IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 219

Suit No 109 of 2014

Between

Tan Shi Lin

… *Plaintiff*

And

Poh Che Thiam

… *Defendant*

JUDGMENT

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

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Tan Shi Lin
v
Poh Che Thiam

[2017] SGHC 219

High Court — Suit No 109 of 2014
Lai Siu Chiu SJ
17–20 January 2017; 11 April 2017

7 September 2017 Judgment reserved.

Lai Siu Chiu SJ:

Introduction

1 This suit arose out of a road accident that took place on 26 December 2012 ("the accident"). The accident involved a then 32 year old female motorcyclist Tan Shi Lin ("the plaintiff") and Poh Che Thiam ("the defendant") who was then driving motor bus no. CB 6780X ("the bus"). The bus slammed into the left side of the plaintiff's body causing her to fall off her motorcycle after which a wheel of the bus ran over her left foot.

2 In regard to the plaintiff's injuries, I can do no better than to quote the following extracts from the medical report of the plaintiff's orthopaedic surgeon Dr David Paul Bell ("Dr Bell") dated 24 February 2015 ("Dr Bell's

first report") which was written in comprehensible English free from medical jargon unfamiliar to the average layman:[1]

> [The plaintiff] sustained the following injuries:
>
> 1. Near amputation of the left big toe.
>
> 2. Open dislocation of the left second toe interphalangeal joint.
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> 3. Degloving injury to the skin on the medial [*ie*, inner] aspect of the left foot, involving the dorsal and plantar surfaces of the foot.
>
> …
>
> [The plaintiff] underwent multiple surgeries to her left foot, including amputation of the left big toe following unsuccessful revascularization of the toe. She also underwent disarticulation of the second toe at the metatarsophalangeal joint subsequently.
>
> Definitive soft tissue coverage was achieved with a free flap, transferring skin and muscle from her left thigh to cover the defect. She subsequently underwent flap debulking and scar excision in May 2013.

3 The plaintiff was hospitalised twice. On the first occasion she was warded from 26 December 2012 to 2 February 2013.[2] Together with her second stay (30 May 2013 to 4 June 2013),[3] she spent a total of 42 days in the hospital. There were occasions when the plaintiff suffered from skin graft donor site and wound infections.[4] She was either on crutches or in a wheelchair for about six months after her discharge from hospital in February 2013 due to delays in her healing process.

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1 Agreed Bundle ("AB"), vol 1, pp 32–33.

2 Plaintiff's Affidavit of Evidence-in-Chief ("AEIC"), Exhibit TSL-3, p 42.

3 AB1 10.

4 AB1 14.

4 Aside from the main degloving injury and the two amputations, the plaintiff suffered and still suffers from: (i) chronic/permanent pain in her left foot; (ii) compensatory pain in her right foot; (iii) adaptive/compensatory low back pain; (iv) a decreased range of motion and stiffness in her left ankle and (v) supraspinatus tendonitis in her left shoulder. She also claimed that there is a likelihood of the early onset of arthritis in her left foot and ankle as well as the development of lumbar spondylosis.

5 In addition to those physical injuries, the plaintiff claimed that she suffers from Post-Traumatic Stress Disorder ("PTSD"). She has stopped riding a motorcycle since the accident, allegedly because she has developed a phobia towards it. In her affidavit of evidence-in-chief ("AEIC"), the plaintiff deposed that seeing a bus or a cross-junction (where the accident happened) reminded her of the accident. She claimed that she would hide her physical disfigurement by wearing trousers and has had to come to terms with her amputation injuries. Her injuries have also affected her relationship with her boyfriend.

6 Despite sustaining these serious injuries, the plaintiff – who at the material time worked as a physiotherapist at Khoo Teck Puat Hospital ("KTP Hospital") – commendably pursued and excelled in, further studies from January 2014 to July 2014. She obtained a first class honours degree in physiotherapy from Trinity College Dublin, School of Medicine, on 26 June 2014.

7 The plaintiff commenced this suit in January 2014, which action the defendant initially resisted. However, on 21 October 2014, the defendant consented to interlocutory judgment being entered against him on the basis he

was 100% liable for the accident with damages, interest and costs reserved to the court assessing the damages.

8 The trial that took place before this court therefore was to determine the quantum of damages due and payable to the plaintiff arising from the injuries she sustained in the accident.

9 The plaintiff's claims for general damages totalled $725,826.72. This comprised:[5]

(a) $281,500 for pain and suffering and loss of amenities;

(b) $75,000 for loss of earning capacity;

(c) $346,968 for loss of future earnings;

(d) $21,105.39 for future medical expenses; and

(e) $1,253.33 for future transport expenses.

10 The plaintiff's claims for special damages totalled $50,972.37. This comprised:[6]

(a) $1,605 for the cost of repair of the plaintiff's motorcycle;

(b) $90 for the loss of use of the plaintiff's motorcycle;

(c) $9,408.88 for pre-trial medical expenses;

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5 Plaintiff's closing submissions ("PCS"), paras 4 and 289.

6 PCS, paras 4 and 289.

(d) $415.49 for pre-trial transport expenses and

(e) $39,453 for pre-trial loss of earnings.

It should be noted that parties had reached agreement on items (a) to (d) above, and informed the court of the same at trial. These four items totalled to $11,519.37.

11 The defendant's closing submissions argued that the plaintiff should only be entitled to an award of $152,826.87 in respect of both general and special damages,[7] a figure which reflects a complete lack of sympathy for the plaintiff's unfortunate circumstances.

The evidence

12 For the assessment hearing, the plaintiff called a number of medical professionals as her witnesses, namely:

(a) Dr David Tan Meng Kiat ("Dr Tan"), a consultant at the Department of Hand and Reconstructive Microsurgery at National University Hospital ("NUH") who had operated on the plaintiff immediately after the accident;

(b) Dr Rathi Mahendran ("Dr Rathi"), a senior consultant psychiatrist at the Department of Psychological Medicine at NUH;

(c) Dr Lim John Wah ("Dr Lim"), a consultant at the Department of Family & Community Medicine at KTP Hospital;

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7 Defendant's closing submissions ("DCS"), para 160.

(d) Mr Adriaan Erasmus, the principal podiatrist at NUH;

(e) Ms Rie Nagai ("Ms Nagai"), a senior prosthetist and orthortist at Tan Tock Seng Hospital ("TTSH"); and

(f) Ms Pow Siok Kee ("Ms Pow"), a senior occupational therapist at NUH.

13 In addition to the above, the plaintiff called the human resources manager of KTP Hospital, Ms Nya Lee Hoon ("Ms Nya").

14 The defendant's medical expert was Dr Lim Yun Chun ("Dr LYC"), a consultant psychiatrist at Raffles Hospital.

15 The defendant agreed to dispense with the attendance of the plaintiff's three other medical witnesses, namely:

(a) Associate Professor Peter George Manning, a consultant at NUH who was on duty as the senior emergency physician when the plaintiff arrived at NUH on the evening of 26 December 2012 after the accident;

(b) Ms Kate Frances Carter, a senior podiatrist at the Rehabilitation Centre at NUH; and

(c) Mr Trevor Bindell, the Assistant Head of Service of Prosthetics and Orthotics Department at TTSH.

