

Mei Yue Lan Margaret v Raffles City (Pte) Ltd
[2005] SGHC 168

Case Number : Suit 1491/2002, RA 117/2005, 119/2005
Decision Date : 14 September 2005
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Vincent John (Andrew Yap and Company) for the plaintiff; P E Ashokan (KhattarWong) for the defendant
Parties : Mei Yue Lan Margaret — Raffles City (Pte) Ltd

Damages – Assessment – Injury to leg not life-threatening and no amputation – Whether award for pain, suffering and loss of amenities exceeding that awarded to amputees justified

Damages – Assessment – Whether potential increase in Goods and Services Tax and upward trend in medical costs valid considerations in assessing award for future medical expenses

Damages – Assessment – Whether subsequent termination of claimant's employment valid consideration in assessing damages for pre-trial loss of earnings and loss of future earnings and earning capacity

14 September 2005

Judgment reserved.

Woo Bih Li J:

1 The plaintiff is Mei Yue Lan Margaret ("Margaret"). She was working as an accounts clerk with Astra Oil Company Pte Ltd ("Astra") in February 1999. Astra's office was located at the 14th floor of Raffles City Tower. On 23 February 1999, Margaret was using the ladies' toilet on the 14th floor. As she left, she pulled open the door and a metal sheet attached to the bottom of the door fell onto her right leg, cutting her leg sharply. Unfortunately, the consequences of that accident have been very painful and serious as I shall elaborate on later.

2 On 3 April 2001, Margaret commenced the present action against the defendant, Raffles City (Private) Limited ("Raffles City"), in the Subordinate Courts. On 1 November 2002, she obtained an order to transfer the action to the High Court. On 11 April 2003, interlocutory judgment was entered by consent against Raffles City, for, *inter alia*, 99% of her damages to be assessed. The assessment was conducted in January 2005 by an assistant registrar who gave her decision in May 2005.

3 The award of the assistant registrar was as follows:

(a) General damages

(i)	Pain, suffering and loss of amenities	\$100,000.00
(ii)	Loss of earning capacity	\$ 20,000.00
(iii)	Loss of future earnings	NIL
(iv)	Loss of marriage prospects	NIL
(v)	Future medical expenses	\$ 91,605.00

(vi)	Future transport expenses	NIL
	Subtotal	\$211,605.00
(b)	<u>Special damages</u>	
(i)	Pre-trial medical expenses	\$ 69,904.06
(ii)	Pre-trial transport expenses	\$ 7,821.00
(iii)	Pre-trial loss of earnings	\$ 30,870.64
(iv)	Renovation of toilet	NIL
(v)	Miscellaneous expenses	\$ 61.30
	Subtotal	\$108,657.00
	Grand total	<u>\$320,262.00</u>

The assistant registrar also ordered Raffles City to pay interest and costs which I need not elaborate on.

4 Each side appealed against certain items awarded by the assistant registrar and I will now deal with each item which was the subject of an appeal or appeals.

Pain, suffering and loss of amenities

5 The assistant registrar awarded \$100,000 for pain, suffering and loss of amenities. Each side appealed against this item. Raffles City submitted that \$100,000 was too high as a person with an amputated leg receives less than \$100,000 and Margaret was no worse than such a case.

6 Raffles City also referred to four cases which were mentioned by the Court of Appeal in the well-known case involving the actress Andrea Heidi de Cruz (*TV Media Pte Ltd v De Cruz Andrea Heidi* [2004] 3 SLR 543 ("*Andrea de Cruz's case*")). Raffles City submitted that:

(a) In *Toon Chee Meng Eddie v Yeap Chin Hon* [1993] 2 SLR 536, a road accident left a seven-year-old boy with irreparable brain damage, paralysis on the right side and only a slim chance of being able to speak again. He was awarded \$160,000 in general damages.

(b) In *Gunapathy Muniandy v Khoo James* [2001] SGHC 165, the plaintiff was awarded \$100,000 in general damages for a condition that was much more severe than Margaret's condition. The plaintiff in *Gunapathy* suffered such serious brain damage that, among other things, she walks with a grotesque gait, uses a wheelchair which she cannot push with her own hands and speaks by uttering as though she was born with a birth defect like cerebral palsy. She is crippled by severe dysphasia and right-sided severe hemiparesis and needs to be permanently cared for because her deficits are permanent. She is also emotionally insecure in the extreme.

(c) In *Lim Yee Ming v Ubin Lagoon Resort Pte Ltd* [2003] SGHC 134, the 26-year-old plaintiff, although mentally active and alert after the accident, suffered paralysis to her lower limbs, loss of sexual function, bladder and bowel dysfunction. She was awarded \$130,000 in

damages for pain and suffering.

(d) The court in *Chen Qingrui v Phua Geok Leng* [2001] SGHC 64 awarded the plaintiff \$206,000 in general damages for injuries that left her blind, bound to a wheelchair and unable to speak.

7 Thus, Raffles City suggested an initial sum of \$30,000 and then \$40,000 or \$50,000 for pain, suffering and loss of amenities. On the other hand, Margaret sought an award of at least \$145,000 comprising \$100,000 for the physical injury and pain, \$40,000 for chronic post traumatic stress disorder and \$5,000 for osteoporosis.

8 The cases on amputation cited by Raffles City were old cases where the accident was in 1991 or earlier. Furthermore, while the other four cases it referred to in [6] above suggested that the assistant registrar's award of \$100,000 was excessive, it is important to try and understand what Margaret had to go through as a consequence of her injury. I refer to the following evidence, which was largely undisputed, and mostly taken from Margaret's Affidavit of Evidence-in-Chief.

