IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 275

District Court Appeal No 15 of 2021

Between

Leow Peng Yam

… *Appellant*

And

Aryall Kang Jia Dian

… *Respondent*

GROUNDS OF DECISION

[Civil Procedure] — [Limitation]
[Limitation of Actions] — [Particular causes of action] — [Tort]
[Limitation of Actions] — [When time begins to run] — [Section 24A of the Limitation Act]

Version No 1: 08 Dec 2021 (11:37 hrs)

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Leow Peng Yam
v
Kang Jia Dian Aryall

[2021] SGHC 275

General Division of the High Court — District Court Appeal No 15 of 2021
Valerie Thean J
16 September 2021

8 December 2021

Valerie Thean J:

Introduction

1 In negligence claims involving personal injury, s 24A(2)(*b*) of the Limitation Act (Cap 163, 1996 Rev Ed) operates to bar any claims brought after a period of three years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury. The requisite knowledge includes knowledge of the identity of the defendant (s 24A(4)(*b*)). The concept of knowledge is defined within s 24A(6)(*a*) to include knowledge that such a plaintiff might reasonably have been expected to acquire from facts observable or ascertainable by him.

2 The plaintiff in the present case ("Ms Kang") was severely injured in a collision with a bus on 14 May 2016, and suffered, as a result, serious cognitive difficulties. The defendant bus driver ("Mr Leow") accepted that the collision

was caused by his negligence, but asserted that her action was time-barred. Ms Kang argued that the limitation period did not commence until she regained reasonable cognitive ability, some eight weeks after the injuries were first sustained. She filed the writ of summons against Mr Leow on 18 June 2019. Mr Leow, on the other hand, contended that the limitation period began to run on the date of the accident or, at the latest, on 23 May 2016 when Ms Kang asked police officers, without receiving the answer, about Mr Leow's identity.

3 The time at which the limitation period commenced for Ms Kang was the sole subject matter of this District Court appeal.

Background

4 The salient facts are not in dispute. On 14 May 2016, an SMRT Corporation Ltd ("SMRT") bus driven by Mr Leow collided into Ms Kang when she was crossing a signalised traffic junction. She was conveyed to Khoo Teck Puat Hospital ("KTPH") by ambulance and was found to have, among other injuries, severe head and brain injuries as well as psychological conditions and symptoms. These included an acute subdural haematoma along her right frontal, temporal and parietal lobes with a traumatic subarachnoid haemorrhage in the right sylvian fissure and haemorrhagic contusion of the left occipital lobe; adjustment disorder with mixed anxiety and depressed mood; and cognitive disabilities in terms of immediate and delayed memory and attention span. Following the accident, she was also in considerable pain, dazed and disoriented. She was in a state of amnesia which affected her memory of the accident and her short-term memory.

5 Ms Kang was discharged from KTPH on 23 May 2016 and given hospitalisation leave until 23 August 2016. Upon her discharge from KTPH, on

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23 May 2016, Ms Kang filed a police report regarding the accident with the Traffic Police (the "Police Report"). She did so as a police officer told her while she was at KTPH that they required her to do so for the purpose of facilitating their investigations. Her evidence was that her father helped her with this task and she simply signed the report. While she had no recollection of the accident at the time, she had been given a "green card" either by a nurse or the Traffic Police at the hospital which provided the details of the accident location, time and date. She gave this information to the police officer at the station. She asked the police officer for the name of the bus driver but was told that this information was confidential.

6 Subsequently, Ms Kang appointed lawyers and in due course, discovered that Mr Leow was the driver of the bus that had collided into her. She filed the writ of summons against Mr Leow on 18 June 2019. This was three years, one month and four days after the accident.

Decision below

7 The District Judge gave her grounds of decision in *Aryall Kang Jia Dian v Leow Peng Yam* [2021] SGDC 91 ("the GD"). She was of the view that Ms Kang's medical condition was a relevant factor in assessing the point in time from which she would have been reasonably expected to acquire knowledge of Mr Leow's identity from the various facts observable or ascertainable to her (GD at [24]). In view of Ms Kang's personal situation and particular circumstances, the District Judge found that the earliest point in time that she could reasonably have been expected to acquire the requisite knowledge to bring an action against Mr Leow was at least eight weeks from the date of the accident, around mid-July 2016 (GD at [34] and [38]).

