# Lai Wai Keong Eugene *v* Loo Wei Yen
# [2013] SGHC 123

**Case Number** : Suit No 727 of 2009 (Registrar's Appeal No 273 of 2012)
**Decision Date** : 28 June 2013
**Tribunal/Court** : High Court
**Coram** : Vinodh Coomaraswamy J
**Counsel Name(s)** : Anthony Wee and Pak Waltan (United Legal Alliance LLC) for the plaintiff; Toh Kok Seng and Desmond Tan (Lee & Lee) for the defendant.
**Parties** : Lai Wai Keong Eugene — Loo Wei Yen

*Damages – Assessment*

28 June 2013

**Vinodh Coomaraswamy J:**

**Background**

1 The plaintiff, Lai Wai Keong Eugene, suffered catastrophic and life-changing injuries on 12 April 2007 in a collision between his motorcycle and a car driven by the defendant. [note: 1] As a result of the collision, the plaintiff is now a paraplegic with no sensation or motor control from his upper chest downwards. [note: 2] He sustained a complete spinal cord injury at T4/T5 level, multiple fractures of his thoracic spine, fractures of bilateral ribs, bilateral pneumothoraxes and a left haemothorax. [note: 3] He had a difficult post-operative recovery, which was complicated by pneumonia and by pressure sores at the sacral area. [note: 4] He continues to suffer multiple disabilities arising from paraplegia. These include incontinence, frequent skin breakdown sometimes requiring surgical intervention, multiple episodes of urinary tract infection, permanent loss of sexual function, recurring bouts of muscle spasms and low blood pressure. [note: 5]

2 The plaintiff commenced an action against the defendant on 25 August 2009 seeking damages for negligence. The defendant consented to interlocutory judgment with damages to be assessed, accepting 90% liability for the plaintiff's injuries.

3 In due course, the Assistant Registrar ("AR") assessed the damages totalling $2,073,432.42. That sum comprised the following heads: [note: 6]

(a) Special damages assessed at $335,399.49;

(b) General damages:

(i) Pain and suffering and loss of amenity assessed at $200,000;

(ii) Future medical expenses assessed at $486,000;

(iii) Other future expenses (not including future medical expenses) assessed at

$171,770; and

(iv) Loss of future earnings assessed at $880,262.93.

4 The plaintiff appealed against the AR's award on only two of these heads: loss of future earnings ("LFE") and future medical expenses. The appeal came before me. I dismissed the appeal. The plaintiff has appealed to the Court of Appeal. I now give my reasons.

**The proceedings below**

5 As before me, the central dispute at the assessment of damages before the AR focused on the plaintiff's claims for LFE and for future medical expenses.

***Submissions for the plaintiff***

6 Plaintiff's counsel, Mr Anthony Wee, submitted to the AR that in assessing LFE:

> . . . although everyone thinks that the conventional approach is **the only** way in which loss of future earnings should be assessed, **this misconception** is nothing more than a myth and is further away from the truth than most people think. The Court is really only bound by one, and only one, principle – the simple concept of *restitutio in integrum.* The way in which this goal is reached is unfettered. The Plaintiff is therefore asking Your Honour to depart from adopting the conventional approach". [note: 7]
>
> [Emphasis original]

7 In order to achieve *restitutio in integrum* for *this* plaintiff for *his* lost future earnings, Mr Wee submitted to the AR that the court should depart from the conventional approach in two ways:

(a) First, and most importantly, Mr Wee argued that the AR should not select a *multiplier* by reference to multipliers applied in previously-decided cases involving similarly-situated plaintiffs. Instead, Mr Wee urged the AR to assess the plaintiff's damages by reference to the present value of the plaintiff's lost income for each year over the entirety of his remaining working life. These calculations were set out in tables prepared by the plaintiff's accounting expert, Mr Foong Daw Ching. [note: 8] Mr Wee argued it was open to the AR to adopt this approach in this case because Mr Foong's evidence enabled the court to assess – more accurately than the conventional approach permits – what the *actual* LFE of *this* plaintiff would have been over his *actual* remaining working life. [note: 9] Mr Wee submitted that the next step for the AR was to discount this actual LFE for the vicissitudes of life, having regard to a case decided in Singapore and to authoritative and standardised actuarial tables known as the Ogden Tables used in England to assess damages for personal injuries. [note: 10]

(b) Second, Mr Wee argued that the court should not adopt a single *multiplicand* [note: 11] because to do so would disregard this plaintiff's proven prospects of promotion over his working life. The plaintiff's date of birth being 22 July 1972, [note: 12] he was aged 34 at the time of his injuries. He then held the post of Senior Logistics Executive ("SLE") at DHL Supply Chain Singapore Pte Ltd ("DHL"). [note: 13] His monthly salary was $3,469. [note: 14] Mr Wee argued that the evidence established: (1) that the plaintiff would as a certainty be promoted to Assistant Manager ("AM") at the age of 36 or 37; (2) that he had great potential to be promoted to Manager between the ages of 39 and 42; (3) that he would reach the post of Senior Manager

between the ages of 44 and 47; and (4) that he would hold that post until retirement at the age of 65. [note: 15] Mr Foong in his present value table therefore factored in increments in salary of 3% to 4% per annum banded together over 4-year periods projecting that the plaintiff would have retired on 22 July 2037 drawing an annual salary of about $112,000. [note: 16]

8 Applying the approach which he advocated, Mr Wee invited the AR to award the plaintiff $1,823,034.60 for LFE. [note: 17] Alternatively, if the AR preferred the conventional approach, Mr Wee submitted that the appropriate multiplier should be 21 years with a varying multiplicand to reflect the plaintiff's promotions over his remaining working life, yielding an award for LFE of $1,814,574.45. [note: 18] Underlying both figures was the assumption that, but for his injuries, the plaintiff would have continued earning an income until age 65. [note: 19]

9 Mr Wee also sought an award of $858,000 [note: 20] for the plaintiff's future medical expenses. Mr Wee accepted the use of the conventional approach for assessing future medical expenses because he had not adduced present value evidence for this head of loss. [note: 21] The plaintiff's claim for future medical expenses comprised 3 elements. For 2 of the 3 elements, Mr Wee applied a multiplier of 22 years. [note: 22] He derived that multiplier by discounting the plaintiff's remaining 30 years of life by 25%. [note: 23] For the third element, Mr Wee applied the same discount of 25%, but this time directly to the future expense as a lump sum rather than to a multiplier. [note: 24]

***The AR's decision***

10 The AR declined to depart from the conventional approach in assessing LFE, holding as follows at [16] of his grounds of decision:

> "I agree with the plaintiff that the principle of [*restitutio*] *in integrum* underlies the assessment of damages for personal injuries and death. But with respect, I cannot agree that the approach adopted by the court to achieve [*restitutio*] *in integrum* is "unfettered". It is clear from *Tay Cheng Yan*, a case which the plaintiff had himself relied upon, that the Court of Appeal, while agreeing that there is nothing wrong in law or in principle with the use of actuarial tables, . . . made a policy decision to prefer the use of the direct application method, ie, the conventional approach taking into account the "interests of uniformity and clarity of legal practice in Singapore" and the "comprehensive familiarity of our courts and practitioners" with the conventional approach. I therefore find that there is no reason for the court not to adopt the conventional approach in assessing the loss of future income of the plaintiff in this case."

11 The AR therefore disregarded Mr Foong's present value tables. [note: 25] He applied the conventional approach. He selected a multiplier of 13. [note: 26] He did so by having regard to comparable cases, to the plaintiff's age (39 years at the date of assessment) and to the statutory minimum retirement age (62 years stipulated by s 4(1) of the Retirement and Re-employment Act (Cap 274A, 2000 Rev Ed)). [note: 27] This multiplier, of course, does not represent actual years but notional discounted years. To avoid confusion, I will therefore refer to the components of this multiplier as multiplier units rather than years.

12 The AR accepted Mr Wee's submission that the multiplier should be split, holding that that approach was consistent with existing case law [note: 28] and, in any event, not disputed by the defendant. [note: 29] The AR therefore split the multiplier into three segments – representing three

periods of the plaintiff's working life – and applied an increased multiplicand to each segment to reflect what he found to be the plaintiff's promotion and salary increment prospects.

