Lee Wei Kong (by his litigation representative Lee Swee Chit) *v* Ng Siok Tong [2010] SGHC 371

Case Number	: Suit No 215 of 2006 (Registrar's Appeal No 440 of 2009 & Registrar's Appeal No 445 of 2009)
Decision Date	: 29 December 2010
Tribunal/Court	: High Court
Coram	: Kan Ting Chiu J
Counsel Name(s)	: Joyce Fernando (Engelin Teh Practice LLC) for the plaintiff; Patrick Yeo and Lim Hui Ying (KhattarWong) for the defendant.
Parties	: Lee Wei Kong (by his litigation representative Lee Swee Chit) — Ng Siok Tong

Damages – Assessment

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 12 of 2011 was allowed by the Court of Appeal on 13 January 2012. See [2012] SGCA 4.]

29 December 2010 Judgment reserved.

Kan Ting Chiu J:

1 This judgment arises from an assessment of damages for personal injuries by an Assistant Registrar ("AR"). After the damages were assessed, both the plaintiff and defendant appealed against parts of her decisions.

2 The injuries were sustained by the plaintiff when he was 18 years old, and was just about to commence his second year of junior college. He was crossing a road junction when he was involved in a collision with a taxi driven by the defendant. The parties had agreed to apportion liability at 75:25 in favour of the plaintiff, and interlocutory judgment was entered by consent with damages to be assessed. (For the avoidance of doubt, all the awards herein are stated on the full basis, before the 75:25 apportionment.)

3 The plaintiff suffered severe injuries which included [note: 1] :

i. Large left parieto-temporal extradural haematoma;

ii. Lateral frontal subdural haematomas;

iii. Traumatic subarachnoid haemorrhage;

iv. Fractures of the left temporal bone and zygoma;

v. 6 teardrop fracture of the cervical spine;

vi. Post-traumatic amnesia;

vii. A right hemiparesis of grade 4 power with spasticity;

viii. Language deficits;

ix. Impaired truncal balance; and

x. Homonymous hemianopia.

4 Immediately after the accident, the plaintiff was warded in the National University Hospital for a month and a half. He had sustained severe traumatic brain injury. Emergency craniotomy and removal of the extradural and subdural haematoma were performed upon his admission in hospital. He was found to suffer from post-traumatic amnesia and his cognitive, language and motor skills were affected. He required physical, occupational and language therapy and was transferred to Tan Tock Seng Hospital for that purpose.

5 He was discharged from the hospital in June 2005 on a wheelchair and returned home where he was looked after by his mother, initially with the help of a maid. His parents took exceptional measures to ensure that he received all the treatment and help that he needed, and they were rewarded when the plaintiff made recovery beyond the initial expectations.

6 At the time of the assessment the plaintiff was able to walk, swim, engage in recreational sports, travel by public transport, make simple money transactions and socialise at birthday parties, church cell group meetings and at camp. He is a full time student at the LaSalle-SIA College of the Arts, pursuing a Diploma of Higher Education in Painting, although he is given special treatment in view of his existing disabilities.

7 A major issue in the appeals is the award for pain and suffering for the head injuries. The AR made an award of $285,000 against which both parties appealed. The AR stated in her brief grounds of decision that:

> I accept that a component approach is preferable to a global approach where the resultant deficits are identifiable and discrete.

In coming to this conclusion, she followed the decision of the High Court in *Tan Yu Min Winston (his next friend Tan Cheng Tong) v Uni-Fruitveg Pte Ltd* [2008] 4 SLR(R) 825 ("*Winston Tan*"), an appeal from another assessment of damages by the same AR. In that appeal, Chan Seng Onn J increased the AR's award for pain and suffering for head injuries to the plaintiff.