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8 In arriving at this conclusion, the District Judge relied on the medical evidence of Dr Eugene Yang ("Dr Yang"), a Senior Consultant and the Head of the Division of Neurosurgery in the Department of Surgery at KTPH. Dr Yang had concluded that Ms Kang's cognitive abilities had been impaired to the extent that she would have needed at least eight weeks to reasonably contemplate taking the necessary action to identify the bus driver (GD at [36]). Further, the District Judge found that while Ms Kang may have had information regarding the date, time and location of the accident, the fact that it was an SMRT bus that had hit her, and that representatives from SMRT and the police had spoken to her about the accident, Ms Kang's possession of this information did not undermine Dr Yang's assessment that she did not have the higher cognitive functions necessary to act upon that information to acquire Mr Leow's identity (GD at [37]). Dr Yang's evidence was uncontradicted by Mr Leow, who did not testify at the trial, call any witnesses, or adduce any other evidence to contradict Dr Yang's testimony (GD at [16] and [34]).

Summary of parties' positions, issues and decision

9 Section 24A of the Limitation Act was the central focus of the parties' arguments. The relevant provisions of s 24A read as follows:

> **Time limits for negligence, nuisance and breach of duty actions in respect of latent injuries and damage**
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> **24A.**—(1) This section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).
>
> (2) An action to which this section applies, where the damages claimed consist of or include damages in respect of personal

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injuries to the plaintiff or any other person, shall not be brought after the expiration of –

(*a*) 3 years from the date on which the cause of action accrued; or

(*b*) 3 years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (*a*).

(3) …

(4) In subsections (2) and (3), the knowledge required for bringing an action for damages in respect of the relevant injury or damage (as the case may be) *means* knowledge –

(*a*) that the injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;

(*b*) *of the identity of the defendant*;

(*c*) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant; and

(*d*) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant

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> who did not dispute liability and was able to satisfy a judgment.
>
> (5) …
>
> (6) For the purposes of this section, a person's knowledge *includes knowledge which he might reasonably have been expected to acquire* –
>
> (*a*) from facts observable or ascertainable by him; or
>
> (*b*) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek.
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> (7) A person shall not be taken by virtue of subsection (6) to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.
>
> [emphasis added]

Parties' positions

10 Mr Leow's first argument was that Ms Kang's action was time-barred under s 24A(2)(*a*) of the Limitation Act because it was filed after the expiration of three years from the date of the accident.[1] This position was not tenable because s 24A(2), through the use of the word "or", provides a clear alternative in s 24A(2)(*b*) premised on the requirement of knowledge. Section 24A(4)(*b*) also makes clear that such knowledge includes knowledge of the defendant's identity.

11 Mr Leow's alternative argument, if s 24A(2)(*b*) applied, rested on s 24A(6). This section stipulates that knowledge includes such knowledge as a plaintiff might reasonably have been expected to acquire. This was termed in

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[1] Appellant's Case at para 35.

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previous cases, and by both parties and the District Judge in the present case, as constructive knowledge. Mr Leow made the following three arguments:

(a) First, Mr Leow submitted that Ms Kang had constructive knowledge of his identity by 23 May 2016, when she filed the Police Report, and that her action was time-barred because it was filed more than three years from that date. By this date, Ms Kang knew that the *Traffic Police* knew the bus driver's identity, even though they would not reveal it to her on the ground that it was confidential. It was a mere formality for her to apply or write to the Traffic Police or SMRT to obtain Mr Leow's identity.[2]

(b) Second, Mr Leow argued that the District Judge erred in allowing Ms Kang further time to act upon the information she had, as the requirement to act upon such information is not supported by law.[3]

(c) Third, Mr Leow contended that the District Judge placed undue reliance on Dr Yang's medical evidence in assessing when Ms Kang would reasonably have been expected to acquire the requisite knowledge.[4]

12 Ms Kang's case on ss 24A(2)(*b*), 24A(4)(*b*) and 24A(6)(*a*), on the other hand, was that the limitation period could not begin to run until at least eight weeks from the accident because she had no knowledge of Mr Leow's identity and was not in a position to take any steps to procure the relevant information

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2 Appellant's Case at paras 23 and 25.

3 Appellant's Case at para 16; Notes of Argument, 16 September 2021 ("Notes of Argument") at p 3 lines 25–29.

4 Appellant's Case at paras 15 and 27–28; Notes of Argument at p 5 line 1 to p 6 line 32.

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or deal with the claim due to the cognitive impairment caused by her head and brain injuries.[5] Ms Kang made three main submissions.