13 In arriving at the multiplicand, the AR first accepted the plaintiff's submission that, based on case law, the deduction for income tax should be 2.5%. [note: 30] He then accepted the defendant's submission that the plaintiff would, despite his injuries, be capable of earning some income in future through sedentary work. The AR found that that net income would be $600 per month [note: 31] and further found that the plaintiff would be capable earning that net income on and after the 6th multiplier unit. [note: 32]

14 The AR then considered the plaintiff's prospects of promotion. He found that the plaintiff was likely to have remained a SLE for 2 multiplier units, then promoted to AM for a further 8 multiplier units and further promoted to Manager for the final 3 multiplier units. He therefore arrived at a total award for LFE of $880,262.93. [note: 33] Although he did not tabulate it in this manner, this is how he arrived at that figure:

| Unit | Job title | Before tax future earnings without injury | Tax on future earnings at 2.5% | Net future earnings without injury | Net future earnings with injury | Lost future earnings |
|---|---|---|---|---|---|---|
| 1 | SLE | $58,137.15 | $1,453.43 | $56,683.72 | $0 | $56,683.72 |
| 2 | SLE | $58,137.15 | $1,453.43 | $56,683.72 | $0 | $56,683.72 |
| 3 | AM | $70,469.70 | $1,761.74 | $68,707.96 | $0 | $68,707.96 |
| 4 | AM | $70,469.70 | $1,761.74 | $68,707.96 | $0 | $68,707.96 |
| 5 | AM | $70,469.70 | $1,761.74 | $68,707.96 | $0 | $68,707.96 |
| 6 | AM | $70,469.70 | $1,761.74 | $68,707.96 | $7200 | $61,507.96 |
| 7 | AM | $70,469.70 | $1,761.74 | $68,707.96 | $7200 | $61,507.96 |
| 8 | AM | $70,469.70 | $1,761.74 | $68,707.96 | $7200 | $61,507.96 |
| 9 | AM | $70,469.70 | $1,761.74 | $68,707.96 | $7200 | $61,507.96 |
| 10 | AM | $70,469.70 | $1,761.74 | $68,707.96 | $7200 | $61,507.96 |
| 11 | Manager | $93,959.60 | $2,348.99 | $91,610.61 | $7200 | $84,410.61 |
| 12 | Manager | $93,959.60 | $2,348.99 | $91,610.61 | $7200 | $84,410.61 |
| 13 | Manager | $93,959.60 | $2,348.99 | $91,610.61 | $7200 | $84,410.61 |
| | **Total** | | | | | **$880,262.93** |

15 With regard to the award for future medical expenses, the AR found to be excessive the 22-year multiplier which Mr Wee submitted was appropriate. The AR therefore selected a multiplier of 15 years, resulting in an award of $486,000. [note: 34]

**This appeal**

16 The plaintiff was dissatisfied with both of these awards and appealed the AR's decision. On appeal, the plaintiff sought an award for LFE of $1,777,458.74. [note: 35] Mr Wee contended before me afresh that the weight of evidence and authority was sufficient to justify a departure from the conventional approach to assessing awards for LFE. [note: 36] He relied especially heavily on the fact that the AR did not have the opportunity to consider the Court of Appeal's recent decision in *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 ("*Hafizul*"). *Hafizul* was decided after the close of the assessment phase in this case and just 4 days before the AR handed down his grounds of decision. According to Mr Wee, *Hafizul* had cleared the path for me to blaze a trail by adopting his submissions and abandoning the conventional approach. [note: 37]

17 As for future medical expenses, the plaintiff argued that the multiplier of 15 [note: 38] selected by the AR was too low and that the authorities supported a higher multiplier of 17. [note: 39]

18 The issues which arose for decision in this appeal were (a) whether the AR was correct to adopt the conventional approach in assessing the award for LFE, particularly in the light of *Hafizul*; (b) whether the AR's award for LFE ought to be increased; and (c) whether the AR's award for future medical expenses ought to be increased.

19 In my view and in summary: (i) the AR was correct to adopt the conventional approach; (ii) *Hafizul* does not endorse abandoning or departing from the conventional approach; (iii) it is not open to me as a judge of first instance to adopt Mr Wee's approach as a matter of precedent, principle and policy; (iv) applying the conventional approach, I agree with the AR's quantification of both LFE and future medical expenses.

**Loss of future earnings**

***The objective behind an award of damages***

20 In *Hafizul*, the Court of Appeal reiterated the fundamental principle underlying an award of damages for LFE at [46]:

> It is common ground between the parties that the task of the court in assessing damages in personal injury cases is to arrive at a lump sum which represents as nearly as possible full compensation for the injuries which the plaintiff has suffered. This means that an award for loss of future income should, as far as reasonably possible, provide the plaintiff with the income that he would have earned but for the accident which caused his injuries . . . . Therefore, the starting point for determining the appropriate multiplier must be the likely duration, after the trial, for which the plaintiff would have been expected to earn an income but for the accident (see the decision of the Privy Council in *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1983-1984] SLR(R) 388 at [20]). The underlying objective in fixing the multiplier is to derive a final award that provides the plaintiff with *full compensation* to the nearest extent possible (see the House of Lords decision of *Wells v Wells* [1999] 1 AC 345 ("*Wells*") at 363).
>
> [Emphasis original]

21 At least part of calculating lost earnings is pure arithmetic. To illustrate this, let us assume a hypothetical world where the court is omniscient and where economic conditions are static, dictating a constant 5% real return on all investments of whatever nature. Assume further that a hypothetical tort victim (V) with no prospects of promotion and no expenses is wholly incapacitated by injury from earning any income. Assume finally that V's annual income is $10,000. Calculating the amount of

money which will compensate V for the income he has lost by reason of the tort is pure arithmetic. The compensation can be calculated within minutes by anyone with a spreadsheet computer program and knowledge of its present value function. In the Excel spreadsheet program, the present value function is the "PV()" function. The following table is the result. It has been truncated at 20 iterations simply for convenience.

| **A** | **B** | **C** | **D** | **E** | **F** |
|---|---|---|---|---|---|
| **Year** | **Annual income that would have been earned** | **Present value discounted at 5% per annum** | **Cumulative present value** | **Cumulative discount** | **Multiplier** |
| 1 | $10,000.00 | $10,000.00 | $10,000.00 | 0.0000% | 1.0000 |
| 2 | $10,000.00 | $9,523.81 | $19,523.81 | 2.3810% | 1.9524 |
| 3 | $10,000.00 | $9,070.29 | $28,594.10 | 4.6863% | 2.8594 |
| 4 | $10,000.00 | $8,638.38 | $37,232.48 | 6.9188% | 3.7232 |
| 5 | $10,000.00 | $8,227.02 | $45,459.51 | 9.0810% | 4.5460 |
| 6 | $10,000.00 | $7,835.26 | $53,294.77 | 11.1754% | 5.3295 |
| 7 | $10,000.00 | $7,462.15 | $60,756.92 | 13.2044% | 6.0757 |
| 8 | $10,000.00 | $7,106.81 | $67,863.73 | 15.1703% | 6.7864 |
| 9 | $10,000.00 | $6,768.39 | $74,632.13 | 17.0754% | 7.4632 |
| 10 | $10,000.00 | $6,446.09 | $81,078.22 | 18.9218% | 8.1078 |
| 11 | $10,000.00 | $6,139.13 | $87,217.35 | 20.7115% | 8.7217 |
| 12 | $10,000.00 | $5,846.79 | $93,064.14 | 22.4465% | 9.3064 |
| 13 | $10,000.00 | $5,568.37 | $98,632.52 | 24.1288% | 9.8633 |
| 14 | $10,000.00 | $5,303.21 | $103,935.73 | 25.7602% | 10.3936 |
| 15 | $10,000.00 | $5,050.68 | $108,986.41 | 27.3424% | 10.8986 |
| 16 | $10,000.00 | $4,810.17 | $113,796.58 | 28.8771% | 11.3797 |
| 17 | $10,000.00 | $4,581.12 | $118,377.70 | 30.3661% | 11.8378 |
| 18 | $10,000.00 | $4,362.97 | $122,740.66 | 31.8107% | 12.2741 |
| 19 | $10,000.00 | $4,155.21 | $126,895.87 | 33.2127% | 12.6896 |
| 20 | $10,000.00 | $3,957.34 | $130,853.21 | 34.5734% | 13.0853 |