9 After the metal sheet fell on her right foot, Margaret saw blood spurting out of her foot. She called for help. She was carried to the pantry at her office. Blood continued to flow from her foot continuously. Someone called the company doctor who arrived, bandaged her wound and said she needed immediate treatment in a hospital. Accompanied by one of her colleagues, she went to Singapore General Hospital ("SGH") where she underwent emergency surgery on the same day.

10 Margaret described her physical injury as a deep and traumatic laceration to her right ankle with the following details:

- (a) cut tibialis anterior tendon;
- (b) cut extensor hallucis longus tendon;
- (c) cut extensor digitorum tendons;
- (d) cut Dorsalis pedis artery;
- (e) cut deep peroneal nerve;
- (f) 7cm long V-shaped distally based flap (deep) laceration over the dorsum of the right ankle;
- (g) incision scars with keloid formation;
- (h) discolouration (blue and black) of the skin at the injured site; and
- (i) permanent disability.

11 Below is a table of the medical procedures she underwent:

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S/n	Medical institution	Dates admitted/ Discharged	Surgeries, clinical procedures and treatments
1.	Singapore General Hospital	23/02/1999 to 10/03/1999	First surgery involving repair of the lacerated tendon, artery and nerve
2.	Singapore General Hospital	18/03/99 to 27/03/1999	Treatment of the infected oozing wound at injured site
3.	Gleneagles Hospital	28/09/1999 to 12/10/1999	Further surgery – repair of re-ruptured tibialis anterior, etc
4.	Singapore General Hospital	22/01/2000	Performed an ankle block
5.	Anaesthesia & Analgesia Pain Management Centre	26/04/2000	Performed a right lumbar sympathetic with absolute alcohol
6.	Anaesthesia & Analgesia Pain Management Centre	12/05/2000	Performed local anaesthetic and steroid injection on neuroma
7.	Anaesthesia & Analgesia Pain Management Centre	20/05/2000	Trial of TENS (Transcutaneous Electric Nerve Stimulation)

8.	Gleneagles Hospital	18/08/2000	Further surgery – exploration and excision of traumatic neuroma from the scar
9.	Anaesthesia & Analgesia Pain Management Centre	24/11/2001	Trial Spinal Cord Stimulator implanted into body
10.	Anaesthesia & Analgesia Pain Management Centre	18/12/2001	Permanent Spinal Cord Stimulator implanted into body

12 Margaret elaborated that after her first painful surgery at SGH, she received inpatient treatment at SGH from 23 February 1999 to 10 March 1999.

13 She suffered daily with persistent and excruciating pain at her injured foot during her stay in SGH and she was crying everyday. She was given morphine to help her cope with the pain. After her discharge, she spent most of her time in her room. She suffered persistent and excruciating pain daily at the injured foot even when she did not move. When she moved, the pain intensified. The painkillers prescribed by SGH were not effective in reducing the pain at all. She was so afraid to move that she did everything in her room.

14 She was advised by Dr Wong Meng Koon of SGH to go to a clinic near her residence to clean the wound on a daily basis. She went to the Family Clinic, the Medical Health Clinic Pte Ltd and Ghim Mo Clinic & Surgery to clean the wound. She used crutches to slowly move short distances and often stopped to rest. She was in great pain whenever she moved. She suffered severe pain at the injured foot during the cleaning procedure.

15 However, even after proper cleaning of the wound on a daily basis, it became infected and was oozing yellow serum. Upon noting the same, Dr Patrick Kee who cleaned her wound at Ghim Moh Clinic & Surgery, immediately wrote a note to Dr Wong of SGH informing him of the same. When she saw Dr Wong again at SGH on 18 March 1999 for a medical review, she was immediately re-admitted for treatment of the infected wound. She was not discharged on the same day, as Dr Wong wanted the wound to heal before she was discharged. She received inpatient treatment and was ordered not to leave her bed. She was in great pain and cried everyday. She was discharged on 27 March 1999.

16 On 5 April 1999, she returned to SGH for a medical review by Dr Wong. She told Dr Wong that she still suffered persistent and excruciating pain at the injured foot and was unable to sleep due to the pain and the recurrent nightmares of the accident. Thereafter, she went for light therapeutic exercises and ultrasonic and heat therapy sessions about five times a week until September 1999. During those sessions, she continued to suffer persistent and excruciating pain daily at the injured foot.

17 There was no improvement in her physical condition as she was still only able to move short distances and very slowly with crutches. To make matters worse, she began putting on weight. She still had difficulties in falling asleep and had recurring nightmares of the accident. Consequently, she became anxious and temperamental.

18 On 15 September 1999, she saw Dr Chang Wei Chun, an orthopaedic and trauma surgeon of Orthopaedic & Traumatic Surgery at Gleneagles Medical Centre on the recommendation of a friend. Dr Chang did a clinical examination of her injured foot and told her that she had foot drop due to re-rupture of a major tendon. She was advised to undergo a further reparative surgery.

19 On 16 September 1999, she saw Dr Wong again at SGH for a medical review. She told him about Dr Chang's diagnosis. She told him that she had decided to undergo the reparative surgery as advised by Dr Chang but she still suffered persistent and excruciating pain. Dr Wong then fixed an appointment for her to see Dr Gregory J Meredith of the Pain Management Service of SGH on 3 December 1999.