(a) First, Ms Kang submitted that the District Judge was entitled to consider whether she had the higher cognitive functions needed to act upon the information she had to discover Mr Leow's identity, and that her medical condition was a relevant factor in determining when she would reasonably have been expected to acquire this knowledge.[6]

(b) Second, Ms Kang contended that her knowledge of the surrounding facts such as the date, time and location of the accident and that an SMRT bus had hit her was insufficient to amount to actual or constructive knowledge of Mr Leow's identity.[7] While the Traffic Police knew Mr Leow's identity by 23 May 2016, they declined to disclose it to Ms Kang, which was why she had to source for and instruct solicitors.[8] The point that Ms Kang might have written to SMRT to obtain Mr Leow's identity was neither pleaded nor put to her.[9]

(c) Third, Dr Yang's expert medical opinion showed that, in view of her injuries, the earliest Ms Kang could reasonably have been expected to acquire knowledge of Mr Leow's identity was eight weeks from the accident, this being the reasonable period required for her to recover the relevant cognitive functions to take the necessary steps.[10]

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5 Respondent's Case at para 8.

6 Respondent's Case at paras 17–19(i).

7 Respondent's Case at paras 19(ii) and 28–29.

8 Respondent's Case at para 33.

9 Respondent's Case at para 32.

10 Respondent's Case at paras 19(iii) and 35.

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Issues

13 The difference between Mr Leow's and Ms Kang's positions therefore lay in their interpretation of s 24(6)(*a*). While it appears that Ms Kang discovered Mr Leow's identity only after the appointment of her solicitors, her argument was not that she required her legal advisors or any expert advice in order to do so. Sections 24A(6)(*b*) and 24A(7) were therefore not engaged; only s 24A(6)(*a*) was. In framing her case on ss 24A(4)(*b*) and 24A(6)(*a*), Ms Kang did not state the date on which she actually discovered Mr Leow's identity, presumably because the eight-week window provided by Dr Yang's evidence was sufficient for her purposes. The writ was filed in June 2019, within the period of three years and eight weeks after the accident took place. The pertinent issues were therefore two:

(a) First, what "knowledge" in ss 24A(2)(*b*), 24A(4)(*b*) and 24A(6)(*a*) required, and whether the impairment of Ms Kang's cognitive functions affected the time at which she acquired the requisite knowledge.

(b) Second, on the facts of this case, whether the eight-week recovery period was properly excluded by the District Judge in ascertaining the limitation period.

Decision

14 I dismissed the appeal on 16 September 2021. In my judgment, knowledge within the meaning of ss 24A(2)(*b*), 24A(4)(*b*) and 24A(6)(*a*) must include a reasonable cognitive understanding of the information within Ms Kang's possession. On Dr Yang's evidence, which remained uncontroverted after trial, she could not reasonably have been expected to take

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the necessary steps to ascertain Mr Leow's identity until at least eight weeks after the accident, and thus could not have acquired the requisite knowledge under ss 24A(4)(*b*) and 24A(6)(*a*) until that time. The action was therefore not barred by limitation. I explain my reasons below.

"Knowledge" in ss 24A(2)(*b*), 24A(4)(*b*) and 24A(6)(*a*) of the Limitation Act

15 Section 24A(2)(*b*) of the Limitation Act allows a plaintiff a limitation period of three years from the earliest date on which he has the knowledge required to bring an action in respect of the relevant injury.

16 Relevant in this context is Mr Leow's argument that s 24A(2)(*b*) is an exception to s 24A(2)(*a*) and therefore ought to be applied only in exceptional cases, such as where the plaintiff is unconscious or has no information about the defendant whatsoever.[11] Counsel for Mr Leow suggested that Ms Kang's and the District Judge's reading of s 24A(2)(*b*) would allow litigants to argue that their actions are not time-barred simply because they suffered some cognitive impairments as a result of their injuries, which would in turn render s 24A(2)(*a*) ineffective or redundant.[12]

17 This argument was at odds with the plain words of s 24A(2). The word "or" indicated that s 24A(2)(*b*) applied as an *alternative* to s 24A(2)(*a*) in cases where the plaintiff acquired the knowledge required for bringing an action only after the cause of action accrued. The legislative intention behind the enactment of s 24A(2)(*b*) was to introduce such an alternative to address the "injustice" of an action becoming time-barred when the plaintiff did not know or could not

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11 Appellant's Case at para 18; Notes of Argument at p 4 lines 24–30 and p 12 lines 8–9.