22 The court then applies its omniscience and determines how many more years V would have continued working if he had not suffered his injury. All the court then has to do is to look at the corresponding number of years in Column A and read off the cumulative present value for those years in Column D. That amount of money awarded today will compensate V perfectly for his lost income in this hypothetical world. With that award, V will have available for use at the beginning of each year

of his remaining working life an amount which, when taken together with the compounded constant return of 5% per annum earned since the date of the award, is equivalent to his pre-injury annual income, with the remaining lump sum continuing to earn the compounded constant return until the following year. So, if the court determines omnisciently that V had 10 years of working life remaining at the date of the injury, he is perfectly compensated for his lost future earnings by awarding him $81,078.22. If the omniscient court determines that V had 20 years of working life left, he is perfectly compensated for lost future earnings by an award of $130,853.21.

23 Note first that a table such as the one at [21] above involves no multiplier. It is simply a series of individual present value calculations which are summed. This table works by summing Column C, not by multiplying Column B. Note however that it is possible to work backwards and *derive* the multiplier set out in Column F by dividing the sum in Column D by the sum in Column B for any given year. That same multiplier can also be *derived* by discounting the number of years in Column A by the cumulative discount in Column E. But this linear relationship holds *only* where the annual lost income is constant over a given period. Addition, not multiplication, is the basic algorithm.

***The conventional approach***

24 We do not live in this hypothetical world. Economic conditions are not static. And the court is sadly not omniscient. Where the principle of *restitutio in integrum* is applied in the real world to assessing lump sum compensation for LFE, the assessment exercise is by its very nature fraught with imponderables. The Court of Appeal has described it as an exercise in "crystal ball gazing and peering into the future": see *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] 3 SLR 610 at [48] ("*Koh Chai Kwang*"). The Privy Council has said that "the assessment of future economic loss involves a double exercise in the art of prophesying not only what the future holds for the injured plaintiff but also what the future would have held for him if he had not been injured" (see *Paul v Rendell* (1981) 55 ALJR 371 at 372).

25 The innumerable imponderables include contingencies *related* to a particular plaintiff and contingencies *unrelated* to a particular plaintiff. Examples of contingencies related to a plaintiff are his working lifespan, changes in the degree of his disabilities and changes in his ability to earn an income. Examples of contingencies unrelated to a plaintiff are inflation rates and changes in the reasonably achievable rate of investment return.

26 One obvious solution to mitigating the uncertainties inherent in a lump sum award is to award damages for LFE by way of periodic payments. The court is empowered to award damages on this basis under paragraph 17 of the First Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Ed). However, awards of periodic payments are exceedingly rare in practice. It appears that both plaintiffs and defendants – or more often the latter's insurers – invariably prefer lump sum awards. In the case before me, neither party sought damages by way of periodic payments. So it is a lump sum which I must award.

*The multiplier*

27 Under the conventional approach, all of the imponderable contingencies in assessing LFE are factored into a discounted multiplier derived from comparisons with past cases. The court then adjusts the multiplier for the circumstances of the present case and applies it to a multiplicand derived from the evidence before it. That exercise yields a figure representing the lump sum compensation to be awarded. This is the approach which the AR adopted save that he segmented the multiplier, as case law permits him to do. The conventional approach was endorsed for Singapore by the Privy Council's decision in *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1983-1984] SLR(R)

388 ("*Lai Wee Lian*") at [17] and endorsed again by the Court of Appeal in *Tay Cheng Yan v Tock Hua Bin and another* [1992] 1 SLR(R) 779 ("*Tay Cheng Yan*") at [16].

28 The multiplier in the conventional approach is discounted so as to account for two factors as set out by the Privy Council at [20] of *Lai Wee Lian*. The first factor is the vicissitudes of life: the uncertainties and contingencies which might have cut short the plaintiff's working life in any event. The second factor is accelerated receipt: the benefit that the plaintiff enjoys from the immediate receipt of a lump sum award which can be invested to yield a return. The conventional approach embeds both of these discounts in the multiplier.

*The multiplicand*

29 The choice of the multiplicand in the conventional approach is largely an issue of fact. It is incumbent on the plaintiff to adduce evidence of what he could have earned had he not been injured, taking into account his prospects of future promotion.

30 Mr Wee submitted that the use of a single multiplicand over the entire multiplier period would be unjust and unrealistic. [note: 40] As I have mentioned above (at [12]–[14]), the AR accepted this submission and divided the selected multiplier of 13 into three segments. He then applied an increased multiplicand to each segment to reflect the plaintiff's notional promotions over his working life. [note: 41] This use of a segmented multiplier with differing multiplicands was appropriate on the facts of this case and is consistent with authority (see *Ho Yiu v Lim Peng Seng* [2004] 4 SLR(R) 675 at [23]; *Balanalagirisamy Gowri Rajeswari and another (administrators of the estate of Radhakrishnan Hari Babu, deceased) v Wong Si Wah* [2009] 1 SLR(R) 819 at [12] and the cases cited there).

*On appeal*

31 At the forefront of Mr Wee's submissions before me was a renewed submission that the court should depart from the conventional approach. His preferred approach, based on the present value tables prepared by Mr Foong, was as follows: [note: 42]

(a) Compute the plaintiff's actual lost earnings for each actual year up to the age of 65 (27 years). Segment the multiplier into seven tranches of four years each, with an increased annual income applied to each tranche to account for the plaintiff's promotions and salary increments.

(b) Perform a present value calculation at a discount rate of 1% [note: 43] on the lost earning for each year to derive what that year's lost earnings is worth today. Then sum the present value of each future year's earnings. For the plaintiff, the sum of present values is $2,025,594; [note: 44]

(c) Finally, apply a discount [note: 45] to the sum of present values to account for the vicissitudes of life. Mr Wee submitted that the discount should be 10%. He derived this discount by referring to the latest edition of the Ogden Tables. That indicates that for a male between 40 and 44 years of age who has attained the educational level of GCSE 'A' Levels and who was employed at the time of the accident, the discount for vicissitudes of life is 12%. [note: 46] Mr Wee also referred to the 9% discount for vicissitudes of life applied in *Shaw Linda Gillian v Chai Kang Wei Samuel* [2009] SGHC 187 ("*Gillian Shaw (HC)*"). Mr Wee interpolated between the two figures to propose a 10% discount for the vicissitudes of life in this plaintiff's case. [note: 47]

32 The principal differences between Mr Wee's approach and the conventional approach are two:

(a) Mr Wee's approach, like the table at [21] above, does not involve a multiplier at all. The cumulative effect of the annual lost income is derived by serial addition, not by multiplication.

(b) Mr Wee's approach separates the discount for accelerated receipt from the discount for vicissitudes of life. The discount for accelerated receipt is applied in the series of present value calculations in the first step. The discount for the vicissitudes of life is applied separately to the sum of that series in the second step.

33 By contrast, in the conventional approach, the choice of a multiplier is the first step. And, as I have said, all discounts are embedded in the multiplier.

34 Mr Wee submits that *Hafizul* has changed everything. It is therefore to *Hafizul* that I must now turn.

***The decision in Hafizul***

35 In *Hafizul*, the plaintiff was a Bangladeshi construction worker employed in Singapore. He was rendered a paraplegic after a bag of cement fell on his back. In deciding the appropriate award for his lost future earnings, the Court of Appeal undertook a comprehensive review of the law in this area.

