stage 1 and that, in the light of the unanimous medical evidence in favour, it is reasonable for the Plaintiff to do so.

Whether unreasonable to compensate the Plaintiff for SCS given the variables involved

37 According to the Defendants:

(a) the Plaintiff's claim for 50% of the cost of Stage 2 is speculative. There is a variance among the medical experts regarding the threshold for determining whether a patient is suitable for the second stage of SCS;

(b) even after successful implantation of SCS, the Plaintiff would still have to continue taking pain medication, albeit at lower dosages. The dosages of pain medication is likely to increase with time as there may be a decay in a patient's response to SCS after some time;

(c) therefore, SCS is an expensive procedure which may not be successful in relieving the Plaintiff's phantom limb pain and in fully reducing the cost and negative side effect of pain medication;

(d) it was on this basis that the Defendants have agreed, at the commencement of the trial, to the Plaintiff's full claim of $131,652.00 for future costs of pain medication and $57,000 for future medical consultations.

38 I have some sympathies for the Defendants submission that it is speculative to award the Plaintiff 50% of the costs of Stage 2 simply because 50% of patients who have undergone Stage 1 would proceed to Stage 2. Such an award will inevitably result in either over-compensation or under-compensation. A more appropriate way of dealing with such contingencies would be through provisional damages, an approach recently endorsed by the Court of Appeal in *Kenneth Quek* at [88]. However, on the facts of the present case, there is no need to further explore the option of provisional damages, having regard to the critical point made at [37(d)] above.

39 Both Dr Lee and Dr Chua gave evidence that, if SCS treatment is successful, the dosage of pain medication needed by the Plaintiff should reduce by between 50% and 75%. This means that, if the Plaintiff is found suitable for SCS after Stage 1 and decides to proceed to Stage 2, the Plaintiff will likely to save between $65,000 and $98,000 on pain medication as a result of the effect of SCS. This saving would be sufficient to cover the cost of the second stage of SCS (which is estimated to range from $65,000 to $77,000). What this means is that the Plaintiff will be overcompensated if a separate award is made for the cost of Stage 2 without a corresponding reduction in the award for future pain medication. In the circumstances, I am of the view that no separate award should be made for Stage 2.

40 One possible objection to the analysis at [39] above is that a number of years could elapse before the Plaintiff decides to go for SCS, at which point he would have used up a significant portion of the $131,652.00 award on pain medication. The Plaintiff would then be left with an amount which is insufficient to cover the cost of Stage 2. The answer to this objection is that the timing for commencing SCS treatment is fully within the Plaintiff's control. It is therefore entirely within the Plaintiff's discretion how he wishes to deploy

the agreed award of $131,652.00 for the management of his phantom limb pain. Consequently, it would not seem fair to require the Defendants to shoulder the risks and uncertainties associated with the eventuality described above when the occurrence of that eventuality is entirely within the Plaintiff's control.

41 For the reasons given at [36] and [39] above, I award **$10,000** in respect of the cost of the first stage of SCS and make no award in respect of the second stage of SCS.

Cost of everyday prosthesis

42 The Plaintiff claims $483,102.00 for the lifetime cost of an everyday prosthesis. The Defendants changed their position on this item between their opening statement and their closing submission. In their opening statement, the Defendants were prepared to compensate the Plaintiff $376,168.00 for this item. In their closing submission, the Defendants reduced this amount to $92,127.00. I will say more about the Defendants' change in position at [63]-[65] below.

Multiplier

43 The Plaintiff was 34 years old at the time of the accident and 39 years old at the time of the trial. Instead of splitting the claim for the cost of prosthesis between a special damages claim for the period from accident to trial and a general damages claim for the period after trial, the Plaintiff chose to claim the cost of prosthesis for the entire period beginning from the time of the accident as general damages. The Defendants did not object to this approach.

44 I note that, while this approach simplifies the task of computing damages, it will result in the Plaintiff being under-compensated. This is because any pre-trial expenses claimed as part of general damages will be discounted as

a result of the discount amount inherent in the multiplier-multiplicand method of assessing general damages, while pre-trial expenses claimed as special damages will not be subject to any such discount. Nevertheless, since it is the Plaintiff's choice to approach the costs of prosthesis in this way and since this approach does not prejudice the Defendants, I will not disturb the choice which the Plaintiff had made.

(1) Life expectancy and "remaining living years"

45 As noted in *Kenneth Quek* at [52], the determination of the multiplier for future medical expenses depends less on the age of the claimant than on the likely number of "remaining living years" he would have enjoyed but for the accident. Plaintiff's Counsel tendered a table on *Population and Vital Statistics* taken from the website of the Ministry of Health which shows that the average life expectancy at birth of male Singapore residents in 2015 was 80.4 years. (No data for 2016 was available as the table was updated only to 2015 for life expectancy statistics.) This was not disputed by the Defendants. From there, Plaintiff's Counsel submitted that the Plaintiff's "remaining living years" at the time of the accident for the purpose of determining a multiplier for future medical expenses is 46 years. Again, the Defendants did not dispute this.

46 I am aware that in *Kenneth Quek*, the Court of Appeal observed, at [69], that 75 years is typically taken as the life expectancy of a male claimant in Singapore in "the existing precedents". The two cases cited in *Kenneth Quek* as these "existing precedents" were *Ng Song Leng v Soh Kim Seng Engineering & Trading Pte Ltd and Another* [1997] SGHC 289 ("*Ng Song Leng*") and *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85 ("*Lee Wei Kong*"). In *Ng Song Leng*, Lai Kew Chai J stated at [28] that "life expectancy in Singapore average 75 years". This statement by Lai J *was*

factually accurate back in 1997. The *Population and Vital Statistics* table from the Ministry of Health shows, in an attachment entitled *Life Expectancy*, that the life expectancy at birth for male Singapore residents in 1997 was 74.8 years. In *Lee Wei Kong*, the relevant portion of the judgment reads (at [52]):

> In the present case, *there was no evidence before the court* as to the average life expectancy of males in Singapore. Assuming that the Appellant is expected to live until 75 years of age, he would have had approximately 53 years of life as at the time of the assessment.
>
> [emphasis added]

It is clear from the foregoing passage that the Court of Appeal in *Lee Wei Kong* regarded the question of life expectancy as a question of fact to be proven by evidence, and that it was only in the absence of evidence that the court had to make reasonable assumptions concerning average life expectancy.

47 I, too, accept that the life expectancy of Singapore residents is not a question of law for which binding precedents exist, but a question of fact to be determined in the light of the evidence presented at trial. In the present case, clear evidence was adduced that the relevant life expectancy is 80 years and this evidence went unchallenged.

(2) Deriving the multiplier under the arithmetic approach

48 The Plaintiff submits that the multiplier should be 18 years, applying a discount amount of 60% on the Plaintiff's 46 "remaining living years". The Defendants submit that the multiplier should be 10 years because the Plaintiff is 15 years older than the plaintiff in *Kenneth Quek*.

49 In *Kenneth Quek*, the Court of Appeal arrived at the multiplier of 20 years by applying the discount rate of 4.80% per annum on the "remaining living years" of 50 (at [79]). In the present case, applying the discount rate of

4.80% to 46 "remaining living years" would produce a multiplier of 19.3 years. (This method of deriving the multiplier is described in *Kenneth Quek* as the "Arithmetic Approach". The detailed mathematics involved, as well as the conceptual difference between discount *rate* and discount *amount*, are explained in detail in the Court of Appeal's judgment in *Kenneth Quek*. I do not propose to repeat the explanation here.)

50 I would make one further observation. The Plaintiff was fitted with a prosthesis almost one year after the accident. Therefore, in assessing the damages award for cost of the prosthesis on the basis that pre-trial costs would form part of the general damages instead of being separately accounted for as special damages, the "remaining living years" should, strictly speaking, be computed from the time the Plaintiff was fitted with a prosthesis and not from the time of the accident. This would result in 45 "remaining living years", giving a multiplier of 19.1 years (also using the discount rate of 4.80%). As the difference between 19.3 and 19.1 is insignificant, I see no reason to depart from the figure of 46 "remaining living years" proposed by the Plaintiff (and not disputed by the Defendants).