20 On 28 September 1999, Margaret was admitted to Gleneagles Hospital for the reparative surgery. Immediately after surgery, she suffered severe pain even though her foot was immobilised in a backslab. She also had frequent and vivid flashbacks of the accident, which continued to severely disrupt her sleep. She was also very depressed and cried a lot. She was physically tired and felt helpless against the ongoing pain and the nightmares. At the recommendation of Dr Chang, a psychiatrist named Dr Terence Burke visited her at the ward.

21 She continued to receive inpatient treatment until her discharge from Gleneagles Hospital on 12 October 1999. However, her condition did not improve as she continued to suffer persistent pain at the injured foot. She was still using crutches.

22 She went for regular checkups at a clinic near her residence. After the wound had healed, a fibreglass cast was supplied at her injured foot to protect the tendon. She suffered further pain during that procedure. After about six weeks, the cast was removed and she went for light physiotherapy as advised by Dr Chang. She continued to consume painkillers and put on substantial weight. Her weight increased to 59kg, from about 50kg prior to the accident.

23 On 3 December 1999, she saw Dr Gregory J Meredith again. He proposed certain treatments to her but she requested him to write his proposed treatments to Dr Chang as she wanted to consult Dr Chang before agreeing to any treatment.

24 On 17 December 1999, she saw Dr Meredith with a note from Dr Chang stating that he would like her to proceed with the treatment proposed by Dr Meredith for pain management. Consequently, on 22 January 2000, she was admitted to SGH. Dr Meredith performed an ankle block. He injected local anaesthetic at the injured site. When he injected the most painful area of the injured foot, she lost control and started struggling and crying as the additional pain on top of the current pain were too much for her to bear.

25 As the ankle block provided only temporary relief, her excruciating pain returned. She saw Dr Meredith again on 25 February 2000 and 24 March 2000. She told him that her condition was still the same and the pain was unbearable even after the ankle block and after taking the different and stronger painkillers prescribed by him. She further told him that she felt dizzy and nauseous when she took some of the prescribed painkillers.

26 On 13 April 2000, she saw Dr Chang again for a medical review, that is, about seven months

after her surgery at Gleneagles Hospital. She informed him that the pain was still persistent and unbearable, that she was still having frequent nightmares of the accident and bloody scenes and was unable to sleep well at all. She told him that she was only able to walk for short distances with the help of crutches. Dr Chang then told her that he believed she had developed a condition known as Reflex Sympathetic Dystrophy ("RSD") as a result of her nerve injury. Dr Chang described RSD and Margaret's condition as follows:

"Reflex sympathetic dystrophy" (RSD) is a term applied to a variety of seemingly unrelated disorders having strikingly similar clinical features and manifesting the same fundamental disturbed physiology. The term "reflex" indicates a response to a primary exciting stimulus that is traumatic, medical, infectious, or vascular; the term "sympathetic" indicates the neurologic pathway subserving the development and maintenance of these syndromes; and the term "dystrophy" indicates that, if untreated, these symptoms uniformly result in trophic changes as a result of the persistent sympathetic stimulation. RSD has 3 phases, and the presenting signs and symptoms will vary somewhat depending on the phase at the time the patient is first seen.

The first stage is the acute or hyperemic phase characterized by constant pain, usually of burning quality, aggravated by movement and associated with hyperpathia (delayed overreaction and aftersensation to a stimulus, particularly a repetitive one) and allodynia (pain elicited by a normally non-noxious stimulus, particularly if repetitive or prolonged). Hyperesthesia (increased sensitivity) and hypesthesia (decreased sensitivity) may also be present. At this phase the skin is warm red and dry. Towards the end of the phase the skin is smooth and taut with decrease or loss of normal wrinkles and creases. This may last a few weeks or as long as six months.

The first stage if untreated can progress to the second stage i.e. dystrophic phase. This is characterized by spreading of edema (swelling), increasing stiffness of the joints and muscular wasting. Pain is the major symptoms usually of spontaneous and burning in nature. Hyperpathia and allodynia are usually more obvious. The skin is moist, cyanotic (blue) and cold, hair is coarse and nails show ridges and are brittle. Signs of atrophy are more prominent. Xrays usually show osteoporosis.

The third stage i.e the atrophic stage is characterized by irreversible trophic changes. Pain is less prominent. Skin becomes smooth, glossy and tight, its temperature is lowered and it appears pale or cyanotic in colour. Hair has usually fallen out. Osteoporosis is more advanced.

[Margaret] is in the early second stage of RSD.

The localized pain and tenderness of the foot can also be to some extent due to the formation of a neuroma caught in the scar. She has been treated by Dr Greg Meredith (from the Singapore General Hospital) for this by local injection. This had only helped transiently.

She has also been referred to Dr Boey Wah Keong an anaesthetologist and pain specialist for treatment of the RSD and the possibility of a neuroma in the wound. She has undergone chemical lumbar sympathectomy by injection. Results are being monitored. She may require exploration of the wound for the "neuroma".

27 As indicated above, Dr Chang had referred Margaret to Dr Boey Wah Keong, a pain management consultant at Anaesthesia & Analgesia Pain Management Centre. On 20 April 2000, Dr Boey examined her. She informed Dr Boey of the persistent and unbearable pain and of the different treatments by Dr Wong, Dr Chang and Dr Meredith. She further informed him that she was unable to have any proper rest or sleep as she was having recurrent nightmares of the accident and

that she was seeing a psychiatrist, namely, Dr Burke.

28 Dr Boey confirmed that Margaret had developed RSD. He added that she also had a neuroma over the scar at the injured site. He assured her that he could do something to help her manage the pain but not cure it.