Consequently, the reports of these three witnesses were accepted without the need for cross-examination.

16 Due to the defendant's agreement to accept items (a), (b) and (d) listed in [10] above, the court was also able to dispense with the evidence of Phoon Siew Kook from the workshop that repaired the plaintiff's motorcycle as well as that of the automobile appraiser Looi Eng Chai who had appraised the damaged motorcycle and estimated its cost of repair to be $1,500.

17 The plaintiff had similarly agreed to dispense with the attendance of Dr Bell as a witness. Dr Bell's first report as well as his second report dated 3 January 2017 ("Dr Bell's second report") were put in as evidence without the need for cross-examination. I shall return to Dr Bell's reports later.

The claims for general damages

18 I shall first deal with the items of general damages under the separate heads claimed by the plaintiff.

Pain and suffering and loss of amenities

19 The plaintiff claimed in respect of the following injuries:[8]

(a) Degloving injury to left foot;

(b) Big toe amputation;

(c) Second toe amputation;

(d) Chronic/permanent left foot pain;

(e) Compensatory right foot pain;

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8 PCS, para 289.

(f) Adaptive/compensatory low back pain;

(g) Left shoulder contusion/supraspinatus tendonitis;

(h) Decreased range of motion/stiffness of ankle in left foot;

(i) Surgical scars;

(j) Possible early onset of arthritis for the left foot and ankle;

(k) Possible development of lumbar spondylosis; and

(l) PTSD.

It should be noted that the plaintiff had initially claimed in respect of a ganglion cyst on her left wrist.[9] However, she eventually withdrew this item of claim based on Dr Bell's second report that it was improbable it was caused by the foot injury.[10]

20 Undoubtedly, the plaintiff suffered horrific injuries as a result of the accident. The resultant amputation of her left big and second toes affected the plaintiff's work as a physiotherapist. The injuries also left the plaintiff with unsightly scars and keloid formations due to the skin grafts she had undergone, not to mention the constant pain she must endure daily from her left foot as well the compensatory pain she suffers from her right foot and lower back.

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9 Joint Opening Statement ("JOS"), Annexure A.

10 AB2 55; Notes of Evidence ("NE"), 17/01/17, 11:18–11:31.

21 I will deal with each item in the order set out above, grouping them together where appropriate.

(a): Degloving injury to left foot

22 Both Dr Tay and Dr Bell referred to the Ministry of Manpower's Guide to the Assessment of Traumatic Injuries and Occupational Diseases for Work Injury Compensation ("GATOD") for their assessments of the plaintiff's disability at 33% and 37% respectively.[11]

23 Counsel for both parties equally relied on GATOD but arrived at different conclusions. The plaintiff's counsel submitted that for the pain and suffering and loss of amenities that the plaintiff endured and continues to endure for the degloving injury to her left foot, a sum of $90,000 should be awarded. In support, the plaintiff cited *Ng Chee Wee v Tan Chin Seng* [2013] SGHC 54 ("*Ng Chee Wee*"). The plaintiff there claimed against the defendant for injuries he suffered when the defendant's lorry collided into the plaintiff's motorcycle. The plaintiff suffered, amongst other injuries, a degloving injury to his right foot. The judge affirmed the figure of $90,000 awarded by the court below for pain and suffering. Thus in the present case, the plaintiff submitted that she was entitled to the same sum as her degloving injury was similar to, if not more serious than, that of the plaintiff in *Ng Chee Wee*.[12]

24 The defendant on the other hand submitted that a *global* sum of $40,000 should be awarded for the crush injury of the plaintiff's left foot. This encompassed the degloving injury, the big and second toe amputations,

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11 AB1 14, 35.

12 PCS, paras 40–48.

chronic pain in her left foot, decreased range of motion of her left ankle, and the possible early onset of arthritis for her left foot and ankle.[13] It was argued that the plaintiff's injuries were less severe than those of the plaintiff in *Zailani bin Putra Ali v Low Keng Huat Construction Company (S) Pte Ltd* [1993] SGHC 277. The plaintiff there was awarded $45,000 for pain and suffering for a severe crush injury to the foot. He had undergone multiple surgeries to remove dead tissue, had his forefoot amputated and was fitted with a forefoot prosthesis. I note this was a 1993 case.

25 The defendant's counsel also argued that the plaintiff's claim for pain and suffering as a whole was manifestly excessive. I note that in the joint opening statement filed at the beginning of trial on 12 January 2017, the plaintiff's claim for pain and suffering and loss of amenities totalled $311,500.[14] It was this amount that the defendant said was manifestly excessive. The plaintiff's claim was since reduced to $281,500 in her closing submissions.[15] Nonetheless, I will still address the defendant's submission on this point.

26 The defendant relied on the Court of Appeal decision of *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85 ("*Lee Wei Kong*"). That case concerned a plaintiff who suffered severe traumatic head injuries. In deciding the appropriate award for pain and suffering, the High Court judge considered cases of other paraplegic claimants. Thereafter, he reduced the Assistant Registrar's global award of $285,000 for pain and suffering to $160,000 on the basis that $285,000 was

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13 DCS, paras 14–15.

14 JOS, Annexure A.

15 PCS, para 289.

manifestly excessive. The Court of Appeal agreed with the judge's reduced award. It was argued that the plaintiff in the present case did not suffer injuries that were comparable to those of the plaintiff in *Lee Wei Kong* at all, since she could still ambulate and manage her own affairs independently. Thus, the defendant submitted that the award in the present case should not even be near the $160,000 awarded in *Lee Wei Kong*.[16]

27 While the court can find guidance in other cases, no two cases are exactly alike. It is a truism that each case turns on its own facts. In my view, the comparison with *Lee Wei Kong* is not helpful or appropriate. The better starting point is *Ng Chee Wee* as the plaintiff there suffered a very similar injury to the plaintiff in the present case. I should point out that no amputation was involved for the plaintiff in *Ng Chee Wee* despite which he was awarded $90,000 for pain and suffering. The judge there also referred to the case of *Mei Yue Lan Margaret v Raffles City (Pte) Ltd* [2005] SGHC 168 in which the plaintiff was injured by a metal sheet that cut her right leg and caused her to sustain nerve injury. The plaintiff there was awarded $100,000 for pain and suffering as she had to undergo numerous operations and treatment which included the implant of a spinal cord stimulator to control the pain from a condition she developed called reflex sympathetic dystrophy.

28 In the light of the authorities cited by both parties, the court is of the view that an award of $90,000 would be fair for the plaintiff's pain and suffering and loss of amenities in respect of the degloving injury to her left foot. She can no longer engage in physical activities such as rock climbing, abseiling and mountain trekking as she did before the accident.

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16 DCS, paras 7–9.

(b) & (c): Big and second toe amputations

29 The plaintiff requested an award of $30,000 for the amputation of her big toe. Relying on GATOD, counsel submitted that the permanent incapacity as a result of this amputation was 14%. The amputation had resulted in many physical limitations which prevented the plaintiff from engaging in activities she previously enjoyed doing, including rock climbing.[17]

30 Counsel for the plaintiff requested a separate award of $25,000 for the full amputation of the three phalanges at the second metatarsophalangeal joint of the second toe of the plaintiff's left foot. Based on GATOD, the permanent incapacity resulting from this amputation was 3%.[18]

31 The plaintiff's claim for $30,000 and $25,000 in relation to the amputations of the big and second toes respectively were based on the *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) issued by the State Courts ("the State Courts Guidelines").