(3) Cross-checking the derived multiplier with past precedents

51 In *Kenneth Quek* at [54], the Court of Appeal held that the multiplier derived under the arithmetic approach should be cross-checked with the multipliers used in past cases so as to achieve consistency with cases involving similarly-situated plaintiffs. In this regard, I would highlight the following precedents, all of which were referred to in *Kenneth Quek*:

(a) in *Tan Juay Mui (by his next friend Chew Chwee Kim) v Sher Kuan Hock and another* [2012] 3 SLR 496, a claimant with remaining life expectancy of 32 years received a 17-year multiplier;

(b) in *Poh Huat Heng Corp Pte Ltd and other v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003, a claimant with a remaining life expectancy of 34 years received an 18-year multiplier; and

(c) in *Ng Song Leng*, a claimant with a remaining life expectancy of 35 years received a 17-year multiplier.

(4) Conclusion on applicable multiplier

52 It would appear, both from the arithmetic approach at [49] above and from the precedent approach at [51] above, that an 18-year multiplier for a remaining life expectancy of 46 years is on the low side. Nevertheless, since the Plaintiff's submission is for an 18-year multiplier and not for a higher figure, I will adopt a multiplier of **18 years** for the purposes of the award for the cost of prosthesis.

Type of prosthesis in respect of which the award should be made

53 The Plaintiff was fitted in May 2012 with the Ottobock C-leg (model number: 3C98) prosthesis ("C-leg") at the cost of $80,517.00. Each C-leg has an expected life span of five years.

54 Dr Sabjit Singh, the orthopaedic specialist engaged as the Defendants' expert witness, highlighted that a key difference between a below-knee amputee and an above-knee amputee is that the former still has the use of his natural knee and can use his knee to control the prosthesis – *eg,* for activities such as going on to a bus.

55 According Mr Trevor Binedell, Principal Prosthetist/Orthotist at Tan Tock Seng Hospital ("TTSH"), who fitted the Plaintiff with the C-leg and who appeared at trial as the Plaintiff's expert witness, the C-leg contains a

microprocessor in the prosthetic knee joint to control the hydraulics in the prosthesis. This allows an above-knee amputee fitted with the C-leg to walk with a more natural gait, with a higher degree of safety (with features such as stumble recovery) and with the ability to negotiate steep slopes and stairs. The microprocessor which controls the prosthetic knee joint constantly detects the motion of the user and can predict what the user will do next, so that the microprocessor can adjust the level of stiffness in the hydraulics in real time to allow the patient to walk more normally, reduce stress on other parts of the body and prevent falls.

(1) The Plaintiff's case

56 The Plaintiff's case is that he should be provided with use of the C-leg until 80 years old (*ie,* the average life expectancy of a male Singapore resident).

57 With each C-leg lasting five years, the Plaintiff submits that he would need about nine C-legs for the rest of his life. The Plaintiff also submits that a one-third discount be adopted to cater for the lump sum payment and vicissitudes of life, resulting in a claim for the costs of six C-legs, amounting to $483,102.00 (*ie,* $80,517.00 x 6).

58 In addition, the sockets for the prosthesis would have to be replaced every three years and the liners would have to be replaced every six months. The average annual costs for the sockets and liners come up to $3,263.00. Applying a multiplier of 18 years, the Plaintiff claims $58,734.00 (*ie,* $3,263.00 x 18) in total for the sockets and liners.

59 It is not clear why the Plaintiff did not apply the multiplier of 18 years for computing the replacement costs of the C-leg when he had adopted the 18-

year multiplier for the sockets and liners. In my view, the 18-year multiplier should also be used to work out the replacement costs of the C-leg, resulting in an award for 4.5 C-legs (*ie,* 3.5 replacement C-legs over the course of 18 years plus the C-leg originally fitted in May 2012) as opposed to the Plaintiff's proposed figure of six C-legs. Therefore, if I were to allow the Plaintiff's claim as outlined at [56] above, I should only award $362,326.50 (*ie,* $80,517.00 x 4.5) as the cost for lifetime replacement of the C-leg.

(2) The Defendants' case in their opening statement and at trial

60 Interlocutory judgment in this case was entered without the Defence being filed. Therefore, the first definitive and complete statement of the Defendants' case is found in their opening statement.

61 The Defendants' opening statement did not take issue with the Plaintiff's use of the C-leg. Instead, the Defendants' opening statement merely submitted that the Plaintiff should not be compensated for the use of the C-leg *all the way to 80 years of age*. It was argued in the Defendants' opening statement that the Plaintiff should downgrade to a mechanical prosthesis after age 55 as he would be expected to have a lower level of physical activity after that age. The quantification proposed in the Defendants' opening statement provided for four changes of the C-leg (totalling $322,068.00) and replacement costs for sockets and liners amounting to $54,100.00.

62 The Defendants tendered two expert's reports by Ms Ong Zhi Hui, a prosthetist and orthotist with Lifeforce Limbs & Rehab Pte Ltd. In neither of these reports did Ms Ong take issue with the initial decision to fit the Plaintiff with the C-leg nor did Ms Ong query the need for the Plaintiff to continue using the C-leg at least until retirement age (which Ms Ong had pegged conservatively

at 55 years). The only recommendation in Ms Ong's two reports in relation to the C-leg is that the Plaintiff should switch to a mechanical prosthesis after age 55. In this regard, Ms Ong's first report indicated that the purpose of the report was to, among other things, determine the "type, cost and lifespan of the prosthesis recommended for his lifestyle". In the final page of that report Ms Ong provided costing for the use of the C-leg by the Plaintiff until 55 years of age. At trial, Defendants' Counsel did not seek to amend the Defendants' opening statement and gave no notice to the court or to Plaintiff's Counsel that he was going to change the Defendants' case on this item.

(3) The change in position in the Defendants' closing submission

63 The Defendants' closing submission took the position that the Plaintiff should not be compensated *at all* for the costs associated with the use of the C-leg. The reason given is that the C-leg is a "luxury item" which the Plaintiff did not reasonably need. Instead, the Defendants' closing submission proposed that the Plaintiff should be compensated only for the cost of mechanical prostheses, which each mechanical prosthesis costing $27,820.00 and having an expected lifespan of five years.

64 Such a fundamental change in the Defendants' case after the close of trial will cause prejudice to the Plaintiff. Although the Defendants did not file any pleadings in this case and they are thus not bound by pleadings, that cannot be taken as *carte blanche* for the Defendants to take the other side by surprise by changing their case fundamentally after the trial is over. As a result of this very late change in the Defendants' position, the Plaintiff has been deprived of the opportunity to question Ms Ong on the specific model of mechanical prosthesis she had in mind, what its detailed features and functionalities were and how it would meet the specific needs and requirements of a patient in the

Plaintiff's position. The Plaintiff has also been deprived of the opportunity to bring Mr Binedell's views on these matters to the court.

(4) My decision

65 For the reasons given at [64] above, it would be a breach of natural justice for me to entertain the Defendants' new arguments outlined at [63] above. The evidential foundation for a fair and proper evaluation of the new arguments is simply lacking. Accordingly, I hold the new arguments inadmissible and will proceed on the basis that the Defendants' case is not that the Plaintiff should have been fitted with a mechanical prosthesis all along, but merely that the Plaintiff should downgrade from the C-leg to a mechanical prosthesis upon reaching retirement age.

66 On this question, Mr Binedell gave the following evidence in a letter dated 14 July 2016:

> It is my professional opinion and experience of over 16 years, a downgrade at the age of 55 would be unsafe and impractical for Mr Tan. Firstly the age of 55 was calculated based on 55 being the retirement age which is not correct. It is now 65 and pushing upwards. Secondly, it is not appropriate to assume that as Mr Tan retires he will immediately become less active and therefore not require such an advanced prosthesis. He will still be required to take public transport, travel, walk in the community, which is a K3 activity.

During cross-examination, Mr Binedell added that, if the Plaintiff were to downgrade to a mechanical prosthesis, he would have to relearn a new way of walking and he would be at risk of falling. Mr Binedell added that, if the rationale for downgrading is that the Plaintiff would become more frail and less active with age, that would instead strengthen the case against downgrading as the microprocessor control in a C-leg would better prevent falling in the case of a more frail and less able Plaintiff.

67 Ms Ong, on the other hand, was not able to offer any cogent reason for insisting on a downgrade after age 55. In her report dated 1 August 2016, she explained that as the Plaintiff would not be able to undertake activities more strenuous than jogging after a certain age, "there will be no justification for continuing to use a high-performance bionic leg like the C-leg and it would be sufficient to switch to a mechanical leg". It is clear from the passage quoted above and from her answers during cross-examination that Ms Ong had assumed that the C-leg is some form of "bionic leg" designed for running and, for this reason, people not engaged in running should not be fitted with a C-leg.