29 Margaret was devastated and cried for days thereafter. With help from her psychiatrist, she tried to stay in control of herself. She took consolation of the fact that Dr Boey had promised to help her manage the pain. Thereafter, she underwent six clinical procedures.

30 On 26 April 2000, Dr Boey performed a sympathetic block of the injured foot with alcohol to reduce the sympathetic nerve supply to the right leg. Margaret said she suffered severe pain during the procedure and was crying continuously while holding on to Ms Grace, Dr Boey's assistant.

31 On 12 May 2000, a further local anaesthetic and steroid injection was performed on the neuroma. This procedure was similar to the one done by Dr Meredith. Margaret was struggling and crying throughout the entire procedure and had to be held down by Ms Grace.

32 On 20 May 2000, a trial of TENS (Transcutaneous Electric Nerve Stimulation) was carried out and Neurontin was added to her list of oral medication. This was the least painful of all the procedures. However, there was still no improvement in her pain condition.

33 On 18 August 2000, Margaret underwent a painful surgery performed by Dr Chang to explore and excise the neuroma. Dr Boey administered the general anaesthetic. The surgery confirmed that she had neuroma with adjacent hyperstrophic scar tissue. Dr Chang explained that neuroma was a tumour of the nerve tissues. She continued to suffer extreme pain at the injured foot and was still unable to walk without crutches. There was however some improvement in her sleeping pattern in that prior to that surgery, she only slept about one to two hours daily but after the same, she managed to get four to five hours of sleep on some days.

34 Margaret then saw Dr Boey again. He said that he could not prescribe any other oral painkillers or medication to ease the pain. At that time, she was consuming the maximum dosage of a strong medication known as Neurontin. Dr Boey told her that it would not be good for her to continue taking Neurontin in the long run as it would affect her liver. Dr Boey went on to advise her that she would be able to manage the pain better by the implant of a spinal cord stimulator ("SCS") into her body, which sends electrical impulses to the painful area. He also mentioned that there was an alternative procedure of implanting a device in her body, which would dispense morphine whenever she felt pain. However, he advised against the latter.

35 Dr Boey decided to proceed with the implant of a trial SCS. He explained that it was a two-stage process. Depending on the effects of the trial stimulator, a permanent stimulator would then be implanted in her body. As the prescribed painkillers did not give immediate and effective relief and had side effects, Margaret agreed to the implant of the trial SCS.

36 On 24 November 2001, an SCS was inserted at Gleneagles Hospital. A screening lead had to be inserted into the spinal canal where the spinal cord lay. It was inserted through her skin from the back of her body under local anaesthetic. Dr Boey had to move the screening lead to different parts of the spinal canal to locate the exact spot of stimulation for pain in the injured foot. She had to be awake during the surgery to guide Dr Boey by telling him where she felt the impulses. When she felt the impulses over the injured site, Dr Boey inserted the screening lead. It was a long and painful procedure. She suffered pain while the screening lead was being moved around and when it was

finally inserted into her spinal canal.

37 She was discharged the same day and left with wires sticking out of her body. She was to see Dr Boey again on 30 November 2001. She was given a handheld device that she had to press to stimulate electrical impulses whenever she felt pain at the injured foot.

38 Margaret saw Dr Boey again on 30 November 2001. She told him that the SCS gave her faster relief from the excruciating pain. Dr Boey then removed all the insertions on the same day. Margaret agreed to the insertion of a permanent SCS.

39 On 18 December 2001, a permanent SCS was inserted. The first part of the procedure was similar to the procedure for the insertion of the trial stimulator. During the second part of the procedure, a generator was implanted by surgery through the front part of her body, that is, her belly, under general anaesthetic. There were no wires sticking out of her body after the surgery. However, as compared to the trial procedure, she suffered greater pain during the surgery to insert the permanent SCS. The pain she suffered was so unbearable and indescribable that she wanted to give up half-way into the surgery. She was crying continuously and had to be consoled and convinced not to give up in the midst of the surgery.

40 Dr Boey described the procedure and effect of inserting the SCS briefly as follows:

In brief, spinal cord stimulation involves inserting percutaneously (through the skin as opposed to open surgery) into the epidural space (the space in the spinal canal where the spinal cord lies) a special lead through which electrical impulses can be transmitted. These pulses acting at the spinal cord level closes the 'gate' (according to the gate control theory of pain of Melzack & Wall) so that pain is not felt by the patient. Instead the patient feels a tingling sensation over where previously pain was felt.

41 As a result of the surgery, Margaret had scars on the front and back of her body. In addition, there is a bulge at her tummy due to the implant of the generator which is obvious when she wears fitting clothes.

42 Eventually, her condition improved and she was able to get four to five hours of sleep continuously. Prior to the accident, she slept at least eight to nine hours every day.

43 The amount and dosages of the oral medication Margaret had to consume for the pain were gradually reduced. Eventually, Dr Boey stopped prescribing any oral medication for the pain.

44 For completeness, I would mention that Dr Boey recommended Margaret to Prof Walter Tan of Raffles Hospital for the purpose of seeking advice on cosmetic surgery on the scars on her body and injured foot and pigmentation of the foot. She saw Dr Walter Tan on 5 June 2003. He advised that she should proceed with the cosmetic surgery after doing all further procedures to improve the physical condition of her injured foot. She asked him whether any further procedures could be carried out to improve her condition. He then asked Dr Keith Goh who was in a nearby room to meet her. Dr Keith Goh examined her injured foot.

45 On a later date, Margaret met Prof Walter Tan again. He told her that Dr Keith Goh proposed a number of procedures which may improve her condition.