36 The Court of Appeal's decision on LFE is at [38] to [62]. The Court of Appeal begins its analysis at [38] by reiterating its earlier endorsement at [37] of *Koh Chai Kwang* of the conventional multiplier/multiplicand approach. The Court of Appeal then goes on to consider: (a) at [42] to [45] the principles for determining the multiplier; (b) at [46] to [47] the relevant factors in determining the multiplier; (c) at [48] to [52] the possible approaches for determining the multiplier; (d) at [53] to [56] the approach that should be adopted in Singapore. In each of these sections, the Court of Appeal speaks repeatedly about choosing a multiplier. That, taken together with the citation and approval of *Koh Chai Kwang*, indicates to me that the Court of Appeal is considering and explaining the principles underlying the conventional multiplier/multiplicand approach and not Mr Wee's suggested approach. As I have pointed out above, Mr Wee's approach does not use a multiplier.

37 The Court of Appeal at [48] lists four possible approaches to determining the multiplier: (a) selecting a multiplier by looking at the multipliers used in comparable cases; (b) applying a "pure arithmetical discount" to the plaintiff's income stream over his expected working life and then applying a further discount for contingencies; (c) calculating the multiplier by a formula fixed by statute, as is the case in Malaysia; and (d) using actuarial tables such as the Ogden Tables. This list of four approaches is informed by the article "*Lai Wee Lian Revisited - Should actuarial tables be used for the assessment of damages in personal injury litigation in Singapore?*" [2000] SJLS 364 by Wai-Sum Chan & Felix W H Chan ("*Lai Wee Lian Revisited*"). I examine each of these four approaches in more detail.

*The conventional approach*

38 The first approach involves the selection of a multiplier based on previously-decided cases. The starting point is the plaintiff's age and his likely remaining income-earning years. The court then looks at the multipliers in previously-decided cases involving comparable plaintiffs (see *Lai Wee Lian* at [29]) and selects a multiplier. Applying this approach, it is legitimate for the court to adjust a multiplier upwards or downwards incrementally to account for the circumstances of a particular case (see for example *Lee Teck Nam v Kang Hock Seng Paul* [2005] 4 SLR(R) 14 at [40] ("*Lee Teck Nam*")). By incrementally, I mean 1 or 2 units, perhaps 3. The multiplier so arrived at discounts for *both* the

vicissitudes of life and for accelerated receipt. This multiplier, segmented if necessary, is then applied to the multiplicand(s) to arrive at a lump sum figure. That figure is the LFE.

*The pure arithmetical discount approach*

39 The second approach which the Court of Appeal considered in *Hafizul* was the use of present value tables. This approach is described in *Lai Wee Lian revisited* (at p 368) in the following terms:

> The pure arithmetical discount tables show precisely what capital sum is needed to yield a given annual income for a fixed number of years at a given assumed interest rate, so as to leave nothing at the end of the period. Where the period of future loss is certain, for example, if there is an agreed expectation of life, a pure arithmetical discount will give the appropriate multiplier to apply to the continuing annual loss.

40 The table at [21] above is one example of one type of present value table. For the reasons set out at [23] above, this method is not, strictly speaking, a method of selecting a *multiplier*. The result of this method is not a *multiplier* but a discounted lump sum. Further, that resulting lump sum is discounted only for accelerated receipt. A separate discount must be applied to account for the vicissitudes of life.

*The fixed statutory formula*

41 I shall not consider the third method. It applies only where there is a specific, legislative formula for calculating a multiplier. We do not have any such legislation.

*The actuarial approach*

42 The fourth approach which the Court of Appeal identified was the use of actuarial tables. Actuarial tables incorporate statistical data and actuarial calculations to predict the survival probabilities of classes of individuals with common characteristics. Actuarial tables involve judgment exercised by an actuary. Actuarial tables may incorporate present value calculations but are therefore not pure arithmetic. It is for this reason that actuarial tables have sometimes been viewed as giving an appearance of objective accuracy in what remains essentially a subjective exercise (see *Taylor v O'Connor* [1971] AC 115 at 140 ("*Taylor v O'Connor*")).

43 Actuarial tables are not the same as present value tables. As the Privy Council in *Lai Wee Lian* observed (at [23]), present value tables are:

> . . . simply arithmetical tables showing results of certain laborious calculations, always on the assumption that a sum, whether received in damages or in any other way, is invested at 5% interest. The calculations are not correctly described as "actuarial"; they involve no element of judgment, actuarial or other, except the arbitrary choice of 5% as the assumed rate of interest.

44 England has developed standardised and authoritative actuarial tables known as the Ogden Tables. The Court of Appeal in *Hafizul* rejected the actuarial approach for Singapore because there are no equivalent tables for Singapore based on Singapore actuarial data. Further, the Court of Appeal was mindful that requiring bespoke actuarial evidence in every case would increase costs and delay. Finally, the Court of Appeal expressly rejected direct reliance on the Ogden Tables in Singapore, saying (at [53]):

> What is clear is that it would not be appropriate for our courts to adopt the Ogden Tables

because the latter are based on projected mortality rates in the UK.

45 The Court of Appeal accepted, however, that the factors which the Ogden Tables account for (employment status, disability status and educational attainment) could, amongst other factors, be relevant to the assessment of an award for LFE in Singapore, since the ultimate aim is to make an award which will fairly compensate the plaintiff on the particular facts of each case (see *Hafizul* at [55]). In the conventional approach, these factors will be taken into account in an incremental variation of a multiplier.

*The Court of Appeal's conclusion*

46 The Court of Appeal concluded its survey of these 4 approaches at [54] as follows:

> In the absence of actuarial tables, it seems to us that the approaches alluded to above at [48(a)]-[48(b)], with adjustments for contingencies (where appropriate) and inflation, are the next most appropriate approaches. A pure arithmetical discount will adjust the lump sum award to account for accelerated receipt. Inflation can be taken into account by using real interest rates (ie, interest rates adjusted for inflation) in the arithmetical discount. Further adjustment may be necessary to account for other contingencies. Any further adjustment of this nature will necessarily be based on the particular facts and circumstances of the case. In order to ensure that awards are consistent, the courts should also consider the multipliers used in comparable cases. That said, a blind adherence to the multipliers in previous cases is not desirable. The court should consider in each case whether the previous cases are truly comparable, and should not hesitate to depart from the multipliers used in previous cases if the circumstances call for it.

47 In my view, the conclusion in *Hafizul* endorses the conventional approach of selecting a multiplier from comparable cases, adjusting it in the light of the facts and circumstances of the case at hand and then applying it to a multiplicand. It is true that the Court of Appeal's endorsement of the approaches described in *both* [48(a)] *and* [48(b)] at [54] of its judgment as methods of selecting a multiplier could be said to be contradictory: the former approach uses a multiplier whereas the latter approach does not (see [23] above). But when the Court of Appeal's reference to [48(b)] is read in the context of what goes before and after it, it is clear that this entire section of the Court of Appeal's judgment offers guidance to courts of first instance in selecting *multipliers*. That is why the Court of Appeal concludes [54] by reminding courts of first instance that there is no fixed maximum multiplier and that they should not hesitate to increase multipliers if the circumstances call for it.

48 The true meaning of the reference in [54] to [48(b)] and the present value approach described there is to endorse that approach as a cross-check for the conventional approach and not as a substitute for it. It is significant that in [48(b)] the Court of Appeal expressly endorses the approach of Chan Seng Onn J in *Gillian Shaw (HC)* at [31]. In that case, Chan J affirmed the AR's application of a multiplier of 16 years for a 26 year-old plaintiff. Chan J's primary approach was the conventional approach. Using that approach, he opined that the AR's selected multiplier of 16 years was appropriate considering the plaintiff's actual remaining working life of 31 years. He then used a present value table to discount 31 years down to a multiplier of 17.59 based on a discount rate of 4% per annum and assuming constant income. He then subtracted 1.59 multiplier units to account for the vicissitudes of life to obtain the final multiplier of 16 years. In that way, he was able to reconcile the two approaches. How did Chan J arrive at the discount of 1.59 multiplier units? It appears that he worked towards the multiplier of 16 years he had already selected by using the conventional approach. This indicates that his primary approach was the conventional approach and the present value approach was a cross check. His award of LFE was not disturbed on appeal (see *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 at [32]).