68 In truth, the C-leg fitted for the Plaintiff is not a running leg. The C-leg is also not a "bionic leg" in the sense that the C-leg does not move on its own nor does it generate its own power to move. The C-leg moves passively – any lifting or walking motion in the C-leg is generated by the power from the user's hip and residual thigh. What the microprocessor in the knee-joint of the C-leg does is to control how the hydraulics in the C-leg respond to the movements generated by the user by recognising, from the user's movements, what his intended actions are. Ms Ong's lack of understanding of the specifications of the C-leg does not instil confidence in her testimony.

69 In fact, at the end of her cross-examination, Ms Ong conceded that:

(a) she was not able to give the court any evidence to show that such a downgrade is necessary;

(b) she had not had a patient downgrade just because he reaches a certain age;

(c) she had no sound medical basis to recommend that the Plaintiff consider downgrading his prosthetic limb in his old age.

70 I therefore prefer Mr Binedell's evidence over Ms Ong's on this issue and find that there is no basis for requiring the Plaintiff to downgrade to a mechanical prosthesis after reaching retirement age (however defined). I note that this conclusion also finds support in the Court of Appeal's finding in *Kenneth Quek* at [84] that the plaintiff in that case should not be required to downgrade from a K3 prosthesis to the K2 prosthesis after the age of 60. For these reasons, I award **$421,060.50** for this item (being the aggregate of the amounts set out at [58] and [59] above).

(5) A postscript

71 I would add for completeness that, even if I had found the Defendants' new arguments at [63] above admissible, I would not have been persuaded by them, for the reasons set out below. For the avoidance of doubt, I go into the discussion at [72]-[82] below mainly out of consideration for the time and effort expended by Defendants' Counsel on the new arguments. The matters discussed at [72]-[82] below do not form any part of my reasons for arriving at the award at [70] above.

72 Both Mr Binedell and Ms Ong accept that the Plaintiff is a K3/K4 user. The K-levels is a system used by Medicare in the United States to classify an individual's ability or potential to ambulate and navigate their environment. Level K3 is defined as:

> The patient has the ability or potential for ambulation with variable cadence – a typical community ambulator with the ability to traverse most environmental barriers and may have vocational, therapeutic, or exercise activity that demands prosthetic use beyond simple locomotion.

Level K4 is defined as:

> The patient has the ability or potential for prosthetic ambulation that exceeds basic ambulation skills, exhibiting high impact, stress, or energy levels – typical of the prosthetic demands of the child, active adult, or athlete.

Mr Binedell explained that when a patient is rated K3/K4, it means that the patient is a K3 ambulator with the potential for K4 ambulation.

73 The C-leg fitted for the Plaintiff is rated as recommended for both K3 users and K4 users. Mr Binedell testified that, before recommending the C-leg, he considered, among other things:

(a) what the patient's K-level was before amputation;

(b) what K-level the patient could potentially achieve after being fitted with a prosthesis (taking into account his general health and fitness level);

(c) what his aspirations were concerning the activities he wished to undertake after being fitted with a prosthesis – this would include a consideration of the nature of the patient's vocation and his work environment.

In this regard, Mr Binedell took into consideration the Plaintiff's need to travel to different locations for meetings and his need to stand for long periods of time giving presentations, which the C-leg is well-suited for. Mr Binedell also took specific note of the Plaintiff's concern about falling and the ability of a microprocessor-controlled prosthetic knee ("MPK") to decrease stresses on other parts of the body when he walks. In fitting a prosthesis, Mr Binedell's goal is to try to take the patient back to his pre-injury level of mobility.

74 The Defendants describe the C-leg as a "top-of-line product". This description is incorrect. As Mr Binedell explained, there are higher-end products available in the market, such as Ossur's "Power Knee". In fact, Ottobock also produces two other models of MPKs ("X3" and "Genium") which are higher-end than the C-leg.

75 The Defendants accuse Mr Binedell of failing to explore other options in terms of usability and cost for the Plaintiff before fitting him with the C-leg. This accusation is uncalled for. Mr Binedell has explained clearly, and to my satisfaction, during cross-examination why he did not select other brands of MPKs for the Plaintiff. In any event, as explained in Andrew Tettenborn, *Butterworth Common Law Series: The Law of Damages* (LexisNexis, 2nd Ed, 2010) ("*Butterworth's Law of Damages*"), a claimant is "entitled to the cost of a reasonable item even though the defendant contended it could be purchased cheaper" (at [33.133]).

76 The Defendants next point to Ms Ong's evidence that patients would usually be fitted with mechanical prostheses at the beginning and only move to a microprocessor-controlled prosthesis if the situation requires the patient to upgrade. Nothing really turns on this, as it was not Ms Ong's evidence that Mr Binedell's approach was unreasonable. In any case, if there were a conflict of opinion between Mr Binedell and Ms Ong on this particular point, I would have preferred Mr Binedell's evidence. Mr Binedell has 16 years' experience as a prosthetist, the last 12 of which was spent in TTSH. He is currently the unit head and principal prosthetist of TTSH. Mr Binedell's testimony in court was clear, confident, comprehensive and helpful to the court. He demonstrated good knowledge of the range of available prostheses and their features as well as a good understanding of the Plaintiff's condition and needs. Ms Ong graduated from university in September 2015 and had less than a year's working

experience as a prosthetist. She spent only about one hour examining the Plaintiff. Her evidence was at times unsure and she spoke largely in generalities without fully engaging with the actual conditions of the Plaintiff.

77 The Defendants highlight that, in *Kenneth Quek*, damages were awarded for a K3 *mechanical* prosthesis. However, no question arose in *Kenneth Quek* regarding MPKs as the plaintiff in *Kenneth Quek* was a *below-knee* amputate who continued to have the use of his natural knee.

78 Finally, the Defendants submit that, because the Plaintiff is essentially a K3 user and the C-leg is rated for up to K4, the C-leg is a "luxury item" which the Plaintiff "does not utilise to the full functions". This submission is flawed. Given that both Mr Binedell and Ms Ong agreed that the Plaintiff is a K3/K4 user, there is nothing unreasonable about fitting him with a prosthesis rated K3/K4. More importantly, while the C-leg is rated up to K4, the manufacturer describes the C-leg as a prosthesis recommended for K3 users *and* K4 users. This means that, while the C-leg can cater to the needs of a K4 user, it is also suitable *and recommended* for K3 users. Quite simply, it is not unreasonable to give a prosthesis recommended for K3 users to a K3 user.

79 In support of this flawed submission, Defendants' Counsel quoted the following passage from Gordon Exall, *Munkman on Damages for Personal Injuries and Death* (LexisNexis, 12th Ed, 2011), at p 133:

> In every case the issue for determination is whether or not the plaintiff reasonably needs the piece of equipment for the purpose of rehabilitation as a result of the disability and whether the cost of the equipment is reasonable, using the standard of mitigation.

However, Defendants' Counsel has omitted to quote to the court the next sentence in the same paragraph. This next sentence, with which I agree, reads:

> When answering the two part question, the court will usually find it persuasive that the injured plaintiff intends to purchase and to use the piece of equipment once compensation funds become available.

80 Defendants' Counsel next cited *Willet v North Bedfordshire Health Authority* [1992] Lexis Citation 3116 ("*Willet*") in which the English High Court declined to make an award for an electric mobility chair because the plaintiff in that case "cannot and will never on the evidence be able to make effective use of that piece of equipment". In citing *Willet* to the court, Defendants' Counsel omitted to mention that the plaintiff in *Willet* suffered brain damage and was spastic in all limbs. It was therefore clear that the plaintiff in *Willet* would not be in a position to make any independent use of the electric chair at all. In contrast, the Plaintiff is well able to control and make effective use of the C-leg. I am therefore of the view that *Willett* does not assist the Defendants.