46 She then met Dr Boey and informed him of the procedures proposed by Dr Keith Goh. Dr Boey advised her of the pros and cons of the proposed procedures and Margaret decided against the same.

47 Margaret said she suffers persistent pain at her injured foot and she walks with a limp and requires a walking stick. She is unable to walk fast, jog, run, jump, climb, squat or do any form of physical exercise. She used to go swimming at least twice a week and cycle almost everyday. She used to play badminton and go jogging weekly and go dancing at least once a week, did aerobics, skipped ropes and carried weights as well as go bowling and go out with friends, including travelling overseas. She claimed that with her injury, she is unable to enjoy all these activities and that she has lost touch with her friends and is embarrassed to meet members of the opposite sex. She also said she suffers from psychological and emotional disorder. Dr Burke and later Dr Paul W Ngui diagnosed her as suffering from Chronic Post Traumatic Stress Disorder ("PTSD") and major depression.

48 In summary, the main medical practitioners Margaret consulted were:

- (a) Dr Wong Meng Koon of SGH;
- (b) Dr Gregory J Meredith of SGH;
- (c) Dr Chang Wei Chun at Gleneagles Medical Centre;
- (d) Dr Terence Burke, a consultant psychiatrist practising at Tanglin Shopping Centre;
- (e) Dr Boey Wah Keong at Gleneagles Annex Block; and
- (f) Dr Paul W Ngui, a consultant psychiatrist at Camden Medical Centre.

49 On the other hand, Raffles City submitted that Margaret's injury was never life-threatening notwithstanding the injury and lack of sleep before the SCS was permanently inserted into her. Also, Margaret was able, eventually, to return to work after she lost her job at Astra before the SCS was inserted into her. She worked part-time for Catering Network Pte Ltd ("Catering Network"). She then worked full-time for it from February 2001 to April 2003 from 9.00am to 10.00pm or 11.00pm each working day. After she lost her job at Catering Network in April 2003 because of SARS, she found another job with JC Capital International Pte Ltd ("JC Capital") from June 2003 to March 2004 working from 9.00am to 9.00pm. She lost her job at JC Capital because she had reported possible unlawful business instructions by one of the directors to the police and eventually JC Capital ceased business. Raffles City also noted that Margaret was able to complete a diploma course in management practice in or about May 2002 which she had commenced in January 1999 just before her right foot was injured.

50 Raffles City had also engaged private investigators who video-recorded Margaret's activities on two days on 18 and 19 December 2003, *ie*, after the SCS had been permanently inserted into her. The video recordings showed that at times Margaret was able to walk at a normal pace without the aid of a walking stick although she was carrying one. Also, at times she was walking up and down steps without the aid of the walking stick although she was holding the hand of a male friend.

51 Margaret's response to the evidence of the video recording was that the pain in her injured foot intensified when she reached her office on 18 December 2003. She increased the power of the SCS and took several breaks that day. The same thing happened on 19 December 2003. She made plans to go and did go to Holland Village on 19 December 2003 to purchase a Christmas gift. Her male colleague Faizal accompanied her there. She held on to his hand for support on several occasions during the shopping trip.

52 As for Margaret's psychiatric condition, Raffles City suggested it was not as bad as she had

alleged. It noted that she did not consult Dr Burke until October 1999 although her accident was on 23 February 1999. She stopped seeing Dr Burke on 14 November 2000 as she herself alleged, although there was supposed to be a receipt suggesting the last consultation to be around 5 November 2001. Dr Burke then left Singapore and Margaret did not consult Dr Ngui until 5 May 2003. Even then she consulted him until 20 April 2004 only.

53 The evidence of Raffles City's expert psychiatrist Lim Yun Chin was that Margaret was suffering from a major depressive disorder but not PTSD which was a more severe condition.

54 I agreed with the assistant registrar that there are no comparable local precedents on awards for pain and suffering and loss of amenities due to RSD. While Margaret'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.

55 The comparison with cases of plaintiffs who suffered other injuries was also not helpful because while there were cases which Raffles City relied on to suggest that an award of \$100,000 was excessive, there were also other cases on the other side of the fence. For example, in *Tan Hun Hoe v Harte Denis Mathew* [2001] 4 SLR 317, the plaintiff was already infertile to some extent before he became totally infertile after an operation. The operation did not cause the infertility. There was a physical contusion when Mr Harte collapsed in a toilet after the operation and his scrotum pressed against the side of the toilet seat. The negligence of the doctor there was in respect of the post-operation care. The trial judge found that the swelling of the scrotum and pain were due to the contusion. He also found that the doctor had exercised less than reasonable care when he failed to see Mr Harte immediately after being informed of the swelling and when he did see Mr Harte later, he should have investigated further by using an ultrasound machine to ascertain the existence of intratesticular haematoma. The haematoma disrupted the blood flow to the testes depriving them of oxygen. This resulted in the tissues in the testes dying, leading to atrophy. The trial judge held that there were two contributing causes of the atrophy: the fall and the post-operation negligence. Liability was apportioned at 40:60 in favour of Mr Harte. He awarded Mr Harte \$50,000 as general damages for pain and suffering, made up as follows:

Large haematoma for four days	\$ 2,000
Complete loss of fertility, bearing in mind that he was sub-fertile before the incident	\$20,000
Partial penile impotence and impaired libido	\$13,000
Atrophy of both testicles	\$10,000
Increased risk of liver cancer from long term testosterone therapy and an awareness of a shortened lifespan	\$ 5,000

56 The Court of Appeal was of the view that the breakdown of the award of the trial judge of \$50,000 included loss of amenities although that expression was not specifically used. After

considering arguments, the Court of Appeal increased the award of general damages for pain and suffering and loss of amenities to \$120,000 as follows:

Atrophy of both testes and complete loss of fertility \$60,000

Partial penile impotence and impaired libido \$45,000

Increased risk of liver cancer on account of testosterone treatment \$10,000

Some several days of suffering on account of the scrotum haematoma \$ 5,000

The Court of Appeal also added that if Mr Harte had, before the accident, been a normal fertile man, then the sum they would have awarded would have been more.