32 The defendant on the other hand submitted that these claims were subsumed within the crush injury claim for which the defendant submitted $40,000 was adequate. Accordingly there should be no separate award for the amputated toes (see [24] above).

33 This court disagrees. It bears repeating that the plaintiff suffered very serious injuries and the amputation of her toes is irreversible; the digits cannot

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17 PCS, paras 49–69.

18 PCS, paras 70–78.

be replaced. Her gait and balance is affected and she can never walk normally again, let alone engage in the many sports activities that she used to participate in before the accident. Consequently, a global award of $40,000 for the entire crush injury would be manifestly inadequate. Rather, this court is of the view that there should be separate awards for the amputated toes.

34 I accept that the plaintiff's incapacity based on the GATOD resulting from the amputation of the big toe and the partial amputation of the second toe appears to be 14% and 3% respectively. I also accept the plaintiff's submission that separate sums of $30,000 and $25,000 for the big and second toe respectively should be awarded for the two amputations.

(d), (e), (f) & (k): Chronic/permanent left foot pain, compensatory right foot pain, adaptive/compensatory low back pain and possible development of lumbar spondylosis

35 It makes sense to deal with these claims together. The plaintiff claimed $25,000 for chronic/permanent left foot pain, $8,000 for compensatory right foot pain, $15,000 for adaptive/compensatory low back pain and $5,000 for possible development of lumbar spondylosis. Hence the plaintiff claimed a total of $53,000 in respect of these four items.

36 As against this, the defendant offered $2,000 for the plaintiff's compensatory right foot pain and $5,000 for adaptive/compensatory lower back pain and the possible onset of lumbar spondylosis. As mentioned, the defendant submitted that the claim for chronic/permanent left foot pain was subsumed within the award of $40,000 he had offered for pain and suffering (see [24] above). Hence the defendant offered a total of $7,000 in respect of these four items.

37 I will first deal with the award for chronic/permanent left foot pain. Dr Tan's medical memorandum dated 22 July 2014 ("Dr Tan's second report") stated that the plaintiff "continues to have trouble with chronic pain from altered foot and gait stance as well as balance, adaptive low back pain from altered gait as well as stiffness of the ankle and surgical scar pain".[19] In his report dated 16 February 2015, Dr Tan stated, *inter alia*, that the plaintiff "[s]ince commencing work … has started experiencing chronic low back pain as well as pain over the second metatarsophalangeal joint", "she has and will continue to have permanent left foot pain from the loss of her first ray and second ray phalanges" and "she has compensatory right foot pain and low back pain which is permanent as a result of altered gait, standing and weight bearing kinematics consequent to the injury of her left foot."[20]

38 It was the plaintiff's own testimony that she experienced pain in her left foot on a daily basis. This was aggravated by the fact that the plaintiff is a physiotherapist.[21]

39 Relying on the State Courts Guidelines, the plaintiff submitted that an award of $25,000 would be appropriate. Her counsel submitted that the plaintiff's foot injury would be classified as serious (for which the range of awards was $15,000 to $25,000) but the fact of the permanent pain in her left foot would bring her injury within the category of severe foot injuries (for which the range of awards was $25,000 to $30,000). As such the plaintiff

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19 AB1 19.

20 AB1 30.

21 Plaintiff's AEIC, para 44; Plaintiff's Further Supplementary AEIC, paras 16–17; NE, 17/01/17, 49:19–49:20, 99:7–25, 101:9–101:10.

came within the lower end of the severe category and higher end of the serious category.[22]

40 As for the compensatory right foot pain, counsel for the plaintiff submitted that an award of $8,000 at the higher end of the mild category (for which the range of awards was $2,000 to $8,000) was appropriate because the plaintiff's injury is long term and permanent.[23]

41 The defendant on the other hand submitted that the plaintiff's compensatory right foot pain was minor and sporadic and thus an award of $2,000 would be adequate.[24]

42 Turning to the low back injuries, the plaintiff requested a sum of $15,000 for the adaptive/compensatory low back pain and $5,000 for possible lumbar spondylosis. The first item was based on the range of $10,000 to $17,000 for moderate back injuries, as set out in the State Courts Guidelines. It was submitted that an award of $15,000 on the higher end of the range was appropriate since the plaintiff's adaptive/compensatory low back pain is long-term and permanent.[25]

43 In support of the second item, the plaintiff cited two assessment cases. In the first case of *Tan Yong Heng Jeffrey v Tay Kiah Por* [2003] SGHC 278 ("*Tan Yong Heng Jeffrey*"), the Registrar awarded $2,000 and $3,000 respectively for potential osteoarthritis in the plaintiff's left metatarsal and left

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22 PCS, paras 79–85.

23 PCS, paras 86–94.

24 DCS, paras 20–29.

25 PCS, paras 95–104.

ankle. In the second case of *Visvalingam s/o Arumugam v Toh Gim Choo* [1998] 1 SLR (R) 314 ("*Visvalingam*"), the judge awarded $5,000 for the early onset of osteoarthritis on the left knee joint. The plaintiff's argument appeared to be that since the plaintiff's possible lumbar spondylosis is likewise a form of arthritis arising from the plaintiff's injuries suffered in the accident, an award of $5,000 would be appropriate.[26]

44 As regards the adaptive/compensatory low back pain, counsel for the defendant argued that the State Courts Guidelines were not applicable because unlike the case authorities cited in the State Courts Guidelines in support of the range of $10,000 to $17,000, the plaintiff in the present case did not suffer a fracture of her lower spine. Consequently, based on prevailing case authorities, the defendant submitted that an award of $5,000 was fair and reasonable for the plaintiff's lower back pain and possible onset of lumbar spondylosis.[27]

45 I will first address the claim for the chronic/permanent left foot pain. It will be recalled that the defendant submitted that any sum to be awarded in respect of this was subsumed in the award of $40,000 he offered for pain and suffering for the crush injury of the left foot (see [24] above).

46 The court is mindful that a plaintiff should not make a double recovery with regards to pain and suffering. In this case, the issue is whether there should be a separate award to the plaintiff for the permanent pain in her left foot, over and above the award of $90,000 for her pain and suffering as set out in [28] above. The answer is yes.

26 PCS, paras 136–149.

27 DCS, paras 30–38.

47 The award for pain and suffering not only compensates an accident victim for the pain the person suffers arising from the accident but covers the residual or permanent pain that the person will have to endure for the rest of his life due to the residual injuries he suffers. It bears noting that the plaintiff's chronic left foot pain and compensatory pain in the right foot and back will never go away.

48 Consequently, the plaintiff is entitled to claim separately for the pain she suffers in her left and right feet as well as in her lower back caused by the amputation of her two left toes and her resultant uneven gait. As for the amount, the sums should be:

(a) $25,000 for the plaintiff's permanent left foot pain;

(b) $5,000 for the compensatory pain in her right foot;

(c) $10,000 for the plaintiff's lower back pain; and

(d) $5,000 for the possible development of lumbar spondylosis.