81 As explained by Mr Binedell, *the C-leg has been on the market since 1997*. Mr Binedell testified that, even though he had fitted less than ten MPKs in his 16-year career, all of them were fitted in the last six years. He sees TTSH prescribing more MPKs. He attributed this to the technology having matured and becoming more affordable. I would add that, in December 2016, the National Health Service of England ("NHS") announced that it would start funding the use of MPKs. The NHS concluded that:

> Based on the above evidence, it would appear that the prescription and use of swing and stance MPKs might be considered a cost-effective technology and, despite initially being more expensive, would appear to be an effective alternative for re-establishing a life that is both of higher quality and longer duration.
>
> [NHS, *Clinical Commissioning Policy: Microprocessor controlled prosthetic knees*, 12 December 2016 at p 15]

82 It was remarked in *Butterworth's Law of Damages*, at [33.134], that:

> Although electric wheelchairs have been denied in the past as unwarrantable luxuries, today such awards are regularly made and rarely contested: and similarly with computers and ancillary equipment.

The principle underlying this passage applies with equal force to the Defendants' attempt to characterise the C-leg as a "luxury item". As a new technology matures, gains acceptability and becomes more affordable, reservations against making awards for the use of such technology would and should correspondingly fade.

Future transport expenses

83 The Plaintiff claims $5,050.00 for future transport expenses. The Defendants submitted in their opening statement that the award for this item should be $2,065.14. In their closing submission, the Defendants changed their position and submitted that the award for this item should be $78.80.

84 Using a multiplier of 18 years for future medical expenses, the Plaintiff submits that he is expected to make 101 trips to the hospitals over the period of 18 years, as follows:

(a) 6 trips for medical consultation in the first year;

(b) 3 trips per year for medical consultation for the next 17 years (51 trips in total);

(c) one trip every 5 years for replacement of prosthesis (3 trips over the space of 18 years);

(d) one trip every 3 years for replacement of socket (5 trips over 18 years);

(e) one trip every 6 months for replacement of liner (36 trips over 18 years).

The Plaintiff then estimates that each round trip to the hospital would cost $50.00, resulting in the total of $5,050.00 for 101 trips.

85 The Defendants submitted in their opening statement that based on the World Taximeter website, a round trip from the Plaintiff's home to NUH costs $18.71, a round trip to TTSH costs $24.44 and a round trip to Singapore General Hospital ("SGH") costs $26.88. The Defendants then observed that, over 2012 and 2013, the Plaintiff made three trips to NUS, six trips to TTSH and one trip to SGH. Using the data from the World Taximeter website to estimate the costs of all these trips at $229.45, the Defendants' then concluded that the Plaintiff should be allowed $114.73 per year for 18 years, making a total of $2,065.14.

86 In their closing submission, the Defendants submitted that, according to the documents disclosed by the Plaintiff in his List of Documents dated 26 December 2014, the Plaintiff incurred parking expenses of $27.57 over the course of 3.5 years. The Defendants concluded that the Plaintiff's transport expenses amounted to only $7.88 per year. Adopting a multiplier of 10 years, this makes a total of $78.80 for future transport expenses. (The Defendants accepted a multiplier of 18 years in their opening statement but changed their position on the multiplier in their closing submission.)

87 An award for future expenses must be based on a forward-looking estimate of the Plaintiff's reasonable future needs. While historical expenditure may serve as a reference guide in the absence of reliable evidence concerning

the Plaintiff's future needs, historical data cannot be controlling when, as in the present case, the estimate for the number of future hospital visits is based on evidence from expert witnesses who had been cross-examined by Defendants' Counsel. I therefore accept the Plaintiff's submission that he is likely to make about 101 trips to the hospitals over the course of 18 years.

88 As for the Plaintiff's choice of 18 years as the multiplier for this item, I note that the Plaintiff was 39 years old at the date of trial. Using the average life expectancy of 80 years, the Plaintiff's "remaining living years" at age 39 would be 41 years. Using the discount rate of 4.80%, we get a multiplier of 18.6 years. I therefore accept 18 years as the appropriate multiplier for this item.

89 While I find the Plaintiff's estimate of $50.00 per round trip to be on the high side, the Defendants have failed to provide any evidence to persuade me that the numbers they obtained from the World Taximeter website are accurate and reliable. In the circumstances, I would take as a guide the decision in *Kenneth Quek* to award $1,000 for an estimated 2 trips to the hospital per year over 18 years (36 trips in total). In the present case, for an estimated total of 101 trips over 18 years, I would make a global award of **$3,000** for future transport expenses.

Loss of earnings

90 At the time of the accident, the Plaintiff was working as a senior consultant with Accenture Management, earning a gross monthly salary of $7,000. Following the accident, the Plaintiff was on medical leave for six months and no pay leave for three months. In April 2012, he returned to work, but only on a part time basis as he found difficulty coping with the work due to the pain and fatigue he was experiencing. Under this arrangement, he was

working 2 days a week at a salary of $2,920.00 per month. Eventually, he found that he could not cope with the work at Accenture Management on a part time basis. The Plaintiff explained that this was because he found the workload to be more than what he could handle within the hours available in two workdays per week. He resigned from Accenture in December 2012.

91 In January 2013, he started work as a senior research associate at the Singapore Management University ("SMU") on a one-year contract. He worked 2.5 days a week at a salary of $4,000 per month. Even though the Plaintiff sought renewal of the contract, SMU decided not to renew the contract when it expired in December 2013. The Plaintiff undertook some freelance work in 2014 and also attended a 5-month coaching course. In 2014, he started Coachcraft Pte Ltd ("Coachcraft") to provide freelance career coaching services. His income from freelance work in 2014 was $21,072.00. In 2015, Coachcraft generated a *profit* of $31,306.48. For the first nine months of 2016, the *revenue* of Coachcraft was $44,125.44.

92 The Plaintiff testified that his ability to work had been affected by the constant pain and fatigue he felt. It is not disputed that:

(a) the Plaintiff developed phantom limb pain which continues to plague him to this day;

(b) the Plaintiff's pain medication does not erase the pain altogether but only supresses the pain to a lower level; and

(c) the main side effect of the Plaintiff's pain medication is general fatigue and drowsiness.

The foregoing factors meant that the Plaintiff had difficulties with concentration and with working long hours.

93 The Defendants submit that there was no evidence to suggest (save for the Plaintiff's own assertions) that the Plaintiff would not be employable at a consulting job at the same pay scale that he would have obtained had he stayed on in Accenture. I do not accept this submission. First, it is not disputed that the Plaintiff was suffering from severe phantom limb pain. Secondly, both Dr Tay and Dr Lee gave evidence that the Plaintiff has been prescribed rather high doses of pain medication in the light of the severity of the pain. Thirdly, it is also not disputed that the pain medication prescribed to the Plaintiff would affect the Plaintiff's ability to concentrate.

94 The Defendants attempted to discredit the Plaintiff's case through the evidence of a private investigator, Mr Abdul Hadi bin Mohamed Salleh ("the Private Investigator"). The Private Investigator undertook surveillance operations on the Plaintiff over seven different days spread cross a period of five months. The sum total of the Private Investigator's evidence concerning the Plaintiff's ability to concentrate amounted to:

(a) the Plaintiff was observed to be driving a car on various occasions, all of which involved journeys lasting *less than 30 minutes*; and

(b) the Plaintiff was observed at work on one day, during which he was seen interviewing several persons at a client's office for about three hours in the morning, took a 25-minute lunch break and then returned to work for another one hour and 20 minutes before leaving for the day.

Nothing in the Private Investigator's evidence contradicts the Plaintiff's case that he had difficulties sustaining concentration for the entire length of a typical work day and therefore had to undertake work with flexible hours.

95 The Plaintiff also underwent assessment by an occupational therapist engaged by the Defendants ("the Occupational Therapist"). The Occupational Therapist assessed the Plaintiff over a period of 4.5 hours during which the Plaintiff was asked to perform 13 different physical tasks. According to the Physical Work Performance Evaluation report ("PWPE report") compiled by the Occupational Therapist, the Plaintiff fully participated in all the tasks and no self-limiting behaviour was observed. In fact, for two of the tasks, the amount of effort put in by the Plaintiff was classified by the Occupational Therapist as "overextending", which was defined in the PWPE report as "Therapist stops task. Client willing to continue despite maximum being reached. Full physical effort given".

96 The PWPE report concluded that the Plaintiff was "able to tolerate the Medium level of work for the 8-hour work day/40-hour week" and that the Plaintiff's "tested physical demand level matched 80% of the current work demands as a senior consultant". However, during cross-examination, the Occupational Therapist clarified that the PWPE is limited to assessing the Plaintiff's *physical* abilities and does not address the Plaintiff's concentration level or mental abilities to perform the work he is required to do in his actual employment. Out of the 13 tasks comprising the PWPE, the only one requiring some form of mental concentration involves the Plaintiff being asked to screw nuts into bolts continuously for five minutes while seated. At the end of her cross-examination, the Occupational Therapist agreed with Plaintiff's Counsel that the Plaintiff's ability to work at his desk job for long hours has been affected by the injuries he sustained.