12 Notes of Argument at p 4 lines 1–6 and p 10 lines 18–24.

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reasonably have known about the damage until some time after the cause of action accrued. This struck a fairer balance between the interests of plaintiffs and those of potential defendants. As explained at the Second Reading of the Limitation (Amendment) Bill (*Singapore Parliamentary Debates, Official Report* (29 May 1992) vol 60 at cols 31–32 (Prof S Jayakumar, Minister for Law)):

> This amendment is necessary because under the present law, the limitation period for legal actions runs from the time the damage actually occurred even if the plaintiff did not know or could not reasonably have known about the damage. *This can, of course, cause injustice and problems*, especially in building construction cases where latent defects may not be discoverable until after the limitation period has expired. *In such cases, the plaintiff, or the aggrieved party, is then left without any legal recourse.*
>
> …
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> … What [the Bill] does is to extend the limitation periods for personal and non-personal injury claims *by providing an alternative starting date for the limitation period, ie, the date the aggrieved person has knowledge of the damage*. The limitation period would be computed from the date that expires later. It also seeks to balance the interest of potential defendants by providing that no action may be brought after 15 years from the date of the breach of duty even though the damage or injury has not and could not be discovered.
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> [emphasis added]

18 That the effect of introducing s 24A(2)(*b*) was to "provide an alternative starting date for the limitation period where a plaintiff lacked 'knowledge'", albeit only "knowledge of the very specific kind defined in s 24A(4)", was confirmed in *MFH Marine Pte Ltd v Asmoniah bin Mohamad* [2000] 2 SLR(R) 532 at [7]. Contrary to Mr Leow's assertion, Ms Kang's and the District Judge's reading of s 24A(2)(*b*) did not render s 24(2)(*a*) redundant. That subsection remains applicable wherever the plaintiff acquires knowledge

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of the matters required for bringing an action in respect of the relevant injury at the same time that the cause of action accrues.

19 Coming then to "knowledge" within the meaning of s 24A(2)(*b*), s 24A(4)(*b*) stipulates that knowledge of the identity of the defendant is specifically required as part of "the knowledge required for bringing an action for damages in respect of the relevant injury". In this context, s 24A(6) introduces reasonableness into the concept of knowledge. In particular, s 24A(6)(*a*) ties this to facts observable or ascertainable by the plaintiff. The relevant issue of statutory construction, therefore, was whether a plaintiff whose cognitive functions were impaired could contend that it was reasonable for her not to have acquired knowledge until after she had regained her cognitive functions sufficiently.

20 In *Yan Jun v Attorney-General* [2015] 1 SLR 752 at [25], the Court of Appeal observed there has been "considerable identification between the Singapore limitation statutes and the English ones". Section 11 of the Limitation Act 1980 (c 58) (UK) (the "UK Limitation Act") is the equivalent of s 24A of our Limitation Act, and s 14(3) of the UK Limitation Act is *in pari materia* with ss 24A(6) and 24A(7) of our Limitation Act.

21 In *Adams v Bracknell Forest Borough Council* [2005] 1 AC 76 ("*Adams*"), the House of Lords held that in determining whether a claimant had knowledge which he might *reasonably* have been expected to acquire, the standard was an objective one based on the knowledge which a person in the *situation* of the claimant could reasonably be expected to acquire. Aspects of character or intelligence which were peculiar to the claimant were irrelevant (*per* Lord Hoffmann at [47], Lord Phillips of Worth Matravers at [58] and Lord Scott of Foscote at [71] of *Adams*). Baroness Hale of Richmond agreed with the

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result for different reasons and was of the view that personal characteristics connected with the claimant's ability to discover facts which were relevant to an action were relevant (*Adams* at [91]). A key difference between our Limitation Act and its English counterpart is that s 33 of the UK Limitation Act confers on the court an additional discretion, not found in our Limitation Act, to disapply the limitation period if it would be "equitable" to allow the action to proceed. This addition in 1980 was a reason for Lord Hoffman's adoption of a more objective construction of the relevant sections of the UK Limitation Act (see *Adams* at [43]–[45]).