49 The above figures are in line with the recommendations in the State Courts Guidelines. For the item at [48(a)] above, I took into consideration two ranges stated in the State Courts Guidelines. The first range was $15,000 to $25,000 for serious foot injuries that included "significant damage to both feet requiring multiple operations with some needing fusion of foot joints and long-term treatment" and "residual disabilities remain on a long-term basis with a significant risk of osteoarthritis". The second range was $25,000 to $30,000 for severe foot injuries including "fractures of both heels/both feet with substantial restriction on mobility and permanent pain". An award of $25,000 is the maximum of the first range (*ie*, for serious foot injuries that

have a significant risk of osteoarthritis), but at the lower end of the second range (*ie*, for severe foot injuries that cause permanent pain). Consequently, an award of $25,000 would in my view be appropriate. The plaintiff will have no respite from the pain in her left foot because of her occupation as a physiotherapist be it part-time or full-time.

50 As for the item at [48(b)] above, the State Courts Guidelines gave a range of $2,000 to $8,000 for mild foot injuries with complete or near complete recovery that has "continuing symptoms such as permanent limping (slight) pain or ache". Based on the recommended range, I felt an award of $5,000 would suffice. I note that the defendant's figure of $2,000 was the lowest figure in the range, which in my view is wholly inadequate.

51 As for the item at [48(c)] above, I considered the State Courts Guidelines' recommended range of $10,000 to $17,000 for "severe strain of the back ligaments and/or muscles giving rise to backaches, soft tissue injuries resulting in exacerbation of existing back condition or prolapsed discs and/or permanent or chronic disability". In my view, an award of $10,000 – at the lower end of the range – is appropriate. The defendant's figure of $5,000 is unsupported by either case law or the State Courts Guidelines.

52 Finally, as for the item at [48(d)] above, I note that neither GATOD nor the State Courts Guidelines covers this item. In light of existing case law, an award of $5,000 for the possible development of lumbar spondylosis would not be unreasonable.

(g): Left shoulder contusion/supraspinatus tendonitis

53 Dr Tan's report dated 18 December 2013 ("Dr Tan's first report") stated that the plaintiff suffered a left shoulder contusion at the time of the injury.[28] In January 2013, the plaintiff went for an MRI to evaluate her left shoulder pain and it showed mild supraspinatus tendonitis.[29] The plaintiff submitted that based on the State Courts Guidelines (for which the range of awards was $2,000 to $10,000), she should be given a sum of between $8,000 and $10,000.[30]

54 The defendant contended that the left shoulder contusion was a minor injury as it did not feature regularly in the plaintiff's complaints to her doctors. Indeed, it was not even mentioned to Dr Bell or to the plaintiff's occupational therapist Ms Pow. As such, the defendant submitted that an award of $2,000 on the lower end of the range would be appropriate for this head of claim.[31]

55 While both sides referred to the State Courts Guidelines, neither party cited any case authorities in support of the specific awards sought.

56 The court notes that this injury was not serious nor permanent. In fact, the MRI which the plaintiff underwent on 24 January 2013 showed she had mild supraspinatus tendonitis.[32] Since Dr Bell's second report did not refer to this item,[33] it can be assumed that this injury/condition has healed completely

28 AB1 13.

29 AB1 13.

30 PCS, paras 105–111.

31 DCS, paras 39–44.

32 AB1 13.

33 AB2 53–56.

in the four years since. The court awards a sum of $5,000 for this item of claim.

(h): Decreased range of motion/stiffness of ankle in left foot

57 Dr Tan's second report stated that the plaintiff continued to experience stiffness in her left ankle[34] whilst Dr Bell's first report stated she had a limited range of motion of her left ankle when he examined her on 9 February 2015, some 26 months after the accident.[35] Counsel for the plaintiff relied on the State Courts Guidelines, which set out that an award in the region of $33,5000 was appropriate for "transmalleolar fracture of the ankle with extensive soft tissue damage resulting in deformity, severely restricted ankle mobility and instability on a long-term basis".[36]

58 The defendant did not offer a sum for this item of claim on the basis that it overlapped with the crush injury to the plaintiff's left foot (see [24] above).

59 The State Courts Guidelines gave a figure of $33,500 for severely restricted ankle mobility and instability on a long term basis. While the plaintiff will no doubt suffer stiffness of the left ankle on a long term basis, the mobility of her left ankle cannot be described as "severely restricted" as a result of the accident. An award of $33,500 would not be appropriate. Additionally, to avoid any element of double recovery (because of the award

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34 AB1 19.

35 AB1 34.

36 PCS, paras 112–120.

of $25,000 for pain and suffering for chronic/permanent left foot pain, at [49] above), the court awards a sum of $20,000 for this item.

(j): Possible early onset of arthritis for the left foot and ankle

60 The plaintiff sought a separate award of $5,000 for the possibility of developing premature arthritis in her left foot and ankle.[37] Again, the defendant did not offer a sum for this item of claim on the basis that it overlapped with the crush injury to the plaintiff's left foot (see [24] above).

61 The plaintiff's claim for $5,000 was based on two assessment cases, *Tan Yong Heng Jeffrey* and *Visvalingam* (at [43] above). In both cases the court awarded $5,000 for potential early onset of arthritis.

62 I accept the plaintiff's submission and award her the sum of $5,000 for the possible early onset of osteoarthritis in the left foot/ankle.

(i): Surgical scars

63 The reports of both Drs Tan and Bell stated that the plaintiff suffered from surgical scarring at donor sites for the numerous skin grafts that she underwent after the accident.[38] These were at the outer aspect of her left mid-thigh and on her inner thigh. Photographs exhibited in the plaintiff's AEIC showed the extensive and unsightly scars on her left thigh.[39] The plaintiff deposed that her consciousness of her disfigurement prompts her to wear jeans and trousers and to give up the dresses, skirts and bikinis that she used to wear

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37 PCS, paras 136–149.

38 AB1 14, 34.

39 Plaintiff's AEIC, Exhibit TSL-3, pp 67, 69–70.

prior to the accident.[40] Dr Tan also reported that the plaintiff suffers from surgical scar pain.[41]

64 Based on the State Courts Guidelines, the plaintiff requested a sum of $15,000 for the two scars on her left thigh.[42] The defendant on the other hand submitted that a sum of $5,000 for the scars would be appropriate, citing in support the District Court's assessment in 2001 of *Liew Boon Chung v Kumar a/l Muniandy & Anor* Suit No. 1296 of 1996 and the High Court decision of *Aw Ang Moh v OCWS Logistics Pte Ltd* [1998] SGHC 167.[43]

65 A picture speaks a thousand words – photographs of the two huge scars (as well as donor site for her skin grafts) on the plaintiff's left thigh show how unsightly they are. The defendant's submission of $5,000 for this item is wholly inadequate, taking into account it was based on case law assessments made by the District and High Courts respectively as far back as in 2001 and 1998 (see [64] above). Moreover, the plaintiffs in both cases were male and manual labourers. It should be observed that the State Courts Guidelines on scars recommend as follows:

> The higher range of the award is appropriate in cases where the scars are huge and unlikely to be removed completely even with cosmetic surgery and the injured person is a young female.

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40 Plaintiff's AEIC, para 37.