97 Given that the PWPE focuses on physical abilities and does not measure concentration levels or mental abilities, and given that the PWPE evaluation was conducted over only 4 hours instead of over an entire work day, it does not provide sufficient evidence to cast doubt on the Plaintiff's case that he had difficulties sustaining concentration for the length of a typical work day.

Pre-trial loss of earnings

98 The Plaintiff claims pre-trial loss of earnings of $264.843.09. The Plaintiff chose to claim pre-trial loss of earnings only up to 31 December 2015, leaving the loss of earnings during the first nine months of 2016 to be claimed as part of lost future earnings.

99 In their opening statement, the Defendants submitted that no award at all should be made for pre-trial loss of earnings as the Plaintiff had not mitigated his damage by trying to find gainful employment. In the light of this submission, I brought parties' attention to *Jia Min Building Construction Pte Ltd v Ann Lee Pte Ltd* [2004] 3 SLR(R) 288 ("*Jia Min Building"*). In that case, V K Rajah JC (as he then was) ("Rajah JC") observed, at [71], that:

> The burden of proving that the loss has not been mitigated lies squarely on the party in breach. If he is unable to show that the claimant has acted unreasonably, the normal measure of damages ought to be awarded. Any doubts pertaining to this long-standing principle on the burden of proof engendered by the Privy Council decision in *Selvanayagam v University of the West Indies* [1983] 1 WLR 585 have now been permanently dispelled by the Privy Council's subsequent decision in *Geest plc v Lansiquot* [2002] 1 WLR 3111 at [14]. It should also be stressed that if the party in breach intends to contend that the claimant has failed to act reasonably in mitigating damages, notice of such an assertion ought to be pleaded. As Lord Bingham observed in *Geest plc v Lansiquot* [2002] 1 WLR 3111 at [16]:
>
> > [I]t would have been the *clear duty of the company to plead* in its defence that the plaintiff had failed to

> mitigate her damage and to give appropriate *particulars sufficient to alert* the plaintiff to the nature of the company's case, enable the plaintiff to direct her evidence to the real areas of dispute and *avoid surprise* … [emphasis added]
>
> The emphasis is on openness. If there are no pleadings, notice ought to be given in writing.

Geest plc v Lansiquot [2002] 1 WLR 3111 ("*Geest*") was a case, like the present one, where no defence was filed and interlocutory judgment was entered for damages to be assessed. The Privy Council emphasized in *Geest*, at [16], that:

> It should however be clearly understood that if a defendant intends to contend that a plaintiff has failed to act reasonably to mitigate his or her damage, notice of such contention should be clearly given to the plaintiff long enough before the hearing to enable the plaintiff to prepare to meet it. If there are no pleadings, notice should be given by letter.

100 Thus a defendant wishing to rely on the plaintiff's failure to mitigate is required to plead the failure, giving sufficient particulars to alert the plaintiff of the nature of the defendant's case and to avoid surprise. Where no pleadings are filed, the defendant is required to give notice writing to the plaintiff long enough before the hearing to enable the plaintiff to meet the defendant's claim of failure to mitigate.

101 As no pleadings were filed by the Defendants in the present case, I asked Defendants' Counsel whether the Defendants had given the Plaintiff prior notice in writing of the Defendants' intention to claim that the Plaintiff has failed to mitigate his damage. Defendants' Counsel responded in the negative. I therefore ruled that the Defendants were precluded from calling any evidence, posing any questions and making any submissions concerning the Plaintiff's duty to mitigate his damage.

102 Given this ruling, the Defendants submitted in their closing submission that the award for pre-trial loss of earnings should be $122,907.48. The difference between this figure and the Plaintiff's claim is due mainly to difference between the parties on how the earnings of Star Bamboo (S) Pte Ltd ("Star Bamboo"), a business owned by the Plaintiff, should be treated for the purposes of calculating the Plaintiff's pre-trial loss of earnings.

(1) The relevance of the earnings of Star Bamboo (S) Pte Ltd

103 According to the Plaintiff, he established Star Bamboo in 2005 together with two of his father's business partners from China. Eventually, the two of them left Star Bamboo and the Plaintiff became its sole director and sole shareholder. The business of Star Bamboo is the supply and installation of bamboo flooring.

104 When the Plaintiff joined Accenture in 2010, the terms of his employment did not allow him to retain his directorship of Star Bamboo. The Plaintiff resigned as Star Bamboo's director and his wife took over the directorship of Star Bamboo while the Plaintiff remained its sole shareholder. It is the Plaintiff's evidence that, after joining Accenture, he ceased to focus on Star Bamboo and he and his wife were no longer actively getting new business for Star Bamboo. They were just passively waiting for calls from customers. Star Bamboo has no employees other than the Plaintiff and his wife. Where a customer goes beyond merely purchasing the bamboo flooring and requires the flooring to be installed, Star Bamboo would engage subcontractors to provide the installation services. Neither he nor his wife drew any salary from Star Bamboo in 2014 and 2015. The Plaintiff's evidence concerning Star Bamboo was not contradicted by the Private Investigator's report. Over the course of seven days of surveillance, the Private Investigator only observed the Plaintiff

visiting the premises of Star Bamboo twice and the Plaintiff stayed there for less than an hour each time.

105 Evidence was provided of Star Bamboo's profit and loss from 2011 to 2015 as follows:

Year	***Gross Profit***	***Net Profit***	***Adjusted Net Profit***
2011	*$28,632.65*	*- $36,615.54*	*- $10,310.26*
2012	$87,274.07	$30,304.50	$56,44.07
2013	$17,872.36	- $33,137.35	- $16,095.04
2014	$46,598.68	$27,299.76	$30,557.22
2015	$21,867.71	- $5,125.72	- $2,157.83
Total for 2012 to 2015	**$173,612.82**	**$19,341.19**	**$68,746.42**

Notes:

(1) "Gross Profit" refers to revenue from sales less the cost of sales (i.e., less cost of the goods sold and cost subcontractors for installation services, if any).

(2) "Net Profit" refers to Gross Profit less the operating expenses of the company.

(3) "Adjusted Net Profit" is arrived at by adding Net Profit to Total Employment Expenses less the expenses on CPF, CDAC and SDL.

(4) All the figures for Gross Profit, Net Profit, Total Employment Expenses and expenses on CPF, CDAC and SDL are taken from the profit & loss statements of Star Bamboo produced by the Plaintiff at Defendants' Counsel's request.

106 The Plaintiff calculated his pre-trial loss of earnings by taking the difference between the Plaintiff's pre-injury salary of $7,000 per month at Accenture and his actual earnings from 2012 to 2015 as recounted at [90]-[91]

above. The Plaintiff made no claim for loss of earnings in relation to the performance of Star Bamboo.

107 The Defendants did not dispute that the Plaintiff's pre-trial loss of earnings should be calculated by taking the difference between his pre-injury salary *at Accenture* and his actual earnings from 2012 to 2015. Where the Defendants differ from the Plaintiff is that the Defendants treated the *gross* profit of Star Bamboo as part of the Plaintiff's earnings from 2012 to 2015. This would have reduced the Plaintiff's pre-trial loss of earnings by an amount equivalent to the *gross* profit of Star Bamboo.

108 The Defendants' position is flawed at two levels. First, even assuming the earnings of Star Bamboo is relevant to the calculation of the Plaintiff's pre-trial loss of earnings, the appropriate figure to use should not be the *gross* profit of Star Bamboo. This is because money paid out by Star Bamboo as operating expenses would no longer be available to be distributed as dividend, salary or director's fee to the Plaintiff and thus cannot form part of the Plaintiff's earnings. Therefore, the appropriate figure to be used for this purpose should be the *net* profit of Star Bamboo plus any salaries and other employment expenses paid out by Star Bamboo *to* the Plaintiff and/or his wife. This figure is represented by the last column in the table at [105] above.