8 Chan J stated in his judgment in *Winston Tan*:

> 14 The AR then awarded a total figure of $90,000 for the collective injuries to the head region using the global approach. In doing so, she had made adjustments to take account of any overlapping injuries/amounts. The global award of $90,000 for the head injuries covered the pain and suffering for the fractures and other injuries, scarring to the head and face region, loss of smell, impairment of mental capacity and mood, and the eye injuries.
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> Component approach versus the global approach to assessment
>
> 15 I did not think that the AR's approach to make one global award for all the injuries to the head would *per se* be wrong. But without breaking the discrete injuries down into its manageable components, it would be much more difficult to arrive at an appropriate and fair award for the damages and it might lead to an undercompensation or overcompensation as a result. Furthermore, were the court to look towards precedent cases for assistance, it would also be

much harder to find similar cases or comparables with matching or similar injuries to the head as a whole (i.e. on a global basis) than on a component basis, and the court might then have to decide without the benefit of the precedent cases. This of course was not the main reason why I chose not to use the global basis of award for the injuries to the head in this case.

16 The component approach was preferable largely because the multiple injuries to the head spawned a discrete loss of several important distinct and separate functions and amenities, which were located there. After making an assessment based on the component approach, it would still be useful to total up the component awards and perform a further check on (a) whether the aggregate amount awarded for the injuries to the head as a whole remained reasonable and was not excessive; and (b) whether some discounting or adjustment would be needed in case there was some degree of overlapping (for instance where two or more of the injuries were in so close physical proximity to each other that the pain would not likely be distinguishable by the plaintiff although the injuries resulted in a loss of separate functions).

17 In the human body, many sensory faculties are located on the head: the eyes for the sight function; the ears for the hearing function; the nose for the smell function; the tongue for the taste function; and the vocal cord for the speech function. A loss or degradation in the performance of each of these important faculties represents *a separate and discrete loss of amenities*, each with its own attendant pain and suffering experienced by the plaintiff (which includes, *inter alia*, not only the physical pain, its duration, the degree of permanence of that injury or disability, the inconvenience associated with the loss of that function and the debilitating effects of that disability, but also the mental anxiety and anguish, fear, embarrassment, frustration, and the further pain and suffering from future operations or medical treatments, if any, to correct the disability or improve the condition), which is quite separate from the head injuries to the brain, the skull and other bone structures in the head.

(emphasis added)

9 Chan J propounded the component approach because on his analysis:

24 The proper way of damage assessment is not to look merely at the initiating injury, but rather at what are the real and definable manifestations of that initiating injury. Head injuries to the brain in my view should be judged in terms of the resulting deficits arising from that injury, and each of these deficits ought to be separately awarded.

25 The correct and perhaps more scientific way to look at the head injuries to the brain resulting from an accident is to properly classify them into the following three separate domains: structural, psychological and cognitive.

(a) "structural" injury (e.g. brain oedema, subdural, extradural subarachnoid haematoma, brain contusion, loss of consciousness), which is the specialisation of neurosurgeons;

(b) "psychological" injury (e.g. depression, mood swings, anger, anxiety), which is the specialisation of psychiatrists; and

(c) "cognitive" impairment – (e.g. loss of spatial, visual, long and short term memory, intellect (in terms of IQ), learning ability), which is the specialisation of clinical psychologists.

10 Applying the component approach, Chan J varied and increased the AR's award for pain and suffering to:

(a)	Head injuries	$90,000.00
(b)	Total loss of smell	$18,000.00
(c)	Vocal cord injury	$10,000.00
(d)	Eye injuries	$40,000.00
(e)	Scars and facial disfigurement	$15,000.00

(I will refer to injuries (b) to (e) as the "additional injuries".) The variation in effect retained the $90,000 award for head injuries, and supplemented it with additional awards for the additional injuries, eye injuries and scars and facial disfigurement.

11 There were in fact no additional injuries that surfaced during the appeal. What happened was that Chan J made separate awards for each of these "separate and discrete loss of amenities". However, under the global approach, all lost amenities would be taken into account when the global award is made. There is no reason to believe that the AR had disregarded the lost amenities. Indeed, the learned judge had not faulted the AR for ignoring them. Following from that, two questions arise:

(i) whether in adding the four component awards to the original global award, there was an element of double-counting; and

(ii) whether an award under the component approach is made up of a global award *and* component awards, or only the latter.

