Clark Jonathan Michael v Lee Khee Chung
[2009] SGHC 204

Case Number : Suit 698/2005, RA 306/2008, 311/2008

Decision Date : 15 September 2009

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Lee Yuk Lan (Benedict Chan & Company) for the plaintiff; Ramesh Appoo (Just Law LLC) for the defendant

Parties : Clark Jonathan Michael — Lee Khee Chung

Damages – Assessment

15 September 2009 Judgment reserved.

Judith Prakash J:

Introduction

1 On 7 October 2002, the plaintiff was injured in a collision between his motor vehicle and the defendant's motor vehicle. His claim against the defendant for damages resulted, in 2006, in an interlocutory judgment against the defendant on the basis that the defendant was solely responsible for the accident. The assessment of damages took place before the Assistant Registrar, Jason Chan ("the AR").

2 The AR made the following awards in favour of the plaintiff:

<u>General Damages</u>		
i.	pain and suffering and loss of amenities	)
ii.	losses due to one year delay in graduation	) $25,000
iii.	contingent losses'	)
<u>Special Damages</u>		
iv.	General medical expenses	$1,808.90
v.	Medical expenses for osteopathic and ayurvedic treatment	Disallowed
vi.	Medical expenses incurred in Australia	$500
vii.	Expenses for physician prescribed medications	$1,800
viii.	Expenses for physician prescribed services and equipment	$850

ix.	Expenses for transportation	$2,000
x.	Future medical expenses	Disallowed
xi.	Pre-trial loss of income	Disallowed
xii.	Loss of future earnings	Disallowed
xiii.	Loss of earning capacity	$35,000
	Total	$66,958.90

3 Neither party was wholly satisfied with the award. Whilst the defendant appealed against the awards in respect of "pain and suffering and loss of amenities" and "loss of earning capacity", the plaintiff's appeal was more wide ranging. He appealed against the award for general damages and, in respect of the award for special damages, he wanted items v, vi, vii, viii, ix, x, xi, xii and xiii to either be revised upwards in his favour or awarded to him. It should be noted that the plaintiff had originally quantified his claim at a sum that was in excess of $460,000.

The facts

4 The plaintiff is a citizen of the United States of America. He was born in January 1956 and therefore, at the time of the accident, he was 46 years old. The plaintiff is married to a Singaporean. In 1998, he had left his job as a management consultant with a Singapore accounting firm and thereafter he had no paid employment for over three years. Subsequently, he enrolled in a 4-semester accelerated Bachelor of Nursing Science programme at the University of Melbourne, Australia. At the time of the accident, he was in Singapore on holiday after having completed the first two semesters of the programme.

5 The plaintiff saw several doctors and other healing practitioners in the days and months after the accident. The details of these treatments were set out extensively in his affidavit and I do not propose to repeat them here. For clarity, however, a short summary of the same follows.

DATE	INCIDENT
7 October 2002	The defendant's lorry crashed into the plaintiff's car along Ang Mo Kio Avenue 5. The plaintiff's car was rendered a total loss. The plaintiff declined to leave with the ambulance crew that arrived at the accident scene. Instead, the plaintiff was taken by his wife to Dr Phoon Chiong Fook ("Dr Phoon"), his family doctor. Dr Phoon prescribed five days worth of Ponstan.

9 October 2002	The plaintiff's second visit to Dr Phoon. Dr Phoon sent the plaintiff to East Shore Hospital for an x-ray.
11 October 2002	The plaintiff returned to see Dr Phoon. Dr Phoon agreed, at the plaintiff's suggestion, that the plaintiff should see Mr Phillipe Steiner ("Mr Steiner"), a physiotherapist, for treatment.
11 October 2002 – 25 October 2002	The plaintiff went to Mr Steiner's clinic for treatment on five different occasions. On the first three occasions, the plaintiff was treated by Mr Steiner's assistant and the last two times by Mr Steiner himself. The plaintiff unilaterally decided to discontinue these visits.
22 October 2002	The plaintiff saw Dr Phoon for the fourth time after the accident. Dr Phoon prescribed five days worth of Ponstan.
3 November 2002	The plaintiff saw Dr Phoon for the fifth time. At the plaintiff's suggestion, Dr Phoon agreed that the plaintiff should see Dr Wong Merng Koon ("Dr Wong"), Senior Consultant Orthopaedic Surgeon and Co-Director of the Trauma Service at Singapore General Hospital ("SGH").
13 November 2002	The plaintiff visited Dr Lopez Rodriguez Eufemio ("Dr Lopez") for the first time to seek osteopathic treatment. The plaintiff continues to see Dr Lopez for treatment.
18 November 2002 – 26 January 2004	The plaintiff visited Dr Wong on ten different occasions during this period. From then onwards, Dr Wong co-ordinated the plaintiff's care. Dr Wong also referred the plaintiff to a few other specialists in SGH.
25 November 2002 – 30 December 2002	The plaintiff attended six physiotherapy sessions during this period. The plaintiff found them unhelpful.