57 Of course the injury in Mr Harte's case and his suffering were not the same as for Margaret. Margaret did not lose the use of her right foot entirely but the pain and suffering she endured until the insertion of the SCS was tremendous. Even with that insertion, she still suffers pain although the pain is much better managed. If she becomes pregnant, there may be more strain and pain on her right foot. Furthermore, her sporty and outdoor activities have been curtailed. She can travel but her travels must be of a less demanding nature physically. She cannot walk many steep steps comfortably or slide on hands and knees along underground tunnels. She also has a psychiatric illness and still does not sleep as many hours as she did before the accident. All things considered, it seems to me that her pain and suffering and loss of amenities outweigh that of Mr Harte.

58 Both Margaret and Raffles City also placed reliance on *Andrea de Cruz's* case ([6] *supra*). I now cite from the judgment of the assistant registrar who dealt quite extensively with the comparison with Ms De Cruz's injury. The assistant registrar said at [11] to [19] of her grounds of decision:

11 Plaintiff also relied on the recent Court of Appeal decision of *TV Media Pte Ltd v De Cruz Andrea Heidi and Anor* [2004] 3 SLR 543. In that case, the court awarded \$130,000 to a liver transplant patient on account for her past and future sufferings. The plaintiff, Andrea, in that case had been hospitalised for 36 days, undergone numerous blood tests, a liver biopsy and liver transplant; and had suffered from lethargy, jaundice, hallucinations and bouts of vomiting. Her future sufferings would include a restriction of her physical activities and food preferences, a nagging fear of liver failure, risks to her and her foetus if she becomes pregnant, an increased risk of renal failure and skin cancer so that she will have to cover up when she goes out under the sun, affecting her social and working life (she is a TV artiste), the fact that hospital visits are a way of life for her and that she must remain on immuno-suppressant medication for the rest of her life and that she is now uninsurable. Plaintiff argued that her sufferings compared with Andrea as she suffers and will suffer from persistent and permanent debilitating pain for the rest of her life, and must be dependent on SCS for life. She was also subject to several failed painful surgeries, treatment and procedures and has to live in constant fear that the SCS may become less effective over time.

12 Plaintiff submitted that an award of \$100,000 for pain and suffering due to RSD and foot

injuries; \$10,000 for osteoporosis and osteoarthritis; and \$40,000 for PTSD and major depressive disorder should be awarded. This amounts to a total of \$160,000 for pain and suffering related to RSD and its complications.

13 In making the award for pain and suffering and loss of amenities as a result of her injuries, I considered the approach taken by the Court of Appeal in *TV Media Pte Ltd v De Cruz Andrea Heidi and Anor* [2004] 3 SLR 543. First, where there are no comparable local precedents, a court assessing damages for pain and suffering should consider the range of factors spanning the Plaintiff's past and future sufferings. Secondly, it should not consider or follow awards given by foreign courts. Lastly, the court can make comparisons to the sufferings of other Plaintiffs where comparable awards have been given, even though their sufferings cannot be quantified or measured "apple to apple".

14 The medical evidence and Plaintiff's own evidence was that Plaintiff's life before the insertion of SCS was characterised by persistent debilitating pain. She saw numerous doctors; had a total of 5 surgeries and 5 non-invasive treatments; and took numerous medications, to relieve her pain. Plaintiff's testimony of her suffering prior to the insertion of SCS was not contested. She gave evidence that all the surgeries were painful, but did not bring her any relief. She was only able to walk for short distances and very slowly with crutches. Her social life came to a stand still. She did not have any social outings for about five years since the accident because she did not want to risk injuring her hypersensitive foot. As a result of the lack of movement, she gained weight. She also suffered from recurring nightmares and could not fall asleep at night for more than 1-2 hours. The lack of sleep and the stress of her situation caused her to suffer from migraines and lethargy; and she became anxious and easily irritable. It is also important to emphasise that the medical evidence of the pain she suffered was that which is on the highest scale, equivalent to pains due to childbirth. The burning sensation was like putting her foot into a pot of oil. The inability to control the pain meant that she felt helpless and suffered from a major depressive disorder and psycho-social problems.

15 With the help of SCS, P's life is far better. ...

16 It would be overly optimistic, however, to conclude that she will not have any problems in future. At the very least, on the balance of probabilities, she will have to rely on SCS for life. I also accept Dr Boey's uncontested evidence that she is likely to develop a tolerance to SCS over time with constant usage. If so, she will have to resort to the only other treatment left, i.e. the insertion of a morphine pump. She will then be exposed to an equally expensive treatment, which has to be refilled every three months and which is more invasive than SCS. She will also not be able to go for MRI scans due to the SCS, exposing her to the dangers of not being able to use such scans for medical investigation purposes. It is also important to bear in mind that Plaintiff is still relatively young (34 at the time of the assessment) and that the likelihood of complications arising in her life time is correspondingly higher.