22 In so holding, the House of Lords disagreed with the approach taken by the English Court of Appeal in *Nash v Eli Lilly & Co* [1993] 1 WLR 782 ("*Nash*") at 799, where Purchas LJ had opined that the standard of reasonableness was objective but had to be qualified to take into consideration the "position, circumstances *and character*" of the plaintiff, and that in considering the reasonableness of the inquiry made by the plaintiff, his "situation, *character and intelligence*" must be relevant [emphasis added] (*per* Lord Hoffmann at [46]–[47] and Lord Scott at [71] of *Adams*).

23 *Adams* and *Nash* were referred to by the District Judge in *Chang Tong Seng v Lim Tai Kwong t/a Da Li Contractors (Loke Keeng Kwan, Third Party)* [2007] SGDC 74 at [19], which was in turn referenced by the District Judge in this case, for the proposition that two alternative positions could be taken in approaching our Limitation Act: either "only the situation of the plaintiff is relevant, or … the plaintiff's personal characteristics such as character or intelligence should additionally be taken into account in determining reasonableness" (GD at [33]). At the hearing before me, counsel for Mr Leow

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emphasised that the "personal characteristics" of a plaintiff were not relevant for the purposes of s 24A, reiterating that only knowledge was important.[13]

24 In my judgment, s 24A, given a plain and ordinary reading, has as its sole focus a plumbline of reasonableness. Rather than considering whether an impairment in cognitive function is a personal characteristic or a function of intelligence, it is preferable to adopt a fact-specific approach. Such an approach must perforce take reference from the particular plaintiff in all the circumstances of her case. The role of the court is to ask whether, given such circumstances, the plaintiff could reasonably have been expected to acquire the requisite knowledge from facts observable and ascertainable by her. In other words, whatever a plaintiff's personal characteristics or intelligence may be, she is still held to the standard of reasonableness. In interpreting reasonableness, the absence of an equitable lever should be irrelevant to the statutory construction of the reasonable attribution of knowledge.

25 Applying this approach in the context of s 24A(6)(*a*) to the case at hand, facts "observable or ascertainable" by a plaintiff would have no meaning without sufficient cognitive function. Without the ability to understand, "knowledge which [a plaintiff] might reasonably have been expected to acquire" would not form. In the present case, Ms Kang's impairment in cognitive function was a direct result of the accident. As an objective matter, it would be reasonable for her to be permitted some period of time to regain sufficient cognitive function to be aware of and able to understand that she had suffered a serious injury for which she should pursue a claim, and to obtain the identity of the bus driver involved in the accident, before the limitation period began to run. The date on which she could reasonably be expected to regain

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[13] Notes of Argument at p 14 lines 15–21.

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such cognitive function would be a factual matter to be established on the evidence. As a corollary, reasonableness must also apply to the period in question. Each case must turn on its own particular facts. For example, if the injured person experienced a permanent loss of cognitive function such that the suit would reasonably be brought by a deputy or legal representative, the standard of reasonableness would apply to such a plaintiff; the suspension of limitation would not be indefinite.

26 Support for this approach may be found in *Prosperland Pte Ltd v Civic Construction Pte Ltd and others* [2004] 4 SLR(R) 129 ("*Prosperland*"). In that case, the plaintiff argued that his claim was not time-barred because it was not reasonable for him to have the requisite knowledge in August 1997. He explained that the first incident of tile de-bonding was a single isolated incident and it was only in September 1999, when two more tiles de-bonded and fell off, that constructive knowledge should take hold. In agreeing with the plaintiff, Judith Prakash J (as she then was) cited *Nash* to frame "knowledge" as "a state of mind experienced by a plaintiff which actually existed or which might have existed had the plaintiff, acting reasonably, acquired knowledge from the facts ascertainable by him …" (*Prosperland* at [11]). While this decision did not rely upon *Adams* and the parties in *Prosperland* had accepted that the principles in *Nash* were applicable (see *Prosperland* at [8]), Prakash J did not discuss the relevance of character or intelligence to knowledge. At [12], Prakash J defined the requisite knowledge as one of "reasonable belief rather than absolute knowledge", explaining at [11] that:

> … A firm belief held by the plaintiff that the damage was attributable to the acts or omission of the defendant, but in respect of which he thought it necessary to obtain reassurance or confirmation from experts, would not be regarded as knowledge until the result of his inquiries was known to him or, if he delayed in obtaining that confirmation, until the time when it was reasonable for him to have got it. If the plaintiff

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> held a firm belief, which was of sufficient certainty to justify the taking of the preliminary steps for proceedings by obtaining advice about making a claim for compensation, then such belief would be knowledge and the limitation period would begin to run.