18 December 2002, 12 March 2003 and 15 September 2003	The plaintiff visited Dr Tan Nam Guan ("Dr Tan"), a Senior Consultant ENT Surgeon, on these dates for management of the plaintiff's alleged tinnitus.
19 February 2003, 19 March 2003 and 4 August 2003	The plaintiff visited Dr Lim Shih Hui ("Dr Lim"), Chief of Service at SGH's Neurology Department, on these dates for management of the plaintiff's alleged headache.
19 February 2003 – 4 April 2003	The plaintiff was treated by Dr Cui Shu Li at SGH's Acupuncture Unit.
8 July 2003	The plaintiff first consulted with Dr Yeo Sow Nam ("Dr Yeo") on this date. Dr Yeo is Director of the Pain Management Program and Consultant Pain Specialist at SGH. The plaintiff continues to see Dr Yeo.
12 August 2003	The plaintiff visited Ms Esther Tan, a psychologist, to learn cognitive behaviour therapy.
6 October 2003	The plaintiff consulted with Dr Chan Yew Meng ("Dr Chan"), a specialist in tinnitus.
21 October 2003 – 17 December 2003	The plaintiff admitted himself into Samajam Ayurvedic Hospital and Nursing Home in India to seek Ayurvedic treatment from Dr K Sasidharan ("Dr Sasidharan")
February 2004	The plaintiff left for Australia to resume his Nursing Science programme at the University of Melbourne.
March 2004	The plaintiff commenced semester 3 of the Nursing Science programme.
November 2004	The plaintiff graduated from the University of Melbourne with a degree in Nursing Science.

December 2004	The plaintiff applied to several hospitals for a job and returned to Singapore to await a response.
January 2005	The plaintiff was offered a job at the Melbourne Clinic.
June 2005	The plaintiff began work at the Melbourne Clinic.

The appeal

6 The appeal focussed on the AR's reasons for the various awards that he had made and I will discuss these at the same time as I deal with the various arguments put forward as to why the awards should be increased (plaintiff) or decreased (defendant). It is worth reminding myself, however, that as an appellate court, I must be slow to disturb the AR's findings of fact unless they are plainly wrong or against the weight of the evidence: see *Ngiam Kong Seng v Lim Chiew Hock* [2008] 3 SLR 674. Where a trial judge's finding of fact was based on his observation and assessment of the witnesses, the appellate court is constrained in its review because the trial judge is presumed to be better placed and to have had the benefit of assessing the veracity and credibility of witnesses in court: see *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR 601 However, where the trial judge's fact finding was based on inherent probabilities or uncontroverted facts, the appellate judge is in as good a position as the court of first instance, although he must, where appropriate, give due allowance to the fact that he did not have the advantage of seeing the witnesses that the trial court had: see *Peh Eng Leng v Pek Eng Leong* [1996] 2 SLR 305. Therefore, the standard of proof required to show that the lower's court findings of fact was "plainly wrong" is dependent, to a large extent, on how the lower court came to its conclusions.

Whether the AR was correct in awarding $25,000 to the plaintiff as damages for pain and suffering, loss of amenities, losses due to one year delay in graduation and contingent loss

7 The AR was satisfied on the evidence that the plaintiff had suffered a whiplash injury as a result of the accident. He considered that the plaintiff had suffered a serious neck injury that had resulted in persistent pain and stiffness of the neck, headaches and tinnitus. He had also suffered numbness in his arm. The plaintiff had submitted that $80,000 would be an appropriate sum for his pain and injury. The AR considered that this sum was excessive to the point of being unreasonable. In awarding the sum of $25,000, he stated that he took into account the stiffness, tinnitus, pain and inconvenience suffered by the plaintiff as well as his one year delay in graduation and the so called "contingent costs" claimed by the plaintiff. He also used the case of *Tan Siew Bin Ronnie v Chin Wee Keong* [2008] 1 SLR 178 ("*Ronnie Tan*") which he found to be a useful reference case as the facts were similar.