17 I consider the global award suggested by Plaintiff of \$160,000 too high, as it does not take into full account that Plaintiff's life has improved due to the insertion of the SCS and that she is able to regain some semblance of normalcy because she is able to control the pain. On the other hand, I am of the view that the global sum suggested by Defendant of \$33,000 is too low because it is based on the overly rosy view that Defendant's life is back to normal as a result of the insertion of the SCS. The sum is far too low to compensate Plaintiff adequately for her mental and physical sufferings during the years before the insertion of the SCS as detailed in paragraph 14 and the difficulties she may encounter over time. As the compensation awarded to Plaintiff is one-off, provision must be made for a deterioration of Plaintiff's standard of living since she is

likely to develop a tolerance to SCS.

18 In the premises, I am of the view that a global award of \$100,000 is appropriate compensation for Plaintiff's past and future physical and mental sufferings and loss of amenities due to her injuries, which resulted from the accident. In making the global award, I considered that Plaintiff suffered from pain and suffering due to scarring but not osteoporosis and osteoarthritis, as I agreed with DC's submissions that the latter two conditions have not been proven.

19 Plaintiff's suffering is relatively comparable to Andrea's who was awarded \$130,000 for pain and suffering. Both can hope of a "good quality of life" but will require long-term follow-up treatment and will not be able to get back to the "normal quality of life". The long-term effects on Andrea's life, set out in paragraph 11 is worse than that the suffering Plaintiff will have to endure but Plaintiff's mental and physical trauma for close to three years before the insertion of the SCS is far worse than the pain and suffering that Andrea suffered for any given period. I gave a discount of \$30,000 on the basis that Andrea's future suffering is expected to be worse than the Plaintiff who can rely on the SCS to improve the quality of her life substantially for some time.

59 I should mention that in *Andrea de Cruz's* case, the trial judge had awarded her \$250,000 in general damages for pain and suffering and loss of amenities. The Court of Appeal reduced this to \$150,000, and not \$130,000 as the assistant registrar had thought. The error was apparently caused by an inaccurate figure provided by one of the counsel.

60 Nevertheless, I am of the view that the sum of \$100,000 in the round for Margaret's pain and suffering, both physical and mental, and loss of amenities is fair. It is also not excessive. The sum includes her scarring and some osteoporosis but not osteoarthritis. Indeed, Margaret's counsel did not pursue the latter in the appeal before me. As for osteoporosis, Dr Chang said she had osteoporosis initially but this has improved because of the SCS and she is using her right foot although, when compared to the other foot, it will be below par.

Pre-trial loss of earnings

61 The assistant registrar awarded \$30,870.64 for pre-trial loss of earnings. Margaret had been working for Astra as an accounts clerk before the accident on 23 February 1999. Thereafter, she exhausted all her medical/hospitalisation leave. She was granted *ex gratia* hospitalisation leave and also took unpaid leave for several months. Eventually, Astra terminated her employment in January 2000. As I have mentioned, she managed to gain full-time employment with Catering Network as an accounts executive from February 2001 but her employment there was terminated in April 2003. Her employer said the main reason for termination was because business had become poor because of SARS and not so much because she had problems with some customers. I accept that the termination of Margaret's employment with Catering Network was due to SARS. Indeed, she herself accepted this. [\[note: 1\]](#) The SARS outbreak was, in my view, an *actus novus interveniens*. Raffles City should not be liable for the consequences of that development. Nevertheless, there were certain differences between Margaret's employment with Astra and Catering Network. For example, her pay with Catering Network was \$1,600 per month whereas with Astra, it was \$1,700 per month. Secondly, she was getting increments in Astra whereas she did not get any increment with Catering Network. She did work with JC Capital from June 2003 as an accounts executive earning initially \$1,600 per month which was increased to \$2,000 per month from 1 October 2003. However, as I have mentioned, Margaret also lost her job at JC Capital in March 2004 because it went out of business. This was, in my view, also a case of *actus novus interveniens*. However, aside from the loss of her job at JC Capital as well, it was alleged that she would have received more, because of annual increments, if

she had stayed on at Astra. There was also a loss of annual wage supplement and bonus and employer's Central Provident Fund contributions ("CPF") which she would have probably received from Astra. Although the assistant registrar took into account the loss of bonus between July 1999 to February 2001, I agreed that further bonus, annual wage supplement and loss of increments, as well as loss of employer's CPF, should be taken into account up to the date of the assessment, *ie*, February 2005, because even if she had stayed on at Catering Network, it was likely that she would have continued to earn less than if she had stayed on at Astra, at least up to the date of assessment. Margaret's counsel had prepared a detailed calculation of her loss based on various assumptions. However, he had not treated the loss of her job at Catering Network and later at JC Capital as having been due to *actus novus interveniens*. Accordingly, his calculation was made on the basis that she was entitled to claim from Raffles City for the periods she was unemployed after losing her job at Catering Network. There was also no deduction in his calculation for income tax as it was uncertain whether and to what extent she would be taxed in view of certain reliefs.

62 I award Margaret \$20,000 in the round as an addition to the assistant registrar's award of \$30,870.64 for pre-trial loss of earnings, to cover Margaret's loss of annual wage supplement, some further bonus and increments and employer's CPF up to the date of assessment.

63 I note that Margaret received \$15,000 as *ex gratia* compensation from Astra when her employment with it was terminated. However, as neither side suggested that I should take this sum into account, I have not done so.