49 After *Lai Wee Lian* and before *Hafizul*, the courts in Singapore applied the conventional approach *simpliciter*. The benefits of the conventional approach are: (1) it balances the goal of approximating full compensation in the award against the cost and complexity of assessment; (2) the courts and practitioners are familiar with its application; and (3) it ensures broad consistency of awards between like cases while permitting incremental increases over time. *Hafizul* placed continued value on these goals. That confirms to me that *Hafizul* does not: (i) endorse abandoning the conventional approach; and (ii) endorse courts of first instances deviating substantially (rather than incrementally) from past awards of damages for LFE calculated on the conventional approach in comparable cases.

50 The Court of Appeal's decision in *Hafizul* has given welcome direction as it reiterates for courts of first instance the relevance of the conventional method but also clarifies that multipliers (and the implicit multiple discounts embedded in them) are not cast in stone over time but have a degree of incremental flexibility to account for changing circumstances in the general economy or for differing personal circumstances of plaintiffs. In doing so, the *Hafizul* permits courts of first instance to revise multipliers marginally. But I do not think that *Hafizul* permits me, as a High Court Judge, to revise multipliers substantially. That would amount to an across the board increase in the level of awards for damages for personal injuries. That is not something which a court of first instance can do.

***The English position***

51 Mr Wee's submissions drew heavily on the English position. It is therefore useful to consider how the English position evolved over time. In England, the conventional approach was criticised on the grounds that multipliers in comparable cases were arrived at when it was reasonable to expect a sustained rate of return on a capital sum of 4-5% without a plaintiff having to take undue risk. It was also argued that the conventional approach undercompensated plaintiffs by disregarding the effects of inflation over time. The conventional approach takes the view that inflation will take care of itself in a "rough and ready way by the higher rates of interest obtainable as one of the consequences of it" (see *Cookson v Knowles* [1979] AC 556 at 571 ("*Cookson v Knowles*")) and by investment policy (*Taylor v O'Connor* at 143). In the absence of a more precise way of predicting so conjectural a factor as future inflation with greater precision, the view under the conventional approach is that the recipient of a lump sum award is entitled to no greater protection against inflation than other persons who had to rely on capital for their future support (see *Cookson v Knowles* at 571, and *Lim Poh Choo v Camden and Islington Area Health Authority* [1980] AC 174 at 193 ("*Lim Poh Choo*")). Therefore, inflation is taken into account only in exceptional cases where it was shown on the facts that fair compensation could not be achieved otherwise (see *Lim Poh Choo* at 194).

52 In 1981, the UK government began to issue index-linked government stocks ("ILGS"). These investment instruments yield a constant real rate of return, that is, a constant rate of return *after* taking inflation into account. The availability of these instruments meant that an English plaintiff now had a virtually risk-free investment for his lump sum award. The investment would yield a fixed investment return regardless of inflation. In a report published in 1994, the English Law Commission recommended that courts use the rate of return on the ILGS as a means of establishing a realistic discount rate for accelerated receipt of a lump sum award instead of basing awards on the assumption of a historic 4-5% rate of return. It was said that the latter is "crude and inflexible and can lead to over- or under-compensation and hence to injustice" (see the Law Commission Report of 1994 No 224 (Cm 2646) at paras 2.25-2.28 ("the Law Commission Report of 1994").

53 The House of Lords adopted this recommendation in its seminal decision in *Wells v Wells* [1999] 1 AC 345 ("*Wells*"). In *Wells*, the House of Lords held that lump sum awards for LFE should be discounted for accelerated receipt on the basis of the prevailing rate of return available on ILGS.

Since 2001, the Lord Chancellor has exercised his power under s 1(1) of the Damages Act 1996 (c 48) (UK) to set the default discount rate at 2.5% per annum.

54 The decision in *Wells* also endorsed the use of the Ogden Tables. As a result, the English courts went from viewing the Ogden Tables rather grudgingly as a cross-check for the conventional approach to using the Ogden Tables as the starting point for lump sum awards (see *Wells* at 379). In catalysing this sea-change in judicial attitudes towards the use of the tables, the Law Commission in its Report of 1994 highlighted such societal changes as increased life expectancies even of the seriously injured, the falling value of money, the tendency towards greater itemisation of claims leading to increased awards and the increased accuracy and sophistication of information contained in the Ogden Tables (see the Law Commission Report of 1994 at para 2.18) to argue that "judicial ignorance and suspicion of the Tables are no longer justified, if indeed they ever were" (*ibid* at para 2.19). However, it is significant that the Law Commission's recommendations were expressly confined to the use of the *Ogden Tables*, and not to encourage the use of bespoke actuarial expert evidence in every case. The use of the Ogden Tables in England is facilitated by s 10 of the Civil Evidence Act 1995 (c 38) (UK). That section renders the Ogden Tables admissible as evidence notwithstanding the strict rules of evidence.

***The Hong Kong position***

55 In Hong Kong, the Court of Appeal strongly rejected an attempt by a trial judge to depart from the conventional method and adopt the English approach. In the case of *Chan Pui-ki v Leung On* [1996] 2 HKLR 401 ("*Chan Pui-ki*"), the Hong Kong Court of Appeal first made some observations on the nature of the exercise of assessing damages for future pecuniary loss (at 411):

> It would be wise to bear in mind that the assessment of damages for future pecuniary loss can never be a mere matter of mathematics. Whilst the assessments may become more sophisticated as the years go by, and calculations are made in an attempt to achieve greater precision, they may give a false appearance of accuracy. Some of the figures on which they are based are necessarily the result of speculation. No expert can forecast whether the plaintiff might, had she not been injured, have remained in good health until the age of 60, or got married, or remained in employment during any part of that period. Nor, for that matter, what the purchasing power of the Hong Kong dollar might be five years from now, let alone 40 years from now. Damages for financial loss likely to result from personal injury "can only be an estimate, often a very rough estimate, of the present value of his prospective loss": per Lord Reid in *British Transport Commission v. Gourley* [1956] AC 185 at 212. Ultimately, the process must always be one of judgment on the part of the trial judge rather than of mathematical calculation.

56 The Hong Kong Court of Appeal expressed the following opinion in response to academic criticism of the crudeness of the conventional method (at 411):

> Crude though the method may be, it is nevertheless a realistic acknowledgment of the inherent limitations of the whole exercise. It is based upon the applied wisdom of the courts over many years. In selecting a particular multiplier, the court would be able to make comparisons with multipliers used in similar cases. As Diplock LJ observed in *Every v Miles* (1964 CA No 261, unreported, quoted in *Kemp v Kemp* at para 7-001), "these standards have evolved from such current consensus of damage-awarding tribunals as is manifested by the amounts they have in fact awarded in broadly comparable cases". The "consensus" in Hong Kong is formed of course by the awards made by the masters in chambers and High Court judges over the years.

***Plaintiff's criticisms of the conventional approach***

57 Mr Wee mirrored the criticisms mounted in England and Hong Kong of the conventional approach. He argued that I should abandon the conventional approach because: [note: 48]

(a) The conventional approach is a rough and ready method which approximates fair compensation only in the case of a small, uncomplicated award but not in the case of a large award where small inaccuracies in the multiplier can have large consequences in the final award. Those differences are especially significant to a paraplegic who must rely entirely on the court's award to sustain him for the rest of his life.

(b) The need for uniformity and clarity of legal practice cannot override the more important duty of the court to do justice, especially in a deserving case such as this plaintiff's.

(c) There is nothing improper or contrary to law in using present value tables.

(d) The conventional approach relies on multipliers fixed in the 1970s and 1980s when 5% was a reasonably achievable rate of return on investments. That is no longer the case with bank interest rates hovering around 1% for close to a decade. It is unlikely that interest rates will shoot back up to 4% to 5%.

(e) The retirement age when multipliers were fixed in the 1970s and 1980s was 55. The current retirement age is substantially higher.

(f) In the 1970s and 1980s, inflation was lower than a reasonable rate of return on investments. That is no longer the case today.