8 The AR did not state precisely how much was awarded for each head of damages but instead lumped four heads of damages into one award. This makes it difficult to assess the appropriateness of the award. Another difficulty is that it is not entirely clear what the AR meant by "losses due to one year delay in graduation". The plaintiff before me did not make a claim for damages under such a head. Instead, he claimed damages for "actual lost income", a claim which the AR had rejected entirely. The award, however, can be considered primarily as if it was an award for pain and suffering and loss of amenities as these are well known heads of damages.

9 As stated above, both parties had appealed against the quantum of this award. To ascertain whether $25,000 was an appropriate amount, it is necessary to determine the extent of the pain and suffering that the plaintiff had experienced due to the accident.

10 First, the defendant argued that the plaintiff had not suffered from a serious neck injury and that he had not thereafter experienced persistent pain and stiffness of the neck, headaches and tinnitus. The defendant's assertion was that the plaintiff merely suffered from a minor neck strain which resolved itself within 12 to 15 weeks after the accident. Hence, the defendant suggested that any neck pain, headaches and tinnitus that the plaintiff claimed to have experienced beyond that initial 12– to 15– week period were fabricated entirely for the purpose of bringing a claim in court. Second, the defendant argued that even if the plaintiff truly did suffer from neck pain, headaches and tinnitus, this was not due to the accident.

11 The first objection is not, however, supported by the preponderance of the evidence. All of the plaintiff's witnesses either testified that the plaintiff was suffering from neck pain or headaches or tinnitus or all three. The defendant tried to cast doubt on their evidence by pointing out that their diagnoses were based mostly on the plaintiff's complaints and his reactions to their attempts to move his head. In short, their diagnoses were not based on objective medical facts. There were, however, some objective signs such as tension in the neck muscles and tenderness over the neck and shoulder areas. Further, where headaches and tinnitus are concerned, it seems to me that the lack of many objective indicators is unavoidable since the nature of the pain means that its existence cannot be completely ruled out based on objectively ascertainable medical evidence. With regard to the neck pain, I am of the opinion that the various doctors were experienced enough to notice if the plaintiff was intentionally limiting his neck movements. Most importantly, both of the defendant's own expert witnesses accepted that the plaintiff was suffering from neck pain, headaches and tinnitus. There is therefore no reason for me to depart from the AR's finding that these injuries existed.

12 With respect to the second objection, it is difficult to hold that the AR was plainly wrong in finding that the plaintiff's neck pain, headaches and tinnitus were caused or triggered by the accident. This is especially so since Dr Phoon, the plaintiff's family doctor, testified that before the accident, the plaintiff had no history of neck pain, headaches or tinnitus.

13 The defendant argued that the plaintiff's current complaints of neck pain were due to the plaintiff's pre-existing cervical spondylosis. In this regard, he relied heavily on Dr Lee Soon Tai's opinion. Dr Lee is a consultant orthopaedic surgeon who was appointed by the defendant to examine the plaintiff. He saw the plaintiff for the first time in August 2007. Dr Lee himself had admitted, however, that he came to his opinion on the spondylosis without the benefit of the plaintiff's x-rays and MRI scan results. His opinion was based on two factors, both of which were suspect. First, apart from "tenderness" in the neck, Dr Phoon did not notice any other symptoms when he examined the plaintiff on the night of the accident. In fact, Dr Phoon had noted that the plaintiff had a full range of movement of his neck. Second, the plaintiff's injury seemed to have worsened after some time elapsed.

14 Dr Phoon's initial examination was not, however, conclusive of the injuries suffered. This is because as pointed out by various doctors, including Dr Phoon himself, the full extent of the plaintiff's injuries might not have been immediately apparent on the night of the accident but might only have manifested themselves much later. It was in the nature of injuries of this kind that initially the extent of the injury might not have been appreciated. In any case, it can hardly be said that the AR was plainly wrong in finding that the plaintiff's neck pain was due to the accident in light of the fact that Dr Lee was the sole dissenting doctor disagreeing with the majority's opinion as stated above. Furthermore, there was little objective medical evidence to back up Dr Lee's opinion other than

Dr Phoon's observations during the plaintiff's first visit after the accident. Even the defendant's other expert witness, Dr Chong Piang Ngok, was of the opinion that the plaintiff's "complaints were likely due to whiplash injury". The AR's decision to accept the majority opinion rather than that of Dr Lee cannot, in these circumstances, be easily overturned.