12 The component approach and *Winston Tan* came under the consideration of the Court of Appeal in *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 ("*Samuel Chai*"). The Court stated:

> 48 ... the point made was that the component approach did not have sufficient regard to the fact that the injuries, and resulting disabilities, were all essentially caused by one single injury. It was emphasised that such an approach would lead to a high possibility of over-compensation as a result of sub-itemisation. As we see it, such sub-itemisation was no more than an instrument to aid the court to determine what would be a fair and reasonable quantification for a particular injury or disability having regard to precedents. It enables the court to address the different aspects of pain, suffering and loss of amenities arising out of an injury systematically.
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> ...
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> 49 Damages are awarded on the basis of the injuries sustained and the resulting pain and suffering and loss of amenities *that followed*, and not merely on the number of injuries inflicted. Admittedly the problem of overlapping or under-compensation can occur when there are multiple injuries causing similar, if not the same, disabilities. ... Properly applied, the component approach could indeed prevent over-compensation rather than encourage it. Nevertheless, in awarding damages by way of the component approach, courts should always be mindful that the overall quantum must be a reasonable sum reflective of the totality of the injury.

13 It is axiomatic that the global includes the components. Where discrete injuries are identified, they will be taken into consideration under the global approach. The difference is that under the component approach awards are made for the components and not subsumed in a global award.

14 It is unclear if the Court of Appeal regarded the component approach as a distinct approach

which is to replace the global approach, or that it was drawing attention to the need to consider all the components of an injury when assessing damages. A difficulty in affecting a switch-over is that there may not be many precedents for the component damages as awards have hitherto been made on the global approach. In *Winston Tan* no precedents for the component awards were referred to.

15 Chan J had pointed out in *Winston Tan* at [16] that an assessment under the component approach was not an aggregation of the component awards and that:

> ... it would still be useful to total up the component awards and perform a further check on (a) whether the aggregate amount awarded for the injuries to the head *as a whole* remained *reasonable* and was *not excessive*; and (b) whether some discounting or adjustment would be needed in case there was some degree of overlapping. ...
>
> (emphasis added)

It was not made clear how the reasonableness or excessiveness is to be measured. It probably contemplates a reference to a global or overall figure. The Court of Appeal cautioned in *Samuel Chai* at [49] that:

> ... in awarding damages by way of the component approach, courts should always be mindful that the overall quantum must be a reasonable sum reflective of the totality of the injury.

which meant that after making and adding up component awards, the aggregate should be reviewed on a global basis. When seen in that way, the two approaches are not functionally distinct. The global approach arrives at a global figure after taking into account the component figures, and the component approach starts by adding up the component figures and ends by ensuring that the aggregate amount is reflective of the "totality of the injury".

16 The AR applied the component approach in her assessment and made her awards for:

(i)	*Structural damage*	
	For the whole body including fractures to the cervical spine, temporal bone and zygoma, visual field defect, haematomas and haemorrhages	$ 80,000
(ii)	*Psychological damage*	
	For mood instability, personality change and outlook	$ 60,000
(iii)	*Cognitive damage*	
	For the inability to resume mainstream education difficulty in coping with his art course, and post traumatic amnesia	$ 80,000
(iv)	Bladder and bowel dysfunction	$ 20,000
(v)	Loss of motor function and residual spasticity	$ 45,000
		$285,000

Injury (v) was a neurological deficit brought on by the head injury. The AR had probably dealt with it separately because it did not come under the structural, psychological, cognitive components.

17 As in *Winston Tan*, no precedents were cited in support of the component sums and that led the defendant to submit that [note: 2]:

> The learned Assistant Registrar appears to have disregarded all of the authorities cited by the Defendant and the Plaintiff in making her awards for the different components of the injuries. The Defendant submits that none of the cases cited before her by either the Plaintiff or the Defendant supports any of the awards eventually made. The learned Assistant Registrar's award for structural damage at $80,000.00, psychological injury at $60,000.00, and cognitive deficits at $80,000.00 does not appear to be based on any of the authorities cited before her.