(g) The conventional approach involves applying an arbitrary discount of one-third to a plaintiff's actual remaining working years subject to an arbitrary cap of 16. It is only recently that the cap of 16 has been broken by two awards based on multipliers of 20: see *Teo Ai Ling (by her next friend Chua Wee Bee) v Koh Chai Kwang* [2010] 2 SLR 1037; and *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85.

(h) There is no reason for vicissitudes of life to count only against the plaintiff as decreasing his loss – vicissitudes are equally capable of increasing his loss: see *Bresatz v Prizibilla* (1962) 108 CLR 541.

***The plaintiff's proposal***

58 Mr Wee's proposed approach (see [31] above) involves discounting for accelerated receipt by summing a series of present value calculations and then discounting the result for the vicissitudes of life. Mr Wee referred me to a number of cases in which the courts expressed openness to the application of present value tables even though the conventional method was ultimately applied in each case for the sake of uniformity and clarity of legal practice. [note: 49] The first case to which the plaintiff referred was *Lai Wee Lian*. There, the Privy Council opined that "there is nothing contrary to law in the use of the [present value] tables. . .", but stopped short of adopting the method not because it was wrong in principle but only in the interest of consistency of practice and the risk of misapplication. The second was *Tay Cheng Yan*, where the Court of Appeal reiterated the continued validity of *Lai Wee Lian*.

59 Mr Wee's argument was therefore that the use of present value tables and actuarial tables was not prohibited in law, and that uniformity and clarity of legal practice should not be pursued at the expense of an accurate result that would better achieve the established principle of *restitutio in*

*integrum*, especially when the evidence available would permit such accuracy to be achieved.

***Conventional approach ought to be applied as a matter of precedent, principle and policy***

60 I am unable to accept Mr Wee's arguments as a matter of precedent, principle or policy.

*Precedent*

61 I accept that multipliers selected in past comparable cases are not binding in present or future cases as matters of *stare decisis*. If ever there was any doubt, *Hafizul* has made that clear. However, it is my view that *Lai Wee Lian* and *Tay Cheng Yan* compel me to adopt the conventional approach as a matter of *stare decisis*. I do not read *Hafizul* as undermining the binding authority on me of either case or of the long line of appellate cases approving and following them.

*Principle*

62 Further, there are significant difficulties in the way of adopting Mr Wee's approach as a matter of principle. First, applying Mr Wee's approach requires a court to discount separately for the vicissitudes of life. *Hafizul* expressly precludes me from having regard to the Ogden Tables to discount for vicissitudes of life, which Mr Wee's submissions attempt to do in part. Without recourse to local actuarial data, and without a stock of previously-decided cases for guidance, discounting separately for the vicissitudes of life would be entirely arbitrary. *Gillian Shaw (HC)* offers no real guidance: as I have explained above, the discount for vicissitudes of life applied there was not derived independently as a matter of principle but was derived by working towards the multiplier selected by the conventional approach.

63 Discounting separately for the vicissitudes of life in Singapore therefore means that each plaintiff must adduce his own expert actuarial evidence in every case. That evidence will have to cover the plaintiff's pre-injury health including whether he suffers from medical conditions which would have an impact on morbidity or mortality. Another expert would have to give evidence about the future of the industry in which the plaintiff was employed, the financial health of his employer, its prospects of continuing in business for the coming years or decades and the risk of the plaintiff suffering bouts of unemployment. All of this will greatly increase litigation costs and complexity. In addition, receiving this evidence case by case means that the actuarial evidence the court receives in any given case will be neither authoritative nor standardised. This will greatly increase the scope for fundamentally like cases not to be treated alike. Further, the true accuracy of actuarial data is ultimately dependent on the accuracy of the assumptions on which it has been based (see the observations of Lord Hope in *Wells* (at 389)). The assumptions built into the actuarial approach may give the illusion of a more accurate approximation of *restitutio in integrum* without actually achieving it

64 Even using present value tables to discount for accelerated receipt – even though it ought to be pure arithmetic – raises significant difficulties of principle. The discount for accelerated receipt itself comprises two factors. The first is the rate of investment return which a plaintiff can be expected reasonably and sustainably to achieve on his lump sum award over the compensation period. The second is the rate of inflation. If we are now to unbundle discounts and discount for accelerated receipt separately from the vicissitudes of life, then both components of the discount for accelerated receipt itself ought also to be unbundled and discounted for separately. To apply Mr Wee's approach with full rigour, therefore a court of first instance will have to select in each case both a projected rate of investment return and a projected rate of inflation in order to derive a composite discount rate for the accelerated receipt calculations.

65 How is a court to determine the investment rate of return to apply? How is a court to determine the inflation rate to apply? Should it assume that today's circumstances will continue into the future? There is no intrinsic reason to expect or assume that that will be the case. The longer into the future one has to peer, the less there is to expect the future to be like the present. Just because interest rates are now at an historical low and just because an investment return of 5% cannot be earned today without taking on more risk than a bank deposit does not mean that that will be the case 5, 10 or 15 years from now. So too, just because the inflation rate is above the risk-free or low-risk rate of return today does not mean that that will always be the case into the future. The present, like the past, is not necessarily a guide to the future. The court will have to receive expert evidence from economists on rates of return and inflation rates stretching years or decades into the future. That was done in *Chan Pui-ki*. But it seems to me that evidence of that nature is so speculative that receiving it would not yield a more accurate approximation of *restitutio in integrum* but would serve simply to increase the costs and complexity of assessing damages.

66 On the conventional approach, the rate of investment return is embedded in the discount rate which is in turn embedded in the multiplier. Therefore, the rate of investment return is not a case-specific inquiry: the court does not inquire subjectively into how a particular plaintiff proposes to invest his lump sum award or into how much risk it is reasonable to expect a particular plaintiff to expose his lump sum award to. If Mr Wee's approach were to be adopted, it would lead in every case to a case-specific inquiry with each plaintiff leading evidence as to whether he was or was not a conservative or an aggressive investor pre-injury and how that has changed post-injury. Again, it seems to me that that will increase costs and delay without increasing accuracy.

*Policy*

67 Finally, the approach to be adopted in determining awards for LFE is an issue laden with policy. Given all of the uncertainties inherent in forecasting both a plaintiff's actual future with his injuries and his hypothetical future without his injuries, there is no approach which a court can devise which will yield a lump sum which achieves precise *restitutio in integrum* – not a penny more and not a penny less – for a plaintiff's lost future earnings. Whatever method the court adopts, the lump sum can only at best be an *approximation* of *restitutio in integrum*. As a result, inherent in the lump sum approach is the virtual certainty of either overcompensating the plaintiff or of undercompensating the plaintiff. Both are equally undesirable. A legal system's choice of approach in deriving this lump sum, therefore, involves a fundamental policy decision as to how to allocate the risk of inaccurate compensation as between tort plaintiffs as a class and tort defendants as a class. This risk allocation is particularly important because tort defendants are often engaged in activity which carries economic and social utility. Examples including driving a car and erecting buildings.

68 In the conventional approach, that risk allocation is latent in the discounts embedded in the multiplier. Unbundling all of these discounts will require a court of first instance to isolate and grapple directly with these issues of policy. It is not apparent to me that that is something that courts of first instance can or should do.

69 For example, there are clear policy issues in the selection of the investment-rate component of the discount rate. It is natural for a catastrophically-injured plaintiff, who has only his lump sum award to sustain him financially for the rest of his natural life, to tend to be risk-averse. As risk and return are directly related, the investment rate chosen depends at least in part on a policy judgment as to how much risk an injured plaintiff should reasonably be expected to adopt. Setting the projected rate of return high decreases the award, increases the risk of undercompensation and forces tort plaintiffs to take additional risk in investing their awards in order for the awards to achieve *restitutio in integrum*. Setting the projected rate of return low increases the award, increases the risk of

overcompensation and imposes higher costs on tort defendants as a class. In the conventional approach, the common law's assessment of a reasonable rate of return – embedded in the multiplier – is part of the balance struck between the interests of plaintiffs and defendants. Whether to unpack and alter that embedded assessment of reasonable risk, and where to set that level of risk, is a very difficult question of policy.