15 With respect to the plaintiff's headaches, the defendant, likewise, alleged that the headaches were not due to the accident. The defendant pointed out that the plaintiff did not mention having a headache when he saw Dr Phoon immediately after the accident or, indeed, on any of the other occasions on which he saw Dr Phoon. Furthermore, save for Dr Wong Merng Koon and Dr Lim Shih Hui, the doctors were not willing to conclusively opine that the headaches were due to the accident. On the contrary, Dr Lee opined that the headaches were not due to the accident as any headaches triggered by the accident should have come on within 48 hours of the accident.

16 There were two doctors who accepted that the accident caused the plaintiff headaches as against one who opined it did not. There was little objective evidence to support either expert view. This is to be expected since the presence of headaches is hard to verify and the cause thereof is equally difficult to ascertain. Given, however, that the plaintiff had no history of suffering headaches before the accident and the acceptance of two experts that this was a probable consequence of the whip lash, it is difficult for me to disturb the AR's finding that the plaintiff's headaches were caused by the accident.

17 The same reasoning applies to the complaint of tinnitus. The only specialist called to provide evidence was Dr Tan Nam Guan. In his medical report, Dr Tan stated that the plaintiff's tinnitus condition was likely to be related to his accident. When cross-examined, Dr Tan testified that, given the fact that all the medical tests turned out normal and that the plaintiff did not complain to Dr Phoon of tinnitus, the tinnitus "may not necessarily be related" to the accident. At the end of the day, Dr Tan, when pressed for an answer, still chose to believe the plaintiff when he claimed that the tinnitus arose from the road accident.

18 There was little evidence to show that the AR was plainly wrong in deciding that the tinnitus arose from the accident. Dr Phoon had testified that the plaintiff had no history of tinnitus before the accident as far as he knew. While cross-examination of the plaintiff revealed that he had suffered from tinnitus for a short period earlier in his life, that episode had occurred more than 30 years before the accident and had resolved itself without further problem up to the time of the accident. Furthermore, Dr Tan had said that even though all of the plaintiff's test results came out normal, that did not mean that the plaintiff was not suffering from tinnitus. On this basis, it is difficult to fault the AR for accepting the plaintiff's complaint of tinnitus and that the same was due to the accident.

19 On the basis that the plaintiff did suffer from neck pain, headaches and tinnitus due to the accident, I have now to consider what the appropriate amount of damages for this pain and suffering is. This involves a comparison of awards that were made for similar injuries in the past. In *Ronnie Tan*, Chan Seng Onn J held that a sensible way to assess the appropriate quantum of damages to be awarded would be to examine the awards in other comparable cases and use them as a guide, while being mindful that each case has to be decided on its own facts. In like manner, Kan Ting Chiu J observed in *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* [2003] 3 SLR 601 ("*Nirumalan*") at [18] that:

> In deciding on the proper quantum of damages, reference should be made to the precedents available. However, applying the precedents to a specific case is not a straightforward exercise. Often there are only brief descriptions of the injuries and residual disabilities. Allowance has to be made for the age of the award and the injured person.

20 The AR relied on three cases in making his award, the most important of which was *Ronnie Tan*. In that case, the plaintiff was involved in an accident resulting in a whiplash injury with residual permanent disabilities, which included frontal headaches, neck pain, giddiness and vertigo when he read for a long and continuous period or when he handled trials of more than three or four days. However, the doctors agreed that the plaintiff was, otherwise, pain-free most of the time. Chan J found that the AR's award of $24,000 for pain, suffering and loss of amenities was fair and reasonable.

21 The second case relied on was *Nirumalan*. There, the plaintiff suffered whiplash injury to the spine with posterior disc prolapse. His condition would continue to degenerate if there was no surgical intervention. He suffered from weakness in both hands, a stiff neck and frequent headaches. The plaintiff was awarded $30,000 for pain and suffering.