41 AB1 19.

42 PCS, paras 121–135.

43 DCS, paras 45–49.

The State Courts Guidelines then gave a range of $5,000 to $15,000 for multiple scars, $1,500 to $3,000 for single or minor scars and $3,000 to $6,000 for keloid scars.

66 In the light of the above guidelines and the fact that the plaintiff was aged 32 at the time of the accident, the court agrees with her submission that she is entitled to the highest amount in the range for multiple scars, amounting to $15,000.

(l): PTSD

67 The plaintiff has suffered from PTSD since November 2013. Dr Rathi was the doctor who diagnosed the plaintiff as suffering from PTSD when the plaintiff first saw her on 16 December 2013, about a year after the accident.[44] The plaintiff opted for psychological therapy in lieu of medication as treatment.[45] Hence, Dr Rathi referred the plaintiff to a clinical psychologist (namely, Ms Terri Chen) whom the plaintiff saw twice, once on 19 December 2013 and again on 16 July 2014. When Dr Rathi saw the plaintiff a second time on 12 October 2015, she assessed the plaintiff to still be suffering from the residual symptoms of PTSD although the plaintiff's condition had improved somewhat since her first visit.[46] Dr Rathi concluded her second report with this comment:[47]

> While it is difficult to predict how long the emotional difficulties and distressing memories will persist and whether [the plaintiff] will completely recover, it is likely that

44 AB1 18.

45 AB1 44.

46 AB1 45.

47 AB1 45–46.

> psychological therapy, time and closure of the case might help in the resolution of her symptoms.

In cross-examination, Dr Rathi said the plaintiff suffered from mild to moderate PTSD.[48] However, she was uncertain as to how long it would take the plaintiff to recover from PTSD.[49]

68 The defendant's expert Dr LYC produced a report dated 30 April 2016. Dr LYC confirmed that while the plaintiff still suffered from PTSD, "she appeared to have overcome the emotional obstacles, for example, she's able to pass by the accident site on the way to her house" and "[t]he nightmares appeared to have subsided."[50]

69 When he was in the witness stand, Dr LYC opined that it would take another three to six months for the plaintiff to be free of her anxiety symptoms while her distress and other symptoms would subside without the need for treatment.[51]

70 The plaintiff requested an award of at least $20,000 for her continuing PTSD syndrome as under the State Courts Guidelines, her condition would be categorised as "moderately severe".[52]

71 The defendant on the other hand submitted that the plaintiff's condition ought to be characterised as "mild". The defendant referred to the following

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48 NE, 18/01/17, 35:9–35:10.

49 NE, 18/01/17, 39:8–39:20.

50 AB1 48.

51 NE, 18/10/17, 45:14–46:4.

52 PCS, paras 150–170.

facts: that the plaintiff could clearly cope with daily life, was able to study and obtain a first class honours degree, had returned to her pre-accident exercise of cycling and was gainfully employed. Her condition would also be easily resolved with proper psychological help. Hence, an award of $4,000 would suffice as that was the upper limit of the range of $2,000 to $4,000 set out in the State Courts Guidelines.[53]

72 It is common ground between the parties' medical experts (namely, Dr Rathi for the plaintiff and Dr LYC for the defendant) that over time, the plaintiff will recover from PTSD. The dispute concerns how much longer the plaintiff's recovery will take.

73 I am of the view that under the State Courts Guidelines, the plaintiff's PTSD condition would be classified as "moderate" and not "moderately severe" as the plaintiff submitted or as "mild" as the defendant contended. Consequently, in the light of the fact that the recommended range for moderate PTSD is $4,000 to $10,000, the court awards the plaintiff the highest sum in that range of $10,000. The sum takes into account that even if Dr LYC's estimate of 3 to 6 months for the plaintiff's full recovery is deemed to be optimistic, the court is willing to give the plaintiff a cushion of another 6 to 9 months to do so.

Loss of earning capacity

74 The plaintiff is currently 36 years old. She works as a part-time physiotherapist at KTP Hospital and earns a monthly salary of $2,351 (excluding employer's CPF contributions).[54] She had converted to part-time

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[53] DCS, paras 50–61.

employment as of 18 November 2016.[55] When she was a full-time physiotherapist, her last drawn monthly salary was $3,797 (excluding employer's CPF contributions).[56] She claimed $75,000 for loss of earning capacity[57] while the defendant countered that she was only entitled to $50,000.[58]

75 The plaintiff cited the case of *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 ("*Shaw Linda Gillian*"). The plaintiff/respondent in that case was coincidentally a physiotherapist who worked full time at an Adelaide Hospital in South Australia. She was in Singapore on a holiday when she met with an accident. As a result of the accident where the defendant's/appellant's car mounted the pavement and collided into her, the plaintiff sustained a fracture to the base of her skull, fractures to her right leg, severe degloving of her right foot/lateral ankle and multiple bruises and lacerations.

76 The plaintiff cited *Shaw Linda Gillian* (at [37]) for the following proposition:

> … The fact of the matter was that [the plaintiff] was under disabilities, and could not, for example, work long hours, attend to patients in wards, and physically assist patients. To suggest that these negative factors would not make the [plaintiff's] risk of losing her post-accident employment a real risk would be to ignore the obvious. … There was clearly some degree of uncertainty regarding the [plaintiff's] post-accident employment that could not be disregarded. That said, if the [plaintiff] was to be compelled to re-enter the labour market,

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54 AB1 214.

55 AB1 214.

56 AB1 202.

57 PCS, paras 171–204.

58 DCS, paras 140–151.

> her disabilities would, no doubt, put her at some disadvantage. Accordingly, we were of the view that an award for loss of earning capacity was justified.

The plaintiff suggested that like the plaintiff in *Shaw Linda Gillian*, given her limited physical abilities and the fact that she is placed in a physically strenuous and demanding work environment as a physiotherapist, there was a degree of uncertainty regarding her post-accident employment that could not be disregarded. The plaintiff referred to medical reports that purportedly support the conclusion that the plaintiff is unable to sustain her work as a full-time physiotherapist. I shall return to these reports later. It was also submitted that the plaintiff's severe residual disabilities would also disadvantage her in the open employment market in the future.

77 The plaintiff also relied on several case authorities. In *Bernice Amelia Tan v Loh Chee Song* Suit No. 46 of 2000, the plaintiff was a university undergraduate who used to earn $3,000 per month giving tuition and doing freelance photography assignments. Her leg injuries resulted in, among other disabilities, the shortening of her right lower limb and weakened right thigh. The court awarded her $60,000 for the loss of earning capacity. In *Ong Hoe Hiong (an infant) suing by her father and next friend Ong Ah Eng v Ang Kok Wei & Ors* Suit No. 1425 of 1996, the court awarded $65,000 to the plaintiff who was employed as a sales assistant earning about $1,000 per month, and who suffered injuries to her lower limbs. Finally, in *Ong Zern Chern Phillip v Wong Siang Meng* [2004] SGHC 256, the plaintiff was a tank commander earning $2,800 per month. He suffered injuries to the lower limbs which made it difficult for him to squat, run, jump and carry heavy weights. The court awarded $80,000 for loss of earning capacity. None of these cases involved amputations. Relying on these authorities, the plaintiff suggested that an award

of $75,000 would be appropriate, taking into account the fact that her current income surpasses that of all three plaintiffs.