70 There are also clear policy issues in the court's approach to the inflation component of the discount for accelerated receipt. Whereas the anticipated investment return will add to the lump sum over time, inflation will erode it. A composite discount for accelerated receipt therefore embodies a *premium* to counteract the erosion of inflation and a *discount* to account for the compounded investment return. So long as the economic circumstances are such that the reasonable investment return rises and falls together with inflation, the rises and falls in the rate of investment return will offset the rises and falls in the inflation rate. But when economic circumstances change such that rates of return and rates of inflation move independently of each other, and move even in opposite directions, unbundling the two rates could mandate the application of a *negative* discount rate. The effect of that will be to account for accelerated receipt by *increasing* a lump sum award. It seems that this is the position – at least where a legislated discount rate does not apply – in Great Britain and its dependencies. In *Dylan Simon v Manuel Paul Helmot* [2012] UKPC 5 ("*Simon v Helmot*"), the Privy Council upheld the decision of the Court of Appeal of Guernsey apply a *negative* discount rate of -1.5% in assessing LFE. Mr Wee's submissions, too, contemplate a negative discount rate (see [57(f)] above). The conventional approach does not countenance a negative discount rate. Whether it should is yet another difficult question of policy.

71 It is significant that even in England, which now adopts the actuarial approach, the discount for accelerated receipt has not been unbundled into its components. The discount for accelerated receipt has been fixed at 2.5% per annum since 2001 by legislation (see [53] above). *Simon v Helmot* arose in the British dependency of Guernsey where this statutory discount rate does not apply. By applying a negative discount rate of -1.5%, the Privy Council accepted in that case that the legislated default discount rate of 2.5% does not in 2012 represent a real achievable rate of return in the UK. Yet in England and Wales, the legislated default discount rate has remained unchanged for over a decade. That is because this rate has been fixed as a matter of policy to achieve justice as between plaintiffs as a group and defendants as a group: see *Simon v Helmot* at [20].

72 Finally, it is clear that the overall effect of choosing Mr Wee's approach is to effect an across the board increase in the level of awards for LFE. That too raises difficult questions of policy. In my view, that is to be effected by the Court of Appeal or the legislature, not by the High Court. I also do not read *Hafizul* as permitting me to achieve that same across the board increase by applying the conventional approach but adopting a multiplier which is substantially different from those used in comparable cases. This was Mr Wee's alternate argument. Effecting an across the board change in the level of damages awarded for LFE is not something that a court of first instance can or should do, whether by the front door or by the back door. If there is to be a substantial revision of multipliers upwards, that too is something for the Court of Appeal or the legislature and not for the High Court.

*Changing approach requires appellate or legislative sanction*

73 Mr Wee's suggested approach does not in itself offer any guidance as to how the discount for accelerated receipt or its components are to be determined. It does not in itself offer any guidance on whether it is or is not legitimate as a matter of policy to permit a negative discount rate. It does not, in itself, offer any guidance as to how the vicissitudes of life are to be quantified for the final discount. It is not an approach I can adopt without appellate or legislative sanction.

74 It is significant that the change from the conventional approach to the actuarial approach in England – including the use of actuarial data to assess the vicissitudes of life – occurred only after its highest appellate court intervened in *Wells* to mandate that change for all courts of first instance and with supporting legislation. The House of Lords was able to effect its change in *Wells* only because of developments in the supporting infrastructure such as the creation of an inflation-proof investment product, the availability of actuarial data in the standardised and authoritative form of the Ogden Tables and the introduction of legislation to render the Ogden Tables directly admissible in evidence in the absence of an actuary as an expert witness. The conditions in Singapore are quite different on each count.

75 Singapore does not have inflation-proof investment products. It does not have authoritative and standardised actuarial tables compiled based on local mortality and working-life data. It does not have the legislation to make those tables admissible in evidence. Singapore lacks the infrastructure to evolve away from the conventional approach as England has done. Some might also say that the process of assessing LFE is so conjectural that the evolution in English law increases cost, complexity and apparent accuracy but not actual accuracy.

76 The decision of the Hong Kong Court of Appeal in *Chan Pui-ki* is also significant. In that case, a trial judge in Hong Kong received expert evidence from two economists. On that basis, the trial judge decided: (a) that there should be an increase in the level of damages for personal injuries in Hong Kong to match the level of awards in England (at 407A); (b) abandoned the conventional assumption of a real rate of return of 4% (at 411J); (c) adopted a multiplier of 30; and (d) used unpublished, bespoke actuarial evidence to discount separately for the vicissitudes of life (at 412A). The Hong Kong Court of Appeal roundly castigated the trial judge saying at 412D: "This is hardly a satisfactory new foundation for personal injuries litigation in Hong Kong."

77 Even if I had wanted to adopt Mr Wee's submission, I had no *admissible* expert evidence before me in order to make the necessary findings of fact on the various discounts. That is quite unlike the position of the trial judge in *Chan Pui-ki*.

78 I therefore adopt the conventional approach.

***The AR's award for LFE ought not to be varied***

79 The AR chose a multiplier of 13 years. The plaintiff had 23 remaining years of working life being the difference between his age at the time of the accident (39) and the retirement age (62). Like the AR, I found no basis to select the higher alternative retirement age of 65. Although where future loss is variable, there is no linear relationship between the discount for the number of years and the discount for the LFE, it is a useful *qualitative* exercise to calculate the discount on the number of years to compare multipliers from previously-decided cases. A multiplier of 13 in this case represents a 43.48% composite discount off the plaintiff's remaining working life of 23 years.

80 I then considered multipliers in a few recent cases. I framed the discount in percentage terms to compare those multipliers qualitatively with the multiplier of 13 chosen for the plaintiff:

(a) In *Hafizul*, a multiplier of 17 years was used when there were 38 remaining years of working life. This amounted to a composite discount of 55.27%.

(b) In *Lee Teck Nam*, a multiplier of 6 years was applied when there were 8 remaining working years. This amounted to a composite discount of 25%.

(c) In *Teo Ai Ling (by her next friend Chua Wee Bee) v Koh Chai Kwang* [2010] 2 SLR 1037, a multiplier of 20 years was used when there were 45 remaining years of working life. This amounted to a composite discount of 55.56%.

(d) In *Lee Wei Kong* (*by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85, a multiplier of 20 years was applied when there were 40 remaining years of working life. This amounted to a composite discount of 50%.

(e) In [2012] SGHC 33 ("*Toh Wai Sie*"), a multiplier of 11 years was used when there were 16 remaining years of working life. This amounted to a discount of 31.25%.

81 As Tay Yong Kwang J reiterated (at [37] of *Toh Wai Sie*) the size of the discount for vicissitudes of life is inversely related to the number of remaining years of working life, because the time horizon for uncertainties to occur is shorter when the number of working years is reduced (*ie*, when the claimant is older at the time of the injury). Similarly, the discount for accelerated receipt is also smaller when the remaining working years is lower as the plaintiff has fewer years during which to earn an investment return. So it is not surprising that plaintiffs with a smaller number of remaining working years have their multipliers discounted much less in relative terms than those with a large number of remaining working years.

82 Bearing all this in mind, I consider a multiplier of 13 entirely appropriate on the facts of this case. I also consider Mr Wee's suggested multiplier of 21 wholly inconsistent with previously-decided cases. Adopting a multiplier of 21 in this case would not be an incremental revision in multipliers permitted and indeed encouraged in *Hafizul*. Adopting a multiplier of 21 would be a wholesale revision across the board of the level of LFE awards for all comparable cases. As I have said, that is not for me to do.

83 This method of approaching the issue appears to me to be the true practical result of the Court of Appeal's recommended approach at [54] of *Hafizul*. I have applied the conventional approach and derived a figure for LFE. Mr Wee has presented me with a computation adopting the present value approach with an added discount for the vicissitudes of life. Even allowing for the differing multiplicands, that computation is so much higher than the figure derived by the conventional approach as to be irreconcilable. I am constrained by precedent to reject Mr Wee's figure and to adopt the figure yielded by the conventional approach.