(The AR had not referred to any case other than *Winston Tan* and the plaintiff did not respond to this submission in his reply.)

18 There are helpful precedent awards that were made on the global approach. The defendant referred to the following cases:

(i) *Peh Diana & Anor v Tan Miang Lee* [1991] 1 SLR(R) 22. The plaintiff was 14 years old. She was injured in a motor accident. Although she did not suffer any external injuries over the scalp, she sustained unspecified head injuries. She was in a coma for 20 days, and her head injuries left her with a clumsy left hand as a result of motor nerve damage. She had problems of expressive aphasia and dyslexia due to brain damage. There was marked cerebral atrophy. Her IQ was at the borderline of mental retardation and she talked in a childish manner and showed poor concentration and was disorientated in time, and demonstrated personality change. Chao Hick Tin J made an award of $82,000 for the head injuries and the residual disabilities.

(ii) *Toon Chee Meng Eddie v Yeap Chin Hon* [1993] 1 SLR(R) 407 ("*Eddie Toon*"). The plaintiff was 7½ years old when he was knocked down by a car. He suffered a fractured left skull with underlying brain damage and contusion. He had paralysis on the right side. He was unable to walk and was wheelchair bound. He was unable to speak and had the intellectual ability of a six-month to one-year old child. Goh Phai Cheng JC upheld an award of $160,000 for pain and suffering and loss of amenities of life.

(iii) *Chong Hwa Wee (by his Committee of Person and Estate, Chong Hwa Yin) v Estate of Loh Hon Fock, deceased* [2006] 3 SLR(R) 208 ("*Chong Hwa Wee*"). The plaintiff was injured in an accident between a motor cycle and a lorry. He sustained two fractures of the skull and occipital bone. He was unable to speak, and could only write some words very slowly from expressive dysphasia, a condition of the brain, and his comprehension and articulation of the world was probably impaired. Choo Han Teck J upheld an award of $120,000 for the injuries.

(iv) *Muhamad Ilyas Bin Mirza Abdul Hamid v Kwek Khim Hui* [2004] SGHC 12 ("*Muhamad Ilyas*"). The plaintiff who was 20 years old sustained head injury in a motor accident. He was admitted to hospital in a coma. He had a right orbital wall fracture, a right malar fracture and bilateral mandible fractures. Before the accident the plaintiff had an excellent academic record and was awarded a scholarship to pursue a course in electrical engineering. He was enrolled into a course for electrical engineering and computer science after the accident under a disabled students' program. After reviewing the evidence of the array of experts, an AR accepted that the plaintiff suffered a deterioration of memory and had suffered emotional trauma including symptoms of depression but with little residual physical disability. He also found that the plaintiff was still highly intelligent, with no deterioration in IQ. The AR assessed damages for pain and suffering, including the fracture of the teeth at $80,000.

(v) *Jaya bin Abdul Hamid v Radin Nornikman bin Abdul Gani* DC Suit No 4293 of 2001. The plaintiff sustained head injury with left extradural haematoma and traumatic subarachnoid haemorrhage. His disabilities were "residual cognitive dysfunction resulting in borderline full scale IQ" and increased spasticity of right limbs and motor dysphasia. Damages for pain and suffering were assessed at $60,000 in 2003.

19 Of these cases, *Eddie Toon* presented the most serious injuries while *Chong Hwa Wee* presented the injuries most similar to the present plaintiff's, and is also the most recent of the cases.

20 Looking at all these precedents, and taking into account the different types and degrees of severity of the injuries and residual disabilities, and the ages of awards, I find that the $285,000 awarded by the AR is unjustified, and I reduce it to $160,000.

21 The plaintiff had also appealed against the AR's award for pain and suffering. He appealed on a narrower basis, that the award should include a sum for a punctured lung. There were two difficulties with this appeal. Firstly, the injuries pleaded in the statement of claim did not include a punctured lung. Secondly, counsel did not refer to any medical report which recorded that the plaintiff had suffered a punctured lung. There was no basis for the plaintiff's appeal.