22 In the third case, *Kuan Whye Mun v Yeoh Woei Chi Nicholas* (DC Suit No 964 of 2003) ("*Kuan Whye Mun*"), the plaintiff also had a whiplash injury that resulted in pain in her neck and back which the doctor described as very bad. She required frequent pain killer injections and medication and the injections she received led to the development of inflammation and painful lumps in both her buttocks. Her injuries were so severe that they resulted in neurological problems. MRI scans of the cervical spine showed a reversal of the cervical lordosis. There was also evidence of damage to the spinal disc. She was awarded $18,000 for pain and suffering.

23 The case of *Chew Poh Kwan Margaret v Toh Hong Guan* [2004] SGHC 280 ("*Margaret Chew*") is also relevant in this regard. It was another case of whiplash injuries leading to chronic tension-type headaches and depression. However, the plaintiff was found to have a pre-disposition to depression which the accident worsened. The AR awarded $18,000 as damages for pain and suffering.

24 The plaintiff was not satisfied with the above authorities and put forward the cases of *Mei Yue Lan Margaret v Raffles City (Pte) Ltd* [2005] 4 SLR 740 ("*Margaret Mei*") and *De Cruz Andrea Heidi v Guangzhou Yuzhhitang Health Products Co Ltd* [2003] 4 SLR 682 ("*Andrea De Cruz*") as being more appropriate comparisons to draw on when making the award for pain and suffering. I do not agree. It is not necessary for me to go into the details of the injuries suffered in those cases. Suffice it to say that they were of a very different nature from those sustained by the plaintiff and did not involve whiplash or headaches or tinnitus or neck pain.

25 The defendant who also challenged the award for pain and suffering put forward four cases dealing with whiplash injuries where the award for damages ranged from $3,000 to $5,000. There were no detailed grounds in those cases. Concise summaries of the same were provided by the defendant and these are set out in the table below.

Case	Year Decided	Court	Injury Type	Award for pain and suffering and loss of amenities
Lim Bee Geok v Singapore Bus Service (1978) Ltd	1994	Magistrate's Court	Whiplash injury and bruises and tenderness on dorsum of the forearms	$3,000 (quantum by consent)
Chong Mi-Li Pamela v Chia Song Chen	1995	Magistrate's Court	Whiplash injury. 1st plaintiff had a chip fracture of the anterior-interior angle of the fourth cervical vertebral body and she wore a cervical collar for 3 weeks	$5,000 (1st plaintiff) $3,000 (2nd plaintiff)
Chin Hooi Kheng Beatrice v Tan Kim Kam	2001	Magistrate's Court	Whiplash injury. The plaintiff had permanent neck pain and was likely to require regular visits to doctor and physiotherapist	$5,000
Suhaimah bte Abdul Rahman v Neo Geet Hoi	2000	Magistrate's Court	Whiplash injury. Plaintiff was treated with painkillers and physiotherapy	$5,000

As can be seen from the table, there is a lack of detail as to the injuries suffered by the plaintiffs and it was only the plaintiff in *Chin Hooi Kheng Beatrice v Tan Kim Nam* who appeared to have permanent neck pain. It is therefore difficult to use those cases as a comparison. The fact that the cases were commenced in the Magistrate's Court is also an indication that the injuries suffered were not so serious.

26 I agree with the AR's view that *Ronnie Tan* is the precedent with facts most similar to those of the present case. Both cases involved whiplash injuries resulting in long-lasting, if not permanent, pain. In *Ronnie Tan*, the pain involved arose from neck pain, headaches, giddiness and vertigo. In the present case, the pain involved neck pain, headaches, tinnitus and numbness of the arm. However, in both cases, no intrusive surgery was required and the pain experienced by the plaintiffs did not manifest itself all the time but only at certain times. The only difference between the two seems to me to lie in the fact that the plaintiff in *Ronnie Tan* perhaps experienced neck pain and headaches less frequently than the plaintiff here. The cases of *Nirumalan*, *Kuan Whye Mun* and *Margaret Chew* are also useful references.

27 Having regard to the precedents cited above, whilst the award of $25,000 made by the AR was somewhat on the high side, it does not seem to me to have been excessive or plainly unfair or unreasonable and I see no point in reducing it by $1,000 just to bring it in line with the award made in *Ronnie Tan*'s case. The assessment of general damages is a matter which is very much in the discretion of the judge making the award and the exercise of that discretion should not be interfered with unless it can be shown that the judge was plainly wrong or applied the wrong principles. This was not the case here and I will therefore not interfere with that award.