109 The second flaw with the Defendants' approach was highlighted by me to Defendant's Counsel during trial. I pointed out that Star Bamboo existed before the accident and continued to exist after the accident. If Star Bamboo were to be treated as a stream of income, it would be a stream of income which existed throughout and which would not have been affected by the Plaintiff's injury. This is unlike the Plaintiff's employment with Accenture before injury and his research work with SMU and freelance coaching work after injury, for

which a difference in the level of performance attributable to the injury exists. In other words, the profit of Star Bamboo is a neutral factor and should neither be added to nor deducted from the Plaintiff's pre-trial loss of earnings. *I specifically alerted Defendants' Counsel that this is a legal point which would need to be addressed in closing submission*.

110 Unfortunately, Defendants' Counsel made no attempt at all to address this point in closing submission. In the circumstances, I hold that, for the reasons set out at [109] above, the earnings of Star Bamboo need not be taken into account in calculating the Plaintiff's pre-trial loss of earning.

(2) The Plaintiff's pre-trial loss of earnings from 2012 to 2015

111 Based on the Plaintiff's income tax returns, his annual income from Accenture in 2011 was $94,982.00. Even though the Plaintiff's injury occurred in June 2011, the Plaintiff is not claiming any loss of earnings for 2011 as he was on paid medical leave until December 2011.

(A) LOSS OF EARNINGS FOR 2012

112 The Plaintiff's income tax return for 2012 shows an annual income of $30,202.00. Thus the Plaintiff's loss of earnings for 2012 amounted to $64,780.00 (*ie,* $94,982.00 - $30,202.00).

113 It was held in *Teo Sing Keng v Sim Ban Kiat* [1994] 1SLR(R) 340 ("*Teo Sing Keng*") at [34] that:

> … where an award is made for loss of earnings, deduction for income tax should be made as such damages represent compensation for non-receipt of a taxable income.

As the Plaintiff's income tax liability was $3,322.35 in 2011 and $7.99 in 2012, I would reduce the award for loss of earnings in 2012 by the difference in the amount of income tax paid between 2011 and 2012, to arrive at the figure of $61,465.64.

(B) LOSS OF EARNINGS FOR 2013

114 The Plaintiff's income tax return for 2013 shows an annual income of $51,811.00. This meant that the Plaintiff's loss of earnings for 2013 amounted to $43,171.00 (*ie,* $94,982.00 - $51,811.00). The Plaintiff's income tax return for 2013 also shows that he claimed total deductions and reliefs amounting to $23,892.00. This would have resulted in a chargeable income of $27,919.50 and an income tax liability of $158.39. Accounting for the difference between the Plaintiff's pre-injury tax liability and his 2013 tax liability, I would reduce the award for loss of earnings in 2013 to $40,007.04.

(C) LOSS OF EARNINGS FOR 2014

115 The Plaintiff's income tax return for 2014 shows an annual income of $21,072.00. This meant that the Plaintiff's loss of earnings for 2014 amounted to $73,910.00 (*ie,* $94,982.00 - $21,072.00). The Plaintiff paid no income tax in 2014 as the deductions and reliefs he claimed exceeded his income for the year. I would therefore reduce the award for loss of earnings in 2014 by an amount equal to the Plaintiff's tax liability in 2011, to arrive at $70,587.65.

(D) LOSS OF EARNINGS FOR 2015

116 In 2015, Coachcraft generated a profit of $31,306.48. The Plaintiff proposed treating this sum as the Plaintiff's earnings in 2015 for the purposes of calculating loss of earnings. The Plaintiff's income tax return for 2015 shows that the Plaintiff received $12,000 in employment income and $55,000 in rental

income that year. The Plaintiff explained during cross-examination that the $12,000 was director's fee paid by Coachcraft to him.

117 The Defendants in their closing submission added the $12,000 director's fee to Coachcraft's gross revenue of $38,714.44 to arrive at the conclusion that the Plaintiff's earnings from Coachcraft in 2015 amounted to $50,714.44. The Defendants' approach is flawed at two levels. First, for the reasons I have given at [108] above in relation to Star Bamboo, it is wrong of the Defendants to treat gross revenue, as opposed to mere profits, of Coachcraft as the Plaintiff's earnings. Secondly, the Plaintiff had clarified during cross-examination that the figure of $31,306.48 he gave as the profit of Coachcraft was *before* the deduction of the $12,000 director's fee as an expense. This was borne out by the accounts of Coachcraft tendered as evidence by the Plaintiff. It would be double-counting to add the $12,000 director's fee to Coachcraft's profit figure when the profit figure was arrived at without deducting this $12,000.

118 Although I disagree with the Defendants' approach of treating Coachcraft's gross revenue as the Plaintiff's earnings, I also disagree with the Plaintiff's figure of $31,306.48. This is because there is an expense item in the accounts of Coachcraft submitted by the Plaintiff which I find doubtful – Coachcraft's accounts show a flat monthly "motor expenses" of $500. The fact that the same $500 is recorded every month shows that this is not for the reimbursement of actual expenses incurred on behalf of Coachcraft. As the Plaintiff is the sole director and sole shareholder of Coachcraft, it is likely that, this $500 per month was in reality drawn out and utilised at the Plaintiff's discretion in the same manner as the Plaintiff's salary or director's fee. I would therefore treat this $500 per month "motor expenses" as part of the Plaintiff's earnings. Consequently, I regard $37,306.48 (*ie,* $31,306.48 + 12 x $500) to be the Plaintiff's 2015 earnings for the purpose of calculating loss of earnings. This

meant the Plaintiff's loss of earnings for 2015 amounted to $57,675.52 (*ie,* $94,982.00 - $37,306.48). As the Plaintiff's income tax return for 2015 shows his estimated tax liability to be $79.50, I would reduce the award for loss of earnings in 2015 to account for the difference between the Plaintiff's pre-injury tax liability and his 2015 tax liability, to arrive at the figure of $54,432.67.

(3) Should deduction be made for "reasonable expenses"?

119 The Defendants submit that there should be a further deduction of $600 per month for "reasonable expenses". No explanation was given by Defendants' Counsel for proposing such a deduction and no authorities were cited to the court to support such a deduction. To assess the Defendants' submission on this issue, I will consider some relevant authorities.

120 In *Rahman Lutfar*, the plaintiff was a Bangladeshi foreign worker who was injured in April 2012 and sent back to Bangladesh in December 2012. The case went on trial in August 2015. The court awarded the plaintiff three years' pre-trial loss of earnings and two further years of loss of future earnings on the basis of his salary in Singapore, after deducting $186 per month for expenses (such as for transport, food and mobile phone charges) which the plaintiff would have incurred had he continued to work in Singapore.

121 The decision in *Rahman Lutfar* is an illustration of the general principle, laid down *Pickett v British Rail Engineering Ltd* [1980] AC 136 ("*Pickett*") and *Lim Poh Choo v Camden & Islington Health Authority* [1980] AC 174 ("*Lim Poh Choo*"), that the courts should be vigilant to avoid not only duplication of damages but also the award of a surplus exceeding a true compensation for the plaintiff's deprivation or loss.

122 In *Pickett*, the plaintiff's life was shortened as a result of his injury. The court awarded the plaintiff loss of future earnings in respect of the "lost years" but ruled that a deduction should be made to account for the plaintiff's probable living expenses during those "lost years". The court reasoned that:

> (a) these were expenses which would only be incurred if the Plaintiff were alive;
>
> (b) the plaintiff would no longer be incurring any living expenses during the "lost years";
>
> (c) therefore, the plaintiff would be receiving a surplus exceeding a true compensation if the deduction for living expenses were not made in respect of the "lost years".

123 In *Lim Poh Choo*, the plaintiff suffered total disability such that she was not able to work *at all*. In awarding loss of future earnings to the plaintiff, the court deducted from the award sums representing expenses which the plaintiff would have incurred in earning the lost income.

124 *Lim Poh Choo* was applied in the local case of *Tan Shwu Leng v Singapore Airlines Limited and Another* [2001] SGHC 51 ("*Tan Shwu Leng*"). In that case, the plaintiff was an airline cabin crew. As part of her loss of earnings claim, she included a claim for loss of various allowances which she would have been entitled to while on overseas assignment as a cabin crew. Woo Bih Li JC (as he then was) held that, in awarding the loss of overseas assignment allowances, the court should deduct the expenses (*eg,* transport and meals) which the plaintiff would have incurred while on such overseas assignments.