Other appeals of the plaintiff

22 There were three appeals against the dismissals of the claims for future speech physiotherapy and occupational therapy costs, for future nursing care and for future loss of earnings of the mother of the plaintiff for $223,800.

Future speech, physiotherapy and occupational therapy costs

23 In coming to her decision the AR relied on the evidence of Dr Kong Keng He, Head and Senior Consultant, Department of Rehabilitation Medicine, who had treated the plaintiff, that the plaintiff's physical impairments have improved tremendously, and are almost back to normal. Specifically, Dr Kong thought that it was not necessary for him to continue with speech therapy and occupational therapy. The plaintiff contended that the AR should not have disregarded the evidence of a speech language therapist, Dr Radika Vasudeva, and other persons who had dealt with the plaintiff who recommended that he should continue with occupational therapy and speech and language therapy that he was receiving.

24 The AR heard the evidence of all the witnesses on this area and concluded that:

> I accept the evidence of Dr Kong Keng He that the patient's condition has more or less tapered off, and that future speech and occupational therapy sessions are unnecessary, and will be of little or no benefit to him.

In the appeal the plaintiff only submitted that Dr Vasudeva's recommendations should be accepted, without stating that the AR was wrong to accept Dr Kong's evidence or that Dr Kong's opinion was wrong. I do not see any reason for disagreeing on the AR's finding made after listening to the witnesses.

Future nursing care for the plaintiff quantified at $120,000

25 The plaintiff had ceased to require nursing care at the time of the assessment of damages. This claim for future nursing care was put forward on the basis that his condition may deteriorate or

worsen as he gets older. This claim is really groundless. There was no basis to suppose that the plaintiff's condition would deteriorate. All the evidence was that he had recovered to a level that he does not require nursing care. The AR was correct to reject it.

Mother's loss of future income

26 This claim, for $251,802 computed at $19,754 per year for 13 years until she retires at the age of 62 years was made on the basis that the plaintiff's mother was due to start work as a full time kindergarten teacher on the day of the accident, and because of the accident, she did not take up the employment. This claim was not supported by any evidence from the mother herself or the employer. The plaintiff's father produced two letters to support the claim; the first a letter from the Head (Principal), Yuhua Education Centre, PAP Community Foundation, to the mother that she was converted from part-time status from 1 January 2005 at a basic monthly salary of $1000, with no reference to the tenure of employment, and the second was a letter from the education centre which confirmed that she did not take up her appointment. The writers of the letters did not give evidence.

27 The defendant had objected to the admissibility of the two letters, and clearly they were not admissible. In the absence of direct evidence from the mother and the writers of the two letters, there was no evidence to support a claim for $251,802.

28 The defendant also disputed the plaintiff's *locus standi* to make the claim for the mother's pre-trial loss of earnings and future loss of earnings. On a conceptual standpoint, there is some basis in this objection because the income lost is the mother's income, not the plaintiff's income or loss, but there is an answer to the objection. As these claims are acknowledged to be the mother's losses, the mother is effectively the beneficial claimant, especially as she is aware of these claims being made, and is not making any claims of her own. (It should be noted that the same objection could be taken over other claims e.g. the costs of treatment, transport and the maids' employment because the plaintiff's parents paid them, but no objections were taken.)

29 Such claims have been allowed. In *Kuan Kian Seng v Wong Choon Keh* [1995] SGHC 43, K S Rajah JC allowed a claim for the loss of earnings of the plaintiff's wife. The judge cited as authority *Donnelly v Joyce* [1974] QB 474 which allowed a claim for a mother's loss of earnings. For these losses to be recovered, however, they have to be reasonable. If a mother gives up a $10,000 monthly salary to look after a child instead of employing a maid or a nurse, then the recoverable loss should be based on the cost of employment of a maid or nurse and not the mother's salary.