78 The defendant also relied on *Shaw Linda Gillian*, but for a different proposition. At [36], it was stated that:

> It is trite that an award for loss of earning capacity (in the context where the plaintiff is currently employed) can only be awarded if there is a substantial or real risk that the plaintiff could lose his or her present job at some time before the estimated end of his or her working life and that the plaintiff will, because of the injuries, be at a disadvantage in the open employment market … Following from this, no award for loss of earning capacity should be granted if there is no risk of the [plaintiff's] post-accident employment being terminated.

The test is two-stage: first, the court determines whether there is a substantial or real risk that the plaintiff will lose his present job at some time before the estimated end of his working life; and if so, then the court assesses and quantifies the present value of the financial damage which the plaintiff will suffer if that risk materialises, having regard to, among other factors, the degree of the risk and the time when it may materialise. However, if the court determines at the first stage that there is no risk of the plaintiff losing his present job before the end of his working life, the plaintiff is not entitled to an award for loss of earning capacity.

79 The defendant accepted that there was a risk that the defendant might lose her job at KTP Hospital before the estimated end of her working life and thus that the plaintiff was entitled to an award for the loss of earning capacity. However, the defendant said that this risk was not imminent and thus disputed the quantum to which the plaintiff was entitled. He submitted that an award of $50,000 was fair and reasonable.

80 The defendant pointed to the following facts. First, the plaintiff's work performance was satisfactory. She had been graded "B" in her work performance evaluations from 2011 to 2016 (save for 2013 after the accident when she had to take an extended break from her work and received a "C" grade). There was no indication that the plaintiff's superiors and employers were dissatisfied with her work performance.[59]

81 Secondly, Ms Nya from the Human Resources department testified that KTP Hospital hired physiotherapists between 62 and 67 years old, depending on their health. Ms Nya also disclosed that KTP Hospital employs physiotherapists over this age group as well.[60] Thus there was no indication that she would lose her employment at KTP Hospital.

82 Thirdly, the defendant argued that physiotherapists are in demand and with the plaintiff's stellar academic credentials, it was not likely that she would be unable to find a job outside of KTP Hospital.

83 Finally, I come now to the defendant's arguments in response to the plaintiff's assertion that she was unable to work as a full-time physiotherapist after the accident as a result of her severe disabilities. The defendant said that the plaintiff's part-time employment was by choice and not due to circumstances. He alleged that her reasons for converting from full-time to part-time employment were self-serving, highly suspect and inconsistent with other evidence.[61]

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59 NE, 18/01/17, 59:1–59:30.

60 NE, 18/01/17, 64:3–64:13.

61 DCS, paras 100–135.

84 The defendant pointed out that none of the medical reports produced before the court stated in definitive terms that the plaintiff could not work full-time as a physiotherapist. He alleged that the plaintiff had exaggerated her job demands (*eg*, the loads she was required to carry) and deliberately underperformed in tests conducted by her occupational therapist Ms Pow.[62] The plaintiff also failed to disclose to Ms Pow that modifications had been made to her full-time job. What was also noteworthy was the fact that Ms Pow's evaluation of the plaintiff was actually the first time she had conducted the physical work performance evaluation exercise.[63] Ms Pow's evaluation later formed the basis of the reports of Dr Tan and other medical consultants. Accordingly, the defendant argued that those medical reports regarding the plaintiff's suitability for full-time work may be an inaccurate of the plaintiff's condition.

85 The defendant further noted that Ms Pow did not say all physiotherapist jobs are physically demanding. Ms Pow said that there were physiotherapists who were employed in research and teaching.[64]

86 The defendant also took issue with the plaintiff's testimony that Dr Lim had recommended that she convert to part-time employment.

87 Consequently, the defendant submitted that on a balance of probabilities, the plaintiff had not proved that she was unable to work on a full-time basis (including in an outpatient unit) or that her request to work part-time was attributable to her injuries arising from the accident.

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62 DCS, paras 122–131.

63 NE, 20/01/17, 5:20–5:29.

64 NE, 20/01/17, 12:15–12:24.

88 A review of the evidence suggests that the defendant is right. I agree with the defendant that neither party's medical experts said definitively that the plaintiff should only work part-time as a physiotherapist. Dr Tan's first report only said:[65]

> [The plaintiff's] future career prospects have been affected as a consequence of this injury and she will not be able to engage in the maximum scope of a physiotherapist's work due to restrictions in lifting and maximal assist of patients.

Likewise, the concluding paragraph of Dr Bell's second report stated:[66]

> [The plaintiff's] left foot injuries will hinder her ability to work in a strenuous occupation like physiotherapy.

89 Further, it was clarified at trial that the plaintiff's request on 3 October 2016 to convert to part-time from full-time employment *had not* been prompted by medical advice.[67] As the plaintiff had attached an undated memorandum from Dr Lim headed "Recommendation to work part-time" to support this request,[68] it appeared at first blush that Dr Lim had recommended her to work only on a part-time basis. However, when Dr Lim was cross-examined, he disclosed that it was the plaintiff who had requested him, on or about 20 September 2016, for the aforesaid memorandum to support her application for part-time employment.[69] In other words, he had not recommended that she *convert* to part-time employment. Indeed, the plaintiff did not seek his advice on doing outpatient physiotherapy on a full-time basis.

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65 AB1 14.

66 AB2 56.

67 AB3 1.

68 AB1 212–213.

69 NE, 19/01/17, 48:26–49:19; 50:26–51:3

This evidence was corroborated by the plaintiff's own testimony after being pressed by the court to answer counsel's question.[70]

90 Consequently, the court does not accept that due to her disabilities, the plaintiff's physical limitations in lifting patients put her at such a great disadvantage that she cannot be employed as a full-time physiotherapist at KTP Hospital. It was in evidence that KTP Hospital had modified the plaintiff's job scope after she returned to work on a full-time basis in August 2014 in the outpatient department.[71] Further, Ms Nya from the Human Resources department had testified that KTP Hospital hired physiotherapists between 62 and 67 years old, depending on their health, and has even employed physiotherapists over this age group as well.[72]

91 Moreover, there was no indication that the plaintiff would be unable to procure full-time physiotherapy work *outside* of KTP Hospital. The court notes that there is an increasing demand for physiotherapists in Singapore, that the job scope of a physiotherapist is not limited to physically-demanding work and that the plaintiff is a graduate with a first class honours degree.

92 Thus, I very much doubt that the plaintiff is at risk of losing her job as a physiotherapist, an occupation for which demand currently exceeds supply. Since there is no risk of her employment being terminated, consequently, the court does not award the plaintiff the amount she claims for loss of earning capacity.

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70 NE, 18/01/17, 15:9–16:8.