125 The conclusion to be drawn from the foregoing authorities is that a deduction for expenses would not be made as a matter of course and certainly should not be made without sufficient reason. The purpose of a deduction for expenses is to avoid awarding the plaintiff a surplus exceeding a true compensation. Thus a deduction for living expenses would be made when awarding loss of earnings for "lost years", based on the irrefutable logic that dead people do not incur living expenses. A deduction for expenses associated with working life (*eg,* transport expenses for getting to and from work) could be made in cases where the plaintiff is not able to work at all. Finally, deduction for expenses may also be made in cases involving foreign plaintiffs who are compensated on the basis of their Singapore salary in respect of periods where they would no longer be in Singapore.

126 In the present case, apart from the three months during which the Plaintiff was on no pay leave, there is no evidence that the Plaintiff would have incurred less work-related expenses after his injury compared to the period prior to his injury. While I would have been prepared, in-principle, to deduct work-related expenses during the period of no pay leave, I am not in a position to make any such deduction in the present case in the absence of evidence and proper submission regarding what those expenses would have been.

(4) Conclusion on pre-trial loss of earnings from 2012 to 2015

127 Totalling up the figures at [112]-[115] and [118] above, I award $226,493.00 to the Plaintiff for pre-trial loss of earnings from 2012 to 2015.

Loss of future earnings / loss of earning capacity

128 The Plaintiff claims $1,035,032.76 for loss of future earnings ("LFE"). The Defendants submit that:

(a) no award should be made for LFE and an award should instead be made for loss of earning capacity ("LEC") at $25,000;

(b) alternatively, if the court considers that an LFE award is merited, the amount to be awarded for LFE should be $154,238.40.

(1) Multiplier for LFE/LEC

129 The Plaintiff submits that the multiplier for LFE should be 17 years while the Defendants submit that it should be 10 years.

130 Following *Kenneth Quek*, the starting point for determining the multiplier for LFE/LEC is not the age of the plaintiff *per se* but the expected remaining working life of the plaintiff assuming the accident had not occurred. In the absence of any factors which existed prior to the accident indicating that the plaintiff would have a shorter than normal working life, the "remaining working life" is obtained by deducting the plaintiff's age at trial from the statutory minimum retirement age of 67 years. As the Plaintiff was 39 years old at the date of trial, his remaining working life is 28 years.

131 In *Kenneth Quek*, the Court of Appeal applied the discount rate of 4.21% or 4.27% to the plaintiff's remaining working life of 43 years to arrive at a multiplier of 20 years (at [100]). Applying the same discount rates to 28 years of remaining working life would produce a multiplier of 17 years for the Plaintiff. As noted at [51] above, the multiplier derived under the arithmetic approach should be cross-checked with the multipliers used in past cases so as to achieve consistency with cases involving similarly-situated plaintiffs. Considering that a multiplier of 14 years was adopted for 24 years of remaining working life in *Rahman Lutfar* (at [55]) and a multiplier of 18 years was adopted for 34 years of remaining working life in *Teo Seng Kiat v Goh Hwa Teck* [2003]

1 SLR(R) 333, I am of the view that it would be more appropriate to adopt a multiplier of **16 years** in the present case.

(2) Multiplicand for LFE (if awarded)

132 The Plaintiff proposed a multiplicand of $5,073.69 per month by deducting the Plaintiff's average monthly income between 2012 and 2016 from his pre-accident income as a human resource consultant *adjusted for possible future pay increments*. I do not agree with this approach. The Plaintiff's post-accident income (as calculated by the Plaintiff) fluctuated from a monthly average of $1,756.00 in 2014 to the monthly average of $4,332.99 in 2016. In particular, the Plaintiff's average monthly income for 2012 and 2014 would be uncharacteristically low because the Plaintiff was on no pay leave for three months in 2012 and was pursuing a coaching course for five months in 2014, albeit on a part-time basis. It may therefore be argued that a more reliable indication of the Plaintiff's likely income for the foreseeable future would be the average monthly earnings of Coachcraft. This was the approach advocated by the Defendants.

133 Using the figure of $37,306.48 at [118] above as the Plaintiff's annual earnings from Coachcraft for 2015, we obtain an average monthly earnings of $3,108.87. Coachcraft's gross revenue for the first nine months of 2016 was $44,125.44. This translates to an average monthly gross revenue of $4,902.83. As the Plaintiff has not provided information on Coachcraft's expenses in 2016, I am not able to determine Coachcraft's average monthly profit in 2016. Based on these figures, an appropriate multiplicand would likely be in the region of $3,500 per month, after deduction for income tax. When applied to the multiplier of 16 years, this would result in an LFE award of $672,000. However,

as discussed below, I have doubts on whether it is appropriate to award LFE in the present case.

(3) Whether more appropriate to award LFE or LEC

134 The Court of Appeal explained in *Teo Sing Keng* at [40] that:

> An award for loss of earning capacity, as opposed to an award for loss of earnings, is *generally* made in the following case:
>
> (a) where, at the time of trial, the plaintiff is in employment and has suffered no loss of earning, but there is a risk that he may lose that employment at some time in the future, and may then, as a result of his injury, be at a disadvantage in getting another job or an equally well paid job;
>
> (b) where there is no available evidence of the plaintiff's earnings to enable the court to properly calculate future earnings, for example, young children who have no earnings on which to base an assessment for loss of future earnings.
>
> [emphasis added]

In practice, the occasions on which an award of LEC is held to be appropriate are not confined to the two categories mentioned in *Teo Sing Keng*. One example is *Karuppiah Nirmala v Singapore Bus Services Ltd* [2002] 1 SLR(R) 934 ("*Karuppiah*"). The plaintiff in *Karuppiah* found it difficult to cope with her job as an editor after the accident because of the pain in her neck and shoulder arising from her whiplash injury. She resigned from her editor job paying $4,300 per month and went back to her previous career in pre-school education on a part time basis, earning $2,500 per month. At first instance, the assistant registrar hearing the assessment of damages awarded both pre-trial loss of earnings and LFE based on the multiplicand of $1,500 per month.

135 On appeal, Judith Prakash J upheld the pre-trial loss of earnings award (albeit with a lower multiplier having regard to the plaintiff's failure to mitigate)

but set aside the LFE award in favour of a LEC award, giving the following reasons:

> 30 On appeal, the defendants submitted that *the editorial work on the basis of which the plaintiff claimed the loss of future earnings, took up a period of one and a half years out of a total career period of 15 years. Since the accident, she had gone back to what she had been doing before her stint in editing.* They submitted that the plaintiff was not disabled from pursuing her vocation in which she had adequate training and plenty of experience and in fact was now carrying on. That work would pay comparably to her editor's work once she was able to take on additional assignments. At the time of the hearing she was giving two or three lectures a week and working as a practicum supervisor between one and three times a week. She had quite a number of free hours a week and it would not be difficult for her to work up to three hours a day and there would be reasonable opportunities for her to take up work assignments for up to five days a week. This would be particularly so if her shoulder injury is corrected.
>
> 31 I accept the defendants' submissions. In my opinion, although the accident has meant that an editing career would be difficult for the plaintiff to maintain, it has not affected her main skills or her ability to exploit those skills profitably. At the same time, there may be some restriction on her ability to work long hours on a continuous basis even after the shoulder operation since she has to take care of her neck in order to avoid complications in that area. Whilst her earning ability has been adversely affected by the accident the circumstances of the case make an award for loss of earning capacity more appropriate than one for the loss of future earnings. *The editing path was one that was new to the plaintiff and it is not possible to be certain that she would have continued in that line. There are other remunerative avenues still open to her.*
>
> [emphasis added]

136 In the present case, the Plaintiff had similarly been working with Accenture for only 1.5 years before the accident. Therefore, just as in *Karuppiah*, there is some uncertainty in the present case over whether the Plaintiff would have continued in that line. A second source of uncertainty arises from the fact that the Plaintiff was a salaried employee before the accident but is now self-employed. Being self-employed gives the Plaintiff a certain level of

flexibility not available to a salaried employee and carries the potential for earnings to be scaled up in ways not possible with salaried employees. This makes a reasonable comparison between the Plaintiff's pre-accident and post-accident earnings for the long term more difficult than in a case where the plaintiff was self-employed both before and after the accident or where the plaintiff was a salaried employee both before and after the accident. The third source of uncertainty arises from the fact that Coachcraft had been in existence for only 1.75 years at the time of the trial. In that short duration, Coachcraft's average monthly revenue in 2016 rose by almost 52% above its average monthly revenue in 2015. It is uncertain whether Coachcraft's revenue will remain stagnant or will continue to grow as the Plaintiff becomes more established in the field. In the light of these uncertainties, I am not confident that the figures discussed at [133] above provide a fair estimate of what the Plaintiff's LFE is likely to be.