Loss of future earnings and loss of earning capacity

64 Although Margaret is unemployed at present, this is because her employment with Catering Network and later with JC Capital was terminated because of reasons which I have mentioned and each of which I considered to constitute a *novus actus interveniens*. Therefore, I agree with the assistant registrar that there should be no award for loss of future earnings. Margaret was seeking \$200,000 for loss of future earnings or for loss of earning capacity, instead of the \$20,000 awarded by the assistant registrar for loss of earning capacity.

65 I was considering an award for further loss of increments, annual wage supplement, bonus and employer's CPF post-trial but if Margaret had remained longer with Catering Network or JC Capital, she might have caught up on these benefits as well.

66 In any event, Margaret was awarded \$20,000 for loss of earning capacity but there was no evidence that she would be at a significant disadvantage when competing with others for the same job. True, she may have to put in more hours if she had to slow down because of pain in her foot from time to time, but there was no suggestion that this would cause her to be less competitive so as to justify an award for loss of earning capacity. I do not think there should be an award for this item but there was no appeal by Raffles City against it. In any event, I have taken this sum into account in declining to make an award for future loss of earnings.

Loss of marriage prospects

67 I agree with the assistant registrar that Margaret's claim for loss of marriage prospects was speculative and was not established on a balance of probabilities. Accordingly, her appeal on this item is dismissed.

Future medical expenses

68 The assistant registrar awarded \$91,605 for future medical expenses. Each side is appealing against this item. The \$91,605 award comprises \$90,405 for seven replacements of the pulse generator for the SCS with each generator lasting four years. At a cost of \$12,300 per replacement multiplied by seven years, this works out to \$86,100. Including 5% goods and service tax ("GST"), this works out to \$90,405. Although the assistant registrar mentioned (in [16] of her grounds) that Margaret was likely to develop a tolerance to SCS over time and a morphine pump would have to be inserted, this would have been equally expensive. No separate award was made for the morphine pump. I agree that there need not be another award for the morphine pump and, indeed, this was not sought by Margaret.

69 The second component of the \$91,605 award from the assistant registrar for future medical expenses is \$1,200 for cost of consultation and medication for Margaret's psychiatric condition but nothing for future medication and physiotherapy for physical injury. Margaret sought \$2,000 for the latter as Dr Chang had said during cross-examination that there is a more than 50% to 60% chance that she may require some more medication and physiotherapy. He suggested \$500 to \$600 for two to three years.[\[note: 2\]](#) I allow an additional \$1,000 for this item.

70 Coming back to the cost of consultation and medication for Margaret's psychiatric condition, she was seeking \$27,540 instead of the \$1,200 awarded by the assistant registrar. Her claim was based on Dr Ngui's evidence that she would have to take anti-depressants so long as there was residual pain and she would require psychotherapy once every two months even if she was managing well. Margaret sought a multiplier of 17 years at \$270 for every two months, *ie*, \$27,540. However in cross-examination, and from questions by the assistant registrar, Dr Ngui said she would need continued treatment for two or three years easily. This could be bi-monthly with the cost of medication and consultation to be between \$80 and \$100 per visit. It was also a fact that Margaret did not see a psychiatrist throughout the period commencing from the accident to date of assessment as I have mentioned. In other words, there were periods when she did not see a psychiatrist. The reasons for not seeing a psychiatrist were varied. They were partly because she was recovering, partly because of costs and partly because of work commitments. In the circumstances, I am of the view that the assistant registrar's award of \$1,200 for future consultation and medication for Margaret's psychiatric condition is fair and I reject her claim for \$27,540 for this item.

71 On the other hand, Raffles City submitted that the award for seven replacements of the pulse generator was excessive. It meant replacements for the next 28 years (based on one replacement for every four years) or for the next 35 years (based on one replacement for every five years which was an earlier estimate suggested by Dr Boey). Bearing in mind that the payments to Margaret were accelerated, Raffles City suggested an award for three replacements instead. In *Andrea De Cruz's* case ([6] *supra*), the High Court provided a multiplier of 34 years for future medical expenses. This was reduced by the Court of Appeal to 17 years. Andrea de Cruz was 27 years of age when her liver failed. Margaret was 29 years of age when the accident occurred. Using 17 years as a guide, Margaret would have been awarded costs for three to four replacements. Margaret did not dispute that some discount should be given for acceleration but submitted that medical costs and/or GST may increase. I am of the view that the shoe is in the other foot in that the cost of a pulse generator will be more likely to decrease in future although the cost of providing improved healthcare generally tends to be on an uptrend. As for an increase in GST, that was speculative. Accordingly, I am of the view that no addition should be made for increased medical costs or GST. I award Margaret the costs for four replacements. This works out to $\$12,300 \times 4 \times 105\%$ (for GST) = \$51,660. The assistant registrar's award of \$90,405 for this item is therefore reduced by \$38,745.

Future transport expenses

72 The assistant registrar did not make an award for future transport expenses as the medical evidence was that Margaret can take public transport. Margaret was appealing for such expenses. Although Dr Chang had said Margaret can take public transport, he also said it will be better if she avoids crowded conditions as she must not let people step on her injured foot. Raffles City disagreed that she should be awarded transport expenses but accepted \$1,000 per year as a fair quantum for such transport expenses if I should decide in favour of Margaret for this item. However, Raffles City also disagreed on the multiplier of 15 years sought by Margaret but did not suggest an alternative multiplier. I award Margaret \$1,000 per year for transport expenses with a multiplier of 15 years. This works out to \$15,000.

Costs

73 I will hear parties on costs regarding their respective appeals.

[\[note: 1\]](#) See NE page 10 and 11.

[\[note: 2\]](#) See his NE 10.

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