71 NE, 19/01/17, 50:21–50:23.

72 NE, 18/01/17, 64:2–64:12.

Loss of future earnings

93 The plaintiff claimed $346,968 for loss of future earnings. This was based on two multiplicands: the first for a multiplier of ten years at $1,692 per month and the second for six years at $1,999 per month.[73]

94 The plaintiff first sought to establish that she was entitled to an award for loss of future earnings in addition to an award for loss of earning capacity. The plaintiff referred to *Shaw Linda Gillian* at [25]:

> To reiterate again, loss of future earnings and loss of earning capacity compensate different loses. We can best illustrate the point by an example. Suppose an injured person was taken back by his pre-accident employer to do a less demanding job due to his disabilities but at a lower pay. If the employer cannot guarantee how long he will be so employed but will do so as long as possible, it seems to us that the injured victim would be entitled to awards based on both heads of damages.

The plaintiff submitted that the illustration above was applicable to the present case. Although she had returned to her pre-accident occupation as a physiotherapist, she had done so in a lower capacity and at a lower pay. As mentioned, the plaintiff was formerly employed as a full-time physiotherapist but had switched to part-time employment as of 18 November 2016 (see [74] above). Because of her severe disabilities arising from her left foot injuries, she was at high risk of losing her current job as a physiotherapist. On this basis, she was entitled to an award for loss of future earnings.

95 Again, the plaintiff relied on the reports of both Drs Tan and Bell to say that she can never return to work in a full scope of a physiotherapist whether in an inpatient or in an outpatient setting (see [76] above).[74] The

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[73] PCS, paras 205–268.

plaintiff also said that had the dates for the assessment hearing (originally fixed for September 2016) not been postponed, she would not converted from full time to part-time employment and consequently there would not have been any drop in income on her part.[75] I can dispose of the second point quickly as I have already found above at [90] that the plaintiff had chosen to convert from full-time to part-time employment of her own accord. The change of dates for the assessment hearing was irrelevant to that decision.

96 The plaintiff produced the following table to support the first multiplicand of $1,692:

Type of employment	**Gross monthly salary**	**Employer's CPF contributions @17%**	**Total**
Full-time	$3,797	$646	$4,443[76]
Part-time	$2,351	$400	$2,751[77]
Difference in monthly salary			**$1,692**

The second row in the table above reflects the plaintiff's last-drawn full-time salary in September 2016 ($4,433) while the third row reflects the plaintiff's

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74 AB1 35, 56,

75 PCS, para 247; NE, 18/01/17, 28:27–29:7.

76 AB1 202.

77 AB1 214.

salary after her conversion to part-time employment ($2,751). The suggested multiplicand was therefore the difference between those two figures.

97 As for the second multiplicand, the plaintiff suggested a multiplicand of $1,999. The plaintiff's current job grade is 12 with a salary range of $2,600 to $4,800.[78] Based on the Ministry of Manpower's Occupational Wage Survey, the median monthly gross wage for an individual above 30 years who has obtained a Bachelor of Science degree in physiotherapy is $4,750.[79] The plaintiff submitted that if not for the accident, she would have progressed to the next job grade. Even if she did not, inflation would have brought her salary close to the $4,800 mark. Hence her claim for the second multiplicand was based on the following computation:

Type of employment	**Gross monthly salary**	**Employer's CPF contributions @17%**	**Total**
Full-time	$4,059.83	$690.17	$4,750
Part-time	$2,351	$400	$2,751
Difference in monthly salary			**$1,999**

78 AB1 210.

79 AB1 221.

98 The plaintiff said that she had 26 years before reaching the statutory retirement age of 62. Even then, she submitted that she could have been re-employed up to 67 years of age, relying on Section 4 of the Retirement and Re-employment Act (Cap 274A, 2012 Rev Ed) which states:

> Minimum retirement age
>
> 4.—(1) Notwithstanding anything in any other written law, contract of service or collective agreement, the retirement age of an employee shall be not less than 62 years or such other age, up to 67 years, as may be prescribed by the Minister.

Consequently, the plaintiff was of the view that she could continue working until she turned 67 years of age, *ie*, another 31 years. The plaintiff then relied on *Shaw Linda Gillian*, where the plaintiff was similarly a young female physiotherapist with an estimated 31 years of working life ahead and the court applied a multiplier of 16 years. Accordingly, the plaintiff submitted that 16 years was an appropriate multiplier for the present case. Applying a split multiplier (*ie*, 10 and 6 years for the first and second multiplicands respectively), the plaintiff's claim for loss of future earnings was $346,968.

99 The defendant on the other hand submitted that the plaintiff was not entitled to any loss of future earnings. He asserted the plaintiff had failed to prove that she *could not* work as a full-time physiotherapist and thus her part-time employment at KTP Hospital was not a true reflection of her earning power.

100 As mentioned at [88]–[92] above, I agree with the defendant that the plaintiff can be employed as a full-time physiotherapist whether at KTP Hospital or elsewhere. Consequently, the court does not award the plaintiff the amount she claims for loss of future earnings.

101 The court holds that the plaintiff can and should continue working as a full-time physiotherapist on an outpatient basis. In view of Singapore's aging population and the increasing life expectancies of both men and women coupled with the increased demand for physiotherapy, the likelihood of her working until she is past 60 years of age is almost a certainty.

102 However, that does not detract from the fact that the plaintiff's promotion prospects have diminished as a result of the accident. That being the case, she is entitled to some claim for loss of future earnings. The only issue the court must determine is the quantum of that loss, based on her working on a full-time basis.

103 Rather than take the multiplicands used by the plaintiff, the court prefers to accept as a yardstick the plaintiff's last drawn salary of $4,443 during her full-time employment. Subtracting employer's CPF contributions, her net salary as of September 2016 working full-time was $3,797 (see [74] above). The court accepts that as a Bachelor of Science graduate in physiotherapy above 30 years of age, the plaintiff could have earned up to $4,800 per month (see [0] above). Adopting a broad brush approach, the plaintiff's loss in salary in future due to her disabilities would have been around $1,003 (*ie*, $4,800 less $3,797), rounded down to $1,000.

104 As for the multiplier, I accept the plaintiff's argument at [98] above that the expected remaining work life of the plaintiff is 31 years. Based on *Shaw Linda Gillian*, the appropriate multiplier is 16 years. Therefore, the plaintiff's total loss of future earning over 16 years would be $192,000 (*ie*, $1,000 x 12 months x 16 years).

Future medical expenses

105 The plaintiff originally claimed $42,732.60 based on the following breakdown:[80]

Item	**Units**	**Price**	**Total**
Custom shoes	104	$110	$11,440
Shoes modification	104	$90.95	$9,458.80
Custom soles	29	$449.40	$13,032.60
Rigid foot plate	29	$150	$4,350
Check-up / maintenance	104	$42.80	$4,451.20
Total			**$42,732.60**

The above breakdown was based on the report of Ms Nagai from TTSH dated 20 December 2013, which took into account the plaintiff's needs until she reached 80 years of age.[81] The plaintiff applied an upward adjustment to the

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80 JOS, Annexure A.

81 AB1 16–17.

units figure on the basis that her vocation required her to walk more than the average person.

106 The defendant on the other hand offered the following amounts:[82]

Item	**Total**
Custom shoes	$3,133.33
Shoes modification	$5,699.53
Custom soles	$7,190.40
Rigid foot plate	$2,400
Check-up / maintenance	$2,682.13
Total	**$21,105.39**

In offering these figures, the defendant accepted that the plaintiff was entitled to claim for medical expenses up till the age of 80. The major difference was that the defendant applied a discount for accelerated payment.