"Contingent Costs"

28 The AR had included the costs enumerated in schedule 22 of the plaintiff's affidavit of evidence-in-chief in his award of $25,000. However, he did not state if he accepted the claim in full or only in part.

29 The plaintiff's contention in this respect was that the AR had erred in including these "contingent costs" in his award for pain and suffering and loss of amenities. This is because this item of claim was a pecuniary loss unlike the former claim. The plaintiff submitted that the claim for "contingent costs" should be allowed in full as these were losses suffered by the plaintiff due to his inability to complete his nursing course in November 2003. According to the appellant's AEIC, the accident occurred at the tail end of his second semester. Had the accident not occurred, the plaintiff had intended to complete his second and third semester by November 2003. However, because of the accident, he could only do so in December 2004.

30 I accept the plaintiff's argument that the "contingent costs" have to be considered on their own as a pecuniary claim and not lumped together with the award for pain and suffering.

31 The defendant argued that no award should be made for these "contingent costs" at all. This was so for two main reasons. First, the plaintiff chose to delay his course completion of his own volition; the delay had nothing to do with his injuries. Second, the delay was also caused, in part, by the plaintiff's personal weaknesses which had nothing to do with the accident.

32 I do not agree with the defendant's contention that the plaintiff's delay in completing his nursing course was not a result of the injuries he suffered due to the accident. It is true that the plaintiff had not obtained relevant medical certificates from doctors certifying that he was unfit to complete his nursing course. Given the gravity of the plaintiff's injuries, however, the evidence appears to me to indicate that the plaintiff was unfit for nursing school. It was unreasonable to expect the plaintiff to return to school when he was suffering from constant neck pain, headaches and tinnitus. While the severity of the pain would only be known to the plaintiff himself, the fact that the plaintiff resorted to ayurvedic treatment by admitting himself into a hospital in India was indicative of the kind of pain he was experiencing. Dr Wong, although wrongly testifying that he had given the plaintiff a medical certificate, was firmly of the opinion that the plaintiff was unfit to resume his studies. During cross-examination, he said:

DC: Did you specifically say that he was unfit to return to his nursing course?

A: Yes, he was unfit. He can't do it. I can't remember what I wrote on the MC. It is in digital form.

Ct: Plaintiff's Counsel to obtain a copy of the MC issued.

DC: What made you give the MC? Neck condition? Headache? Tinnitus?

A: Combination of factors. Can't sit down to type a report, can't get through a chapter without experiencing pain. Does not help his recovery to rest him. Give the MC because he can't function.

Thus, I accept that the plaintiff deferred his nursing studies because of his injuries.

33 While I am of the view that the plaintiff's pain prevented him from returning to his nursing course until February 2004, I do not agree with his argument that the same caused him to require a "clinical confirmation" such that he was only able to graduate in December 2004 rather than November 2004. The plaintiff had argued that his ability to concentrate and retain information had diminished due to his whiplash injury. However, I note that the plaintiff had no problems with his clinical appraisals in February and May 2004. In other assessments from May to August 2004, his assessors noted that he lacked self-confidence and needed to be proactive in a clinical setting.

34 One would imagine that if the plaintiff's concentration and retention of information had been affected, the plaintiff's knowledge base would, likewise, be affected. The main criticism of his assessors was, however, that he lacked confidence and initiative. This can hardly be attributed to his inability to retain information. Hence, I am of the view that the necessity for the plaintiff to take an additional "clinical confirmation" in December 2004 before he could graduate cannot be attributed to the accident.

35 Turning to the specific claims under the head of "contingent costs" itself, the plaintiff had grouped the items under 8 categories but the evidence for each item was sorely lacking. In brief, the plaintiff did not provide receipts or proof for items 1 (Cancellation of return flight), 2 (additional air flight costs), 3 (additional overseas course fee), 6 (daily expenditure) and 7 (clinical confirmation costs) and 8c (Australian government fee). Therefore these items cannot be allowed. In any case, in respect of item 7, which was the additional confirmation test, that was not attributable to the accident and therefore cannot be allowed on that basis as well.

36 The plaintiff had provided proof for the following items:

Item No.	**Item**	**Amount claimed**
4	Additional overseas student health cover fees due to exchange rate losses	$75.09
5a	3 weeks prepaid rental 8 Oct 2002 to 28 Oct 2002	$461.15
5b	Room and board loss 2003 to 2004	$1,117.11
8a	Medical Fee	$281

8b	Blood test	$110.97
8d	Transcript for application	$10.46
	TOTAL	**$2,055.78**

37 Therefore, I allow the plaintiff's appeal on this head and award him an additional sum of $2,055.78 for the expenses that he incurred because he was not able to resume his course as originally scheduled and had to go back later.