***The multiplicand***

84 As mentioned above, the AR divided the multiplier of 13 years into three segments of 2, 8 and 3 years respectively. Against this, Mr Wee submitted that the multiplier should be divided into equal periods of 4 years each. He asserted that the plaintiff would have become an AM within four years, a manager within 16 years and a senior manager within 24 years, and enjoy a 4% increment in salary year-on-year.

85 I agreed with the AR's findings on the plaintiff's promotional prospects for the reasons given by him. Although the plaintiff's witness, Mr Chia Kay Chye ("Chia") who is a senior manager at DHL, stated in his affidavit that the average time frame for promotion from AM to Manager was 3 to 5 years, he further stated that this would depend on the plaintiff's performance as an AM. In these circumstances, the timeframe of 10 multiplier units for the plaintiff to be promoted from AM to manager appeared reasonable to me.

86 I also agree entirely with the AR's reasons for finding that the plaintiff would be able to earn

$600 a month from the 6th multiplier unit onwards and for adopting 62 as the plaintiff's retirement age. I cannot usefully add anything to his analysis.

87 In the result, I found no reason to disturb the AR's award of $880,262.93 in respect of the plaintiff's LFE.

**Future medical expenses**

88 The plaintiff did not appeal against the AR's use of the conventional approach in assessing the award for future medical expenses. Nor did he appeal against the multiplicand which the AR selected based on the evidence of the plaintiff's doctors. His complaint was with the AR's choice of a 15 year multiplier. [note: 50]

89 It was accepted that the plaintiff had 30 years remaining in his post-injury life span. These 30 years had to be discounted to reflect the contingency of the plaintiff not living out his full expectation of life, and the benefit of accelerated receipt of a lump sum (similar to the discounts applied to the multiplier in the award for LFE). The plaintiff argued for a discounted multiplier of 17 years. [note: 51] He cited *Tan Juay Mui (by his next friend Chew Chwee Kim) v Sher Kuan Hock and another (Liberty Insurance Pte Ltd, codefendant; Liberty Insurance Pte Ltd and another, third parties)* [2012] 3 SLR 496 (multiplier of 17 when there were 32 remaining years of life), *Chin Swey Min a patient suing by his wife and next friend Lim Siew Lee v Nor Nizar Bin Mohamed* [2004] SGHC 27 (multiplier of 16 when the plaintiff was 38 years old—life expectancy was not discussed), and *Ang Leng Hock v Leo Ee An* [2003] SGHC 240 before an AR in chambers (multiplier of 20 when there were 33 remaining years of life). However I note that on appeal, the Judge reduced the multiplier to 15 as she found that the award of 20 as a multiplier "was on the high side" (see *Ang Leng Hock v Leo Ee Ah* [2004] 2 SLR(R) 361 at [59]).

90 The defendant argued for a multiplier of 15 years, citing *TV Media Pte Ltd v De Cruz Andrea Heidi and another appeal* [2004] 3 SLR(R) 543 where a multiplier of 17 was applied for a 27 year old plaintiff with 51 remaining years of life. The Court of Appeal in that case based its decision on a number of High Court cases in which multipliers of 15 to 18 years were applied for plaintiffs between 18 to 29 years of age (at [183]). These cases are *Lim Yee Ming v Ubin Lagoon Resort Pte Ltd and Others (Adventure Training Systems Pty Ltd, Third Party)* [2003] SGHC 134 (multiplier of 15 years for a 26 year old plaintiff); *Ng Song Leng v Soh Kim Seng Engineering & Trading Pte Ltd and Another* [1997] SGHC 289 (multiplier of 17 years for a 29 year old plaintiff; *Teo Seng Kiat v Goh Hwa Teck* [2003] 1 SLR(R) 333 (multiplier of 18 years for a 28 year old plaintiff) and *Chen Qingrui suing by her father and next friend Tan Kok Kiong v Phua Geok Leng* [2001] SGHC 64 (AR applied a 18 year multiplier for an 18 year old plaintiff).

91 Based on these authorities, I agree with the AR that a multiplier of 15 years is reasonable. I agree also with the AR's reasons for arriving at the total award for future medical expenses of $486,000.

**Conclusion**

92 For the foregoing reasons, I hold that an award of $880,262.93 in respect of the plaintiff's LFE and an award of $486,000 in respect of future medical expenses are appropriate.

93 I therefore dismissed the plaintiff's appeal.

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[note: 1] See paragraph 4 of the plaintiff's affidavit of evidence in chief filed on 29 August 2011 ("PAEIC").

[note: 2] See paragraph 10 PAEIC.

[note: 3] See paragraph 7 PAEIC.

[note: 4] See para 9 PAEIC.

[note: 5] See PBAEIC Vol 1 at pp 62-64

[note: 6] See the Assistant Registrar's Grounds of Decision ("GD") at [55]

[note: 7] See Plaintiff's Submissions dated 13 April 2012 at para 11.

[note: 8] See Plaintiff's Submissions dated 13 April 2012 at para 6(b).

[note: 9] See Plaintiff's Submissions dated 13 April 2012 at para 6(a) and 7.

[note: 10] See Plaintiff's Submissions dated 13 April 2012 at para 35 to 36.

[note: 11] See Plaintiff's Submissions dated 13 April 2012 at para 5.

[note: 12] Statement of Claim, para 6.

[note: 13] See PAEIC para 2.

[note: 14] See Plaintiff's Bundle of Affidavits of Evidence-in-Chief ("PBAEIC") Vol 1 at p 20, para 54

[note: 15] See Plaintiff's Submissions dated 13 April 2012 at para 18(c) and 20.

[note: 16] See Plaintiff's Submissions dated 13 April 2012 at para 24.

[note: 17] See Plaintiff's Submissions dated 13 April 2012 at para 50(a).

[note: 18] See Plaintiff's Submissions dated 13 April 2012 at para 50(b).

[note: 19] See Plaintiff's Submissions dated 13 April 2012 at para 24-25.

[note: 20] See Plaintiff's Submissions dated 13 April 2012 at para 62.

[note: 21] See Plaintiff's Submissions dated 13 April 2012 at para 56; Plaintiff's Submissions dated 26 July 2012 at para 65.

[note: 22] See Plaintiff's Submissions dated 13 April 2012 at para 56 and 61.

[note: 23] See Plaintiff's Submissions dated 13 April 2012 at para 56 and 61.

[note: 24] See Plaintiff's Submissions dated 13 April 2012 at para 58.

[note: 25] See GD at [17].

[note: 26] See GD at [23].

[note: 27] See GD at [23].

[note: 28] See GD at [24].

[note: 29] See GD at [19].

[note: 30] See GD at [25].

[note: 31] See GD at [28].

[note: 32] See GD at [27].

[note: 33] See GD at [29]

[note: 34] See GD at [46].

[note: 35] See Plaintiff's Submissions filed 26 July 2012 at para 53.

[note: 36] See Plaintiff's Submissions filed 26 July 2012 at para 6.

[note: 37] See Plaintiff's Submissions dated 26 July 2012 at para 64.

[note: 38] See GD at [36].

[note: 39] See Plaintiff's Submissions filed 26 July 2012 at para 68.

[note: 40] See Plaintiff's Submissions dated 13 April 2012 at para 5

[note: 41] See GD at [24].

[note: 42] See Plaintiff's Submissions dated 26 July 2012 at para 1.

[note: 43] See Plaintiff's Submissions dated 26 July 2012 at para 49.

[note: 44] See PBAEIC Vol 3 at p 706A

[note: 45] See Plaintiff's Submissions dated 26 July 2012 at para 53.

[note: 46] See Plaintiff's Bundle of Authorities at p 36, Table A

[note: 47] See Plaintiff's Appeal Submissions at paras 52-53

[note: 48] See Plaintiff's Submissions dated 13 April 2012 at para 38 to 43.

[note: 49] See Plaintiff's Appeal Submissions at paras 3-6

[note: 50] See Plaintiff's Appeal Submissions at paras 65-66

[note: 51] See Plaintiff's Appeal Submissions at para 68