107 The plaintiff in her closing submissions then accepted the defendant's position in the joint opening statement.[83]

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82 JOS, Annexure A.

83 PCS, para 275.

108 However, in the defendant's closing submissions, he reduced the amounts he was willing to offer.[84] His primary contention was that the plaintiff was not entitled to claim for her medical needs up till 80 years of age. Instead, he contended that a multiplier-multiplicand approach should be employed, and the appropriate multiplier was 15 years. The defendant also contended that on the basis of evidence that emerged at trial, the plaintiff had overestimated her frequency of use and the cost of her needs.

109 Thus, the defendant offered the following amounts based on a multiplier of 15 years:

Item	**Frequency**	**Cost per annum**	**Total**
Custom shoes	Once per year	$103	$1,545
Shoes modification	Nil	Nil	Nil
Custom soles	Once per year	$168	$2,520
Rigid foot plate	Once per four years	$37.50	$562.50
Check-up / maintenance	Twice per year	$40	$504

84 DCS, paras 69–91.

Total	**$5,131.50**

110 The court agrees that based on the evidence at trial, the figures in the joint opening statement should be adjusted downwards. It was quite clear that several of the figures in Ms Nagai's report of 20 December 2013 were overstated. Accordingly, the court accepts the defendant's figure of $5,131.50 for future medical expenses.

Future transport expenses

111 In the joint opening statement, the plaintiff claimed $3,120 for future transport expenses while the defendant offered $1,253.33.[85] The plaintiff's claim was based on 104 visits at $30 per visit, while the defendant's was based on 94 visits at $20 per visit. The plaintiff indicated in her closing submissions that she was willing to accept this amount.[86]

112 However, in the defendant's closing submissions, the defendant reduced the amount he was willing to offer to $600. This figure was based on two visits per year, with a multiplier of 15 years, at $20 per round trip.[87]

113 Again, the court accepts the defendant's reduced figure of $600.

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85 JOS, Annexure A.

86 PCS, para 277.

87 DCS, para 83.

The claims for special damages

114 As mentioned at [10] above, the parties reached agreement on four out of five items of special damages. The only item in dispute was pre-trial loss of earnings, to which I now turn.

Pre-trial loss of earnings

115 The plaintiff was scheduled to go on no-pay study leave from 12 October 2012 to 21 September 2013 to pursue further studies.[88] Unfortunately, she met with the accident in December 2012. As a result, she did not go for her degree and instead returned to work on a part-time basis in October 2013 until December 2013. The plaintiff subsequently took additional no-pay study leave from 1 January 2014 until 31 July 2014 and resumed full-time employment on 1 August 2014.[89] Finally, the plaintiff converted from full-time to part-time employment on 18 November 2016.

116 The plaintiff claimed an award of $39,453, based on the following table:[90]

No-pay leave from January 2013 to September 2013	9 months x $3,072 = $27,648
Loss from part-time pay from October 2013 to December 2013	3 months x $1,492 = $4,476

88 AB1 203.

89 AB1 207, 209A.

90 PCS, para 280.

Difference between graduate and diploma pay from January 2014 to June 2014	5 months x $789 ($3,861 - $3,072) = $3,945
Difference between full-time and part-time pay between 18 November 2016 and 17 January 2017	2 months x $1,692 ($4,443 - $2,751) = $3,384
Total	**$39,453**

117 The defendant contended that the plaintiff was only entitled to $27,576 for pre-trial loss of earnings.[91] This comprised two components:

(a) For the period between October 2013 and December 2013, when the plaintiff resumed work on part-time basis; and

(b) For the period between January 2014 and July 2014, when the plaintiff took her second period of no-pay study leave.

118 In my view the plaintiff is not entitled to claim loss of income for the period of January 2013 to September 2013. Although she was on medical leave after the accident until 30 September 2013,[92] she was supposed to have been on no-pay leave at the time. There would have been no loss of income for this period.

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91 DCS, paras 152–158.

92 Plaintiff's AEIC, Exhibit TSL-3, p 84.

119 I agree that the plaintiff is entitled to claim in respect of the period mentioned in the second row in the table at [116] (which is the same period mentioned at [117(a)] above). Her monthly salary of $1,208 was that of a diploma-holder working on a part-time basis. But for the accident, she would have been paid $3,300 as a degree-holder working on a full-time basis. This works out to a difference of $2,092 per month. Her loss of income for this period between October 2013 and December 2013 was therefore $6,276 (*ie*, 3 months x $2,092).

120 In cross-examination, the plaintiff agreed that her pre-trial loss of earnings for the period January 2014 to July 2014 should be based on a monthly salary of $3,300.[93] For this second period of seven months, the plaintiff's loss was $23,100 (*ie*, 7 months x $3,300).

121 Finally, the plaintiff is not entitled to claim in respect of the period mentioned in the fourth row of the table at [116]. As I have found at [90] above, the decision to convert from full-time to part-time employment was entirely the plaintiff's choice. She should not be entitled to compensation on this basis.

122 Thus, the plaintiff is entitled to an award of $29,376 in respect of her pre-trial loss of earnings.

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[93] NE, 17/01/17, 63:2–64:23, 70:1–72:6.

Conclusion

General damages

123 The amounts awarded to the plaintiff for general damages are as follows:

(a) Pain and suffering and loss of amenities	
(i) Degloving injury to left foot	$90,000
(ii) Big toe amputation	$30,000
(iii) Second toe amputation	$25,000
(iv) Chronic/permanent left foot pain	$25,000
(v) Compensatory right foot pain	$5,000
(vi) Adaptive/compensatory low back pain	$10,000
(vii) Left shoulder contusion/supraspinatus tendonitis	$5,000
(viii) Decreased range of motion/stiffness of ankle in left foot	$20,000
(ix) Possible early onset of arthritis for the left foot and ankle	$5,000
(x) Possible development of lumbar spondylosis	$5,000
(xi) Surgical scars	$15,000
(xii) PTSD	$10,000
(b) Loss of earning capacity	Nil
(c) Loss of future earnings	$192,000

(d) Future medical expenses	$5,131.50
(e) Future transport expenses	$600
Total	**$442,731.50**

Special damages

124 The amounts awarded to the plaintiff for special damages are as follows:

(a) Cost of repair of the plaintiff's motorcycle	$1,605 (agreed)
(b) Loss of use of the plaintiff's motorcycle	$90 (agreed)
(c) Pre-trial medical expenses	$9,408.88 (agreed)
(d) Pre-trial transport expenses	$415.49 (agreed)
(e) Pre-trial loss of earnings	$29,376
Total	**$40,895.37**

125 Consequently, the plaintiff shall have final judgment in the global sum of $483,626.90. Interest at 5.33%, running from the date of the writ of summons, is also awarded on the items for general damages in [123(a)] and pre-trial loss of earnings in [124(e)] totalling $274,376, and for the agreed special damages totalling $11,519.37.

126 The court will hear parties on costs on a date to be fixed by the Registrar.

Lai Siu Chiu

Senior Judge

Tan Seng Chew Richard and Koh Keh Jang Fendrick (Tan Chin Hoe & Co) for the plaintiff;
Yeo Kim Hai Patrick and Neo Eng Hong (KhattarWong LLP) for the defendant.