Whether the AR was correct in disallowing the claim for expenses incurred in respect of osteopathic and ayurvedic treatment

38 With regard to this head of damages, the AR applied the test found in the case of *Seah Yit Chen v Singapore Bus Service (1978) Ltd* [1990] SLR 530 ("*Seah Yit Chen*"). That test as propounded by Yong J at 538 is as follows:

> The test in any such case must be whether it was reasonable for the plaintiff to seek such 'traditional' treatment and incur the expenses, and the answer as to whether it was reasonable must depend on the facts of each case. There should be some evidence before the court that the traditional treatment was undergone on reliable advice, with a reasonable expectation of benefit, and not just on the impulse of the plaintiff. This would be especially relevant if the traditional treatment were to overlap a course of conventional treatment, as a plaintiff should not normally be entitled to recover the expenses of both forms of treatment undergone at the same time. Clearly, the total amount expended must not be extravagant or excessive, as the plaintiff cannot be permitted to throw on to the defendant expenses which cannot be said to be either necessary or appropriate for the treatment of the injuries suffered.

In this case, the AR concluded that the plaintiff could not recover the sums claimed because he did not undergo osteopathic and ayurvedic treatment on reliable advice and his claim was excessive.

39 The plaintiff did not explicitly disagree with the test stated in *Seah Yit Chen*. He, however, cited the case of *Kuan Kian Seng v Wong Choon Keh* [1995] SGHC 43 ("*Kuan Kian Seng*") where K S Rajah JC, while citing *Seah Yit Chen*, seemed to suggest that a plaintiff could recover the costs of traditional medicine as long as the plaintiff benefitted from the traditional medicine. Unfortunately, it is impossible to discern from the judgment if the plaintiff in *Kuan Kian Seng* had consumed the traditional herbs on "reliable advice".

40 In my opinion, if Rajah JC was suggesting in *Kuan Kian Seng* that the cost of traditional medicine is recoverable as long as the treatment was beneficial, this must surely be wrong. The recoverability of expenses for medical treatment cannot be dependent on its success. For one thing, the success of a particular treatment has little, if any, relation to whether that treatment was reasonably undertaken. Further, whether the medical treatment is beneficial may not be ascertainable by the time the matter comes before the court for assessment of damages. In my view, the test propounded in *Seah Yit Chen* that it must be reasonable for the plaintiff to seek traditional treatment is preferable as it is often reasonable for the plaintiff to seek traditional treatment whatever the outcome of such treatment is.

41 In the present case, I find no reason to differ with the AR's finding that the plaintiff's adoption of osteopathic and ayurvedic treatment was not reasonable. With regard to the osteopathic treatment, the AR correctly pointed out that the plaintiff underwent osteopathic treatment on the advice of "a guy [the plaintiff] met while motorcycling". This suggests that the osteopathic treatment was undertaken on the advice of a mere acquaintance. No doctor advised the plaintiff to seek such treatment. The plaintiff argued that he had informed Dr Wong and Dr Yeo that he was seeking osteopathic treatment and that neither had objected. In my opinion, a lack of objection does not translate to approval. It was not reasonable for the plaintiff to undergo such an expensive course of treatment ($4,510) on the faith of such an unreliable source of information.

42 With regard to the ayurvedic treatment, a sum of $6,199.64 was involved, including the cost of air tickets to India. Given that sum (and the effort involved), again it is expected that the treatment would only be undertaken if the plaintiff was able to verify that such treatment was appropriate for his condition and would have some chance of success. The plaintiff stated that he underwent ayurvedic treatment on the following bases:

(a) his own research;

(b) Dr Lopez's advice; and

(c) the experience of a friend who had chronic knee pain and "many years earlier" found a cure with Ayurveda after years of unsuccessful treatment by Western physicians.

In my view, bases (a) and (c) should not be accorded much weight since they are vague and nebulous. It is not known what his research consisted of and who the friend referred to was. With respect to (b), Dr Lopez testified that he did not recommend the ayurvedic treatment to the plaintiff. He merely suggested it as a method to relax and lose weight. Dr Lopez testified as follows:

DC: Were you the one that recommended that he seek ayurvedic treatment?