Other appeals of the defendant

30 There were three appeals which were against the AR's awards for loss of earning capacity, cost of future psychiatric treatment, pre-trial maid expenses, pre-trial loss of income of the mother, and pre-trial transport expenses.

Loss of earning capacity

31 The AR held that the plaintiff's loss was a loss of earning capacity rather than a loss of future earnings. As the plaintiff had not completed his education when he was injured, and it was uncertain that he would have become an architect, as he had aspired to be, the AR's ruling accorded with the Court of Appeal's rulings in *Samuel Chai* on loss of future earnings and loss of earning capacity.

32 The quantification of the loss at $600,000, however, is not as well-founded. The plaintiff submitted in the assessment hearing that:

> We have assessed his loss of earning capacity to be $800,000.00 taking into account his age and potential that was nipped in the bud just as he was embarking on his studies to achieve his career path.

without citing a single precedent award to support the assessment. The AR did not explain how the $600,000 was arrived at.

33 The plaintiff submitted at the same hearing that the plaintiff's loss of earning capacity should be in the range of $150,000 to $180,000. The plaintiff cited the identical awards of $100,000 for the same loss made in *Winston Tan* and *Muhamad Ilyas*. There is another case, *Tan Siew Bin Ronnie v Chin Wee Keong* [2008] 1 SLR 178 ("*Ronnie Tan*") in which the same sum was awarded, and in *Nirumalan V Kanapathi Pillay v Teo Eng Guan* [2003] 3 SLR(R) 601 ("*Nirumalan*") $180,000 was awarded. Prior to these cases, such awards were conservative. Audrey Lim *e t al*, *Practitioners' Library, Assessment of Damages: Personal Injuries and Fatal Accidents* (Butterworths Asia 2001) lists 52 awards made between 1990 and 2000, with the highest at $75,000.

34 In assessing the loss of earning capacity, all the circumstances of the injured person has to be considered, particularly his age, education and work qualification, work record, and the effect the disabilities will have on his work prospects. These matters are relevant for putting a monetary value to the loss. Even with these matters in mind, the assessment of such damages is an inexact exercise, especially when the person's income-earning potential is uncertain.

35 These four cases offer guidance for the quantification of the plaintiff's loss of earning capacity. The plaintiff in *Muhamad Ilyas* was 21 years old and had completed junior college when he met with the accident and suffered serious head injuries. Despite the injuries, he was doing a course in electrical engineering and computer science at the University of California, under a disabled students' program. The plaintiff acknowledged that he was still a person of very high intelligence even after his accident, and was just "slower". The AR did not notice any slowness and found that he was likely to find gainful employment and be successful at whatever career he chose.

36 The plaintiff in *Winston Tan* was 13 years old at the time of the accident when he was a secondary school student, and taking a course on information technology at Temasek Polytechnic at the time of the assessment of damages. Chan J found that his residual disabilities should not be a major stumbling block preventing him from making further progress and achieving his employment goals.

37 The plaintiff in *Ronnie Tan* was a 36 year-old litigation lawyer. He had a whiplash injury with residual disabilities including frontal headaches, neck pain and stiffness and vertigo which affected his ability and capacity to work, although he continued work, probably at a reduced level.

38 The plaintiff in *Nirumalan* was also a lawyer and was about 40 years old when he suffered a whiplash injury which caused him to cut back on his work. He was awarded $180,000 for loss of earning capacity by me. I have to state that when I reviewed this award against the applicable principles and the other awards, it appeared the award was higher than it should have been.

39 In the plaintiff's case, there is evidence that he can undertake simple undemanding employment, but he would not be able to work and earn at the level of a person who has completed his secondary education (which he had) or his junior college education (which he probably would have, but for the accident). The salient factors for consideration in his case are that:

(i) his ability to work is significantly diminished,

(ii) the diminution extends over the whole of his working life, and

(iii) his potential earning level (without the diminution) is uncertain.

40 Taking into account the factors to be considered and the awards made in the cases mentioned, I set the damages for loss of earning capacity for the plaintiff at $250,000.