27 In *Lian Kok Hong v Ow Wah Foong and another* [2008] 4 SLR(R) 165 ("*Lian Kok Hong*") at [41], the Court of Appeal, referring to *Prosperland*, adopted "reasonable belief" to describe the *degree* of knowledge required for the purposes of s 24A, and also noted that "rigid rules in this area will not conduce towards clarity". In my view, *Prosperland* and *Lian Kok Hong* provide a complementary way of approaching the issue at hand. This is to recognise that in ascertaining a reasonable time for the purposes of s 24A(6), the *degree of knowledge required under ss 24A(2)(*b*) and 24A(4)(*b*)* is that of *reasonable belief* in the defendant's identity.

28 Thus, in my view, a plaintiff whose cognitive functioning was impaired such that she could not reasonably be expected to acquire the relevant knowledge until a later date fell squarely within the class of plaintiffs for whose benefit ss 24A(2)(*b*), 24A(4)(*b*) and 24A(6) were enacted. The matter of reasonableness was one to be proved on the facts, to which I now turn.

Whether the facts support the exclusion of the initial eight-week recovery period

29 Mr Leow contended that Ms Kang should reasonably have acquired knowledge of his identity by 23 May 2016, when she filed the Police Report.[14] It was not disputed that, by this time, Ms Kang had actual knowledge of the date, time and location of the accident; that it was an SMRT bus that had hit her; and that representatives from SMRT and the police had spoken to her about the

[14] Appellant's Case at paras 15 and 23–26; Notes of Argument at p 15 lines 15–20.

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accident. She did not have actual knowledge of Mr Leow's identity, but she knew that the *Traffic Police* knew Mr Leow's identity, even if they would not reveal it to her. Mr Leow submitted that the fact that Ms Kang had *asked* the Traffic Police about the bus driver's identity showed that she had applied her mind to this matter and therefore had the requisite constructive knowledge.[15]

30 Dr Yang's evidence was entirely to the contrary. His opinion was that, in view of Ms Kang's condition, a reasonable period for her to recover sufficiently to be expected to apply her mind to the matter and take the necessary steps to discover Mr Leow's identity (by searching for suitable lawyers, attending at their office, discussing the matter with them and engaging them to act for her) was at least eight weeks from the date of the accident on 14 May 2016 (GD at [14] and [34]–[35]).[16] In his re-examination before the District Judge, Dr Yang explained that the necessary steps required to engage suitable lawyers and obtain Mr Leow's identity were "complex" and required "higher cognitive function[s]" which most patients would require six to twelve weeks to recover after suffering similar injuries, such that eight weeks was "a reasonable cut-off time".[17]

31 In this appeal, Mr Leow sought to challenge Dr Yang's medical evidence on two grounds.

32 First, Mr Leow contended that Dr Yang could not testify to the state of Ms Kang's knowledge in 2016 because he did not examine her again before

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15 Appellant's Case at para 25.

16 Record of Appeal, Vol III, Tab 10 (Affidavit of Evidence-in-Chief of Aryall Kang Jia Dian affirmed on 12 August 2020) at p 240.

17 Record of Appeal, Vol I, Tab 5 at pp 89–90 (Transcript, 3 February 2021 at p 12 line 30 to p 13 line 16).

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preparing his medical opinions dated 10 October and 5 December 2019 to ask her specifically about her state of mind in 2016, and in any event could not comment on the legal requirement of knowledge.[18] I did not agree. Dr Yang's evidence was based on his evaluation of Ms Kang's condition and his experience as a specialist treating patients with brain injuries. He explained during cross-examination that his conclusions were based on "the pattern of her head injuries".[19] At the hearing, both counsel assumed that Dr Yang was the neurosurgeon who treated Ms Kang after the accident in May 2016.[20] A perusal of the detailed records shows this was not the case. Nonetheless, Dr Yang attended to her at least from 23 February 2017 and was familiar with her specific condition.[21] There was no necessity for Dr Yang to have asked Ms Kang specifically about what she could recall, in October or December 2019, about what she knew in May 2016. In any case, Ms Kang testified in court, and an assessment of what she recalled was within the purview of the court. In making that assessment, the District Judge was entitled to take into account Dr Yang's medical assessment, based on his having treated her, of the impact of the injuries Ms Kang had suffered as a result of the accident in 2016. Dr Yang's medical evidence was relevant to the legal question of what knowledge Ms Kang might *reasonably* have been expected to acquire in her circumstances.