137 According to the available evidence, the Plaintiff's main job prior to joining Accenture was the running of Star Bamboo. (Besides his stints at Accenture and Star Bamboo, the Plaintiff has not provided any other evidence of his pre-accident employment history.) Even though the Plaintiff's evidence is that there was an intention to wind down the activities of Star Bamboo and that Star Bamboo is no longer trading actively, this remains an option which the Plaintiff could return to if he so desires.

138 Given the foregoing considerations, I am of the view that, like *Karuppiah*, an LEC award is more appropriate in the present case to account for the disadvantages faced by the Plaintiff at work as a result of his fatigue and difficulties concentrating. While the Plaintiff would have difficulties keeping normal office hours, it is open to him to leverage on the flexibility afforded by

his self-employed status to grow his earnings in different ways as he is no longer confined to a specific career model.

139 As for the quantum to be awarded for LEC, it will be useful to consider some precedents:

(a) in *Karuppiah*, the LEC award was $70,000. The plaintiff was earning $4,300 per month before the accident and $2,500 per month at the time of trial. The applicable multiplier was 11 years;

(b) in *Tan Siew Bin Ronnie v Chin Wee Keong* [2008] 1 SLR(R) 178 ("*Ronnie Tan*"), the LEC award was $100,000. The plaintiff was a lawyer and he was assessed, at [21], as having an annual income of $120,000 both before and after the accident. He complained that the pain in his neck and back affected his concentration, thereby reducing his efficiency and the number of hours he could work. The court assessed that the plaintiff would have 15 years of remaining working life.

(c) in *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* [2003] 3 SLR(R) 601 ("*Nirumalan*"), the LEC award was $180,000. The plaintiff was a lawyer who had complaints similar to those of the plaintiff in *Ronnie Tan.* He was earning about $420,000 per year both before and after the accident and was assessed to have a remaining working life of 15 years (see *Ronnie Tan* at [28]).

140 The Plaintiff was earning close to $100,000 per year before the accident. He has a remaining working life of 28 years. The applicable multiplier in the present case is 16 years. Having regard to the fact that the Plaintiff has a much longer remaining working life than the plaintiffs in *Ronnie Tan* and *Nirumalan* as well as a much higher applicable multiplier than the plaintiff in *Karuppiah*,

and having regard to the amounts awarded for LEC in those cases, I assess that an appropriate award for LEC in the present case would be $150,000.

(4) Conclusion on LFE/LEC

141 For the reasons given above, I make an award of **$150,000** for LEC and make no award for LFE.

(5) Revisiting the award for pre-trial loss of earnings

142 As noted at [98] above, the Plaintiff chose to claim pre-trial loss of earnings for only up to 31 December 2015, on the basis that he would claim the loss of earnings from January 2016 to the date of trial as part of LFE. Since I have decided not to make an award for LFE, it will not be fair to hold the Plaintiff to this choice. I will therefore award the Plaintiff pre-trial loss of earnings for the first nine months of 2016.

143 The Plaintiff's annual salary of $94,982.00 in 2011 translates to an average monthly salary of $7,915.17. As noted at [133] above, Coachcraft's average gross monthly revenue in 2016 is $4902.83. This works out to a loss of earnings of $27,111.06 (*ie,* ($7,915.17 - $4,902.83) x 9) for the first nine months of 2016. Deducting for income tax, I would make an award of $24,619.30 for pre-trial loss of earnings in 2016.

144 With the foregoing adjustment, the total award for pre-trial loss of earnings would increase to **$251,112.30**.

Pre-trial transport expenses

145 The Plaintiff claims $2,000 for pre-trial transport expenses. No receipts were provided except for a few parking receipts totalling $27.57. The Plaintiff

submits that, despite the lack of receipts, it could not be denied that the Plaintiff had made various trips to hospitals and clinics to, *inter alia*, follow up with his pain specialist, for fitting of prosthesis and for physiotherapy – the receipts from the hospitals and clinics prove that the trips were made. While I accept that these trips took place, there is no evidence concerning the modes of transport used and the expenses incurred for the trips.

146 Following the approach in *Siew Pick Chiang v Hyundai Engineering & Construction Co Ltd* [2016] SGHC 266 at [83]-[86], I am prepared to make a reasonable estimate in order to arrive at an award for pre-trial transport expenses despite the lack of receipts and lack of evidence concerning the mode of transport adopted by the Plaintiff. However, any such estimate should be a conservative one, to avoid putting plaintiffs who fail to produce receipts in a better position than plaintiffs who conscientiously retain receipts and adduce them in evidence.

147 The evidence reveals that the Plaintiff made roughly 50 trips for various treatments during the five years between the accident and the date of trial. At [89] above, I awarded $3,000 for future transport expenses for a projected 101 trips. This works out to $30 per trip on average. Taking a conservative approach, I would allow $20 per trip for pre-trial transport expenses to arrive at an award of **$1,000.00**.

Loss of personal effects

148 Plaintiff claims a sum of $2,000 for the loss of personal effects suffered by reason of the accident. According to the Plaintiff, this would include his clothing and other items such as mobile phone on the Plaintiff's person at the time of the accident. The Defendants submit that no award should be made

under this head as the Plaintiff has not provided any documentary proof in support of the claim. The Plaintiff responded that:

> (a) while it may have been possible to show the value of replacing these items, it is not possible to show the actual value of these items at the time of the accident; and
>
> (b) it would be unreasonable to disallow such a claim on the principle that no documentary proof has been furnished as the loss is a reasonable consequence of the accident.

149 I agree that loss of personal effects in a traffic accident is a compensable head of damages. I also agree that the measure of damages is the value of the personal effects at the time of the accident and not their replacement cost. It would therefore not be necessary to produce receipts for the purchase of replacement items to support such a claim. However, if receipts for replacement items are produced, these may be accepted as indirect evidence of the value of the items lost (subject to appropriate adjustments, such as for depreciation on account of the age of the items lost or for differences in quality or character between the lost items and the replacement items).

150 Nevertheless, it remains incumbent on the plaintiff in each case to furnish a reasonable basis for the court to make an award. At the minimum, the plaintiff should identify the items lost, provide the court with an estimate of their value as well as some information concerning each item to allow the court to gauge the reasonableness of the estimated value. In the present case, the Plaintiff has not done any of these things. I therefore have no basis to make any award for this item.

Interest

151 As laid down in *Teo Sing Keng* at [50]-[55], the Plaintiff is entitled to:

(a) interest at 5.33% per annum for general damages for pain and suffering from the date of the writ of summons to the date of judgment;

(b) interest at 2.67% per annum for special damages from the date of the accident to the date of judgment; and

(c) no interest for future expenses and LFE/LEC.

152 As the Plaintiff received an interim payment of $100,000 on 15 December 2014, I would award interest on the first $100,000 of damages for pain and suffering from 20 June 2014 to 15 December 2014 and interest on the remaining $40,000 of damages on pain and suffering from 20 June 2014 to 31 July 2017, both at the rate of 5.33% per annum. This amounts to $9,234.77.

153 I would also award interest on special damages of $265,138.35 at 2.67% per annum from 23 June 2011 to 31 July 2017. This amounts to $43,212.18.

154 The total award for interest is therefore **$52,446.95**.

Conclusion

155 In summary, the total amount of damages awarded to the Plaintiff, including interest, is **$1,228,697.80**, broken down as follows:

(a) General damages

(i)	Pain and suffering	$ 140,000.00
(ii)	Future medical expenses	$ 618,112.50

	(iii)	Future transport expenses	$ 3,000.00
	(iv)	Loss of earning capacity	$ 150,000.00
(b)	Special damages		
	(i)	Medical expenses	$ 12,026.05
	(ii)	Counselling expenses	$ 1,000.00
	(iii)	Transport expenses	$ 1,000.00
	(iv)	Pre-trial loss of earnings	$ 251,112.30
(c)	Interest		$ 52,446.95
	Total:		**$ 1,228,697.80**

156 Parties are to file and exchange written submissions on costs within two weeks from the date of this judgment, unless costs are agreed prior to that.

Pang Khang Chau
Judicial Commissioner

Lim Hui Ying and Chiam Daomin Mike (KhattarWong LLP) for the plaintiff;
Loh Kia Meng and Toh Key Boon Kelvin (Dentons Rodyk & Davidson LLP) for the defendants.