Cost of future psychiatric treatment

41 The AR's award was for $144,000 at $600 per month for 20 years, although the plaintiff had claimed $121,200 before the AR, at $505 per month for 20 years, [note: 3] and this was repeated in his submissions in the appeal. [note: 4] The supporting evidence came from Dr Adrian Wang Chee Cheng of the Gleneagles Medical Centre who was treating the plaintiff. Dr Wang testified that there is a 70–80% probability that the plaintiff would require long term medication of five to 10 years, and if his condition remained, then he would require life-long medication. However, he did not state the treatment charges, and the defendant had worked out the charges incurred in 2008 and 2009 to be $350–$400 per month. In his reply, the plaintiff did not explain the $505 that was put up, or the $600 that the AR used. The plaintiff also did not dispute the defendant's computation of the $350–$400.

42 The defendant had contended that the plaintiff could receive the same treatment for less at a government-structured hospital. I do not accept that argument. It is for the injured party to decide on the treatment that he is to receive, and he is entitled to claim *reasonable* costs of treatment. He is not obliged to seek treatment or receive damages at the lowest costs available. I allow $90,000 for further psychiatric treatment at $375 per month for 20 years.

Pre-trial expenses

Maid expenses

43 The AR allowed $22,527 for the costs of employing two maids successively. The defendant appealed against the award on two grounds, firstly, that the documentary evidence produced only showed the Foreign Workers Levy payments. The defendant was not disputing the employment of the maids, which was supported by the evidence of the levy payments. While no supporting documents were produced on the salary and the other expenses incurred on the maids, a list of all the payments was put up. The plaintiff's father explained that there were no documentary records of the payments of the maids' salaries because they were paid in cash, and the other expenses for the maids were based on estimated figures issued by the Ministry of Manpower.

44 The other point raised was that the maids did not only attend to the plaintiff but undertook some household duties. The plaintiff's case was that the maids were employed to help his mother to look after him, because she was unable to do it alone. If the maids did some household chores which the mother was unable to do while she attended to the plaintiff, that part of the maids' services should not be excluded from consideration. The evidence showed that the mother was not seeking to gain an advantage from the employment of the maids because she dispensed with them when she could cope by herself. This award should stand.

Transport expenses

45 The AR made an award of $13,166.80 for pre-trial transport expenses over four years by the family car, taxi and bus. The defendant submitted during the appeal that there were no supporting documents. However, although the plaintiff's father had listed the trips for which the claims were

made, he was not questioned over them by the defendant's counsel during the assessment. The AR had seen and heard the father and accepted his computation of the claim, and I do not see any reason for disturbing it.

Mother's loss of income

46 The AR had made an award of $72,600 because she accepted the evidence that the plaintiff's mother had given up her employment to look after the plaintiff. The employment in question is the full-time job as a kindergarten teacher with the Yuhua Education Centre in respect of which her claim for loss of future earnings has been dealt with. No evidence was produced in support of the claim beside the two letters, one informing her of her appointment and the other confirming her resignation, both of which were not properly proved in evidence.

47 The claim was put up and quantified at $72,600 over the period 2005–2008 without an explanation or documentation on how that figure was arrived at. Against that state of evidence, there was no basis for the AR to make the award. I therefore set aside this award.

Conclusion

48 The following variations are made to the AR's awards:

(i) the award for pain and suffering and loss of amenities is reduced to $160,000;

(ii) the award for the loss of earning capacity is reduced to $250,000;

(iii) the award for costs of future psychiatric treatment is reduced to $90,000; and

(iv) the award for the mother's loss of income is set aside.

49 As the plaintiff's appeals have failed, the plaintiff shall pay costs of $2,000 and reasonable disbursements. As the defendant has succeeded in the majority of his appeals, the plaintiff is to pay costs of $10,000 and reasonable disbursements.

[note: 1] Statement of Claim (Amendment No. 1) para 5

[note: 2] Defendant's Skeletal Submissions, para 21

[note: 3] Written Submissions, page 98, item 9

[note: 4] Written Submissions, page 98, item 9