33 Second, at the hearing, counsel for Mr Leow suggested that Dr Yang's medical evidence was not objective or independent and had been provided to

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18 Appellant's Case at paras 15 and 27–28; Notes of Argument at p 6 lines 11–17 and 30–32.

19 Record of Appeal, Vol I, Tab 5 at p 82 (Transcript, 3 February 2021 at p 5 lines 18–19).

20 See Notes of Argument at p 6 lines 7–17.

21 Record of Appeal, Vol III, Tab 10 at p 213 onwards.

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help Ms Kang "keep her action alive".[22] This assertion lacked any proper basis. The District Judge considered all the evidence before her and accepted Dr Yang's evidence as it had not been undermined in the course of cross-examination or contradicted by Mr Leow (GD at [34]). I saw no reason to disagree with the District Judge's findings on Dr Yang's credibility or on the weight to be given to his medical evidence.

34 In this context, I deal with Mr Leow's related submission that the District Judge erred in allowing Ms Kang to have further time to *act upon* the information she had even though she already had the requisite knowledge under s 24A(4)(*b*).[23] In my view, this submission was premised on a misunderstanding of the District Judge's reasoning. At [37] of the GD, the District Judge found that the mere fact that Ms Kang possessed information on the date, time and location of the accident, that it was an SMRT bus that had hit her and that representatives from SMRT and the police had spoken to her about the accident, did not undermine Dr Yang's assessment that she did not have the higher cognitive functions necessary to act upon that information *to acquire Mr Leow's identity*. Read in context, the District Judge was not laying down a further requirement that Ms Kang had to know the identity of the driver *and* act upon this information before the limitation period could begin to run. Instead, the District Judge found that the mere fact that Ms Kang had some *other* information in her possession did not mean that she could reasonably have been expected to use this information *to acquire knowledge of Mr Leow's identity*. Mr Leow's assertion that Ms Kang would have known that SMRT was a potential defendant was also not persuasive because the defendant in this suit was not SMRT; and in any case, if Ms Kang had sued SMRT, s 24A(4)(*c*)

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22 Notes of Argument at p 6 lines 23–26.

23 Appellant's Case at para 16; Notes of Argument at p 10 lines 10–13.

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(which specifically requires, in cases where it is alleged that the relevant act was that of a person other than the defendant, knowledge "of the identity of that person and the additional facts supporting the bringing of an action against the defendant") would have applied in respect of Mr Leow's identity.

35 Returning, then, to the fact-specific approach I set out at [24], the interplay of ss 24A(4)(*b*) and 24A(6)(*a*) meant that the relevant question was when Ms Kang might reasonably have been expected to acquire knowledge of Mr Leow's identity from facts observable or ascertainable by her. Mr Leow's argument that she had applied her mind to the *question* of who the bus driver might be on 23 May 2016 was irrelevant because she did not acquire his identity by her question. Nor could Ms Kang reasonably have been expected to acquire knowledge of Mr Leow's identity by the fact that she had posed the question. She may have had the ability to apply her mind to the question of Mr Leow's identity when she made inquiries on 23 May 2016, but on Dr Yang's evidence, she could not reasonably have been expected to do anything more to acquire specific knowledge of his identity. Dr Yang's evidence provided her an additional eight-week window until mid-July 2016. Similarly, using the alternative approach I set out at [27], she could not have acquired any reasonable belief as to Mr Leow's identity on 23 May 2016. Her degree of knowledge was not sufficient at that date. Dr Yang's eight-week window applied equally.

36 I found, for these reasons, that the eight-week recovery period ought to be excluded in the calculation of the three-year limitation period under ss 24A(2)(*b*), having regard to 24A(4)(*b*) and 24A(6)(*a*).

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Conclusion

37 I therefore dismissed Mr Leow's appeal. I ordered Mr Leow to pay Ms Kang the costs of this appeal, fixed at $10,000 inclusive of disbursements, and made the usual consequential orders.

Valerie Thean
Judge of the High Court

Ganesh S Ramanathan (Karuppan Chettiar & Partners) for the appellant;
Raj Singh Shergill and Koh Jia Min Desiree (Lee Shergill LLP) for the respondent.

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