A: I did not recommend to him. He was very low and depressed. I suggested to him to try something to relax, maybe lose some weight. Suggested ayurvedic treatment. I did not recommend it to him.

DC: Did you give him the name of a doctor in India that he can contract and get in touch with for the treatment?

A: I think I gave him one or two addresses. He was very keen to make changes.

DC: Were these people you knew from university?

A: No. I think this was a professor from Kerala. I have no relationship or contact with the centre or the person providing the service.

43 In light of the above evidence, it was unreasonable for the plaintiff to seek ayurvedic treatment in India. This is because Dr Lopez first suggested ayurvedic treatment as a way to relax and lose weight, not as a cure for his ailments. Furthermore, it was clear that Dr Lopez was in no position to recommend ayurvedic treatment as his relationship and experiences with Dr K Sasidharan (the Ayurvedic practitioner the plaintiff consulted) and Keraleeya Ayurveda Samajam Hospital were sketchy at best. The plaintiff appears to have resorted to ayurvedic treatment more out of sheer desperation

than in reliance on Dr Lopez's suggestion. He was grasping at (very expensive) straws.

44 In rejecting the claim for reimbursement of the expense on ayurvedic and osteopathic treatment, I should not be taken as holding that expenses incurred on such treatments can never be recovered. It is a question of fact in each case as to whether the treatment was reasonably undertaken and whether the expenses were reasonable. In relation to the ayurvedic treatment in particular, since the plaintiff had to travel to India to undergo it, he would have a heavier burden of proof to show that it was right for him to incur the additional expense of travelling out of Singapore for treatment when there are extensive medical facilities here (even including some ayurvedic treatment centres). A defendant in a case like this cannot be expected to pay for all remedies that a plaintiff resorts to, notwithstanding that the court sympathises with the plaintiff's desire to ameliorate his suffering.

Whether the AR was correct in awarding $1,800 to the plaintiff for expenses incurred on physician prescribed medications

45 Under this head of damages, the plaintiff had claimed for $2,388.55 but the AR only awarded $1,800. The plaintiff appealed and asked that the full amount of the claim be allowed.

46 A total of 53 items were claimed under this head in schedule 15 to the plaintiff's affidavit of evidence-in-chief. However, a number of these items were not substantiated with an invoice for the claim. Only the following items had a matching receipt:

No	Invoice Date	Description	Amount claimed
2	18 November 2002	Singapore General Hospital	$10.60
3	25 November 2002	Singapore General Hospital	$81.00
5	12 December 2002	Singapore General Hospital	$14.55
6	9 January 2003	Guardian Pharmacy	$82.50
7	9 January 2003	Singapore General Hospital	$2.20
8	23 January 2003	Singapore General Hospital	$17.40
10	30 January 2003	Family Health	$17.46
11	19 February 2003	Singapore General Hospital	$58.35
12	12 March 2003	Singapore General Hospital	$9.00
13	17 March 2003	Guardian Pharmacy	$82.50
15	28 March 2003	Guardian Pharmacy	$4.90

16	4 April 2003	Singapore General Hospital	$3.00
17	4 April 2003	Singapore General Hospital	$81.00
25	29 January 2004	Singapore General Hospital	$3.30
26	13 April 2004	Singapore General Hospital	$5.10
27	13 April 2004	Singapore General Hospital	$110.00
41	9 June 2005	Pickford Pharmacy	A$13.15 (S$16.73)
42	27 July 2005	Thye Hin Hoe Medical	$30.00
43	27 October 2005	Singapore General Hospital	$41.00
45	6 January 2006	Thye Hin Hoe Medical	$30.00
46	18 January 2006	Singapore General Hospital	$61.55
47	22 August 2006	Thye Hin Hoe Medical	$90.00
48	31 January 2007	Singapore General Hospital	$7.85
49	12 April 2007	Heidelberg Osteo	A$32 (S$40.08)
52	8 August 2007	Singapore General Hospital	$89.85
		Total:	**$989.92**

It can be seen therefore that the AR was generous in his award to the plaintiff. The items that the AR disallowed were items relating to the alternative treatments undertaken. As I agree with the AR's decision on this point, there is no reason to allow the plaintiff to recover the additional items. The defendant made various submissions on why the sum of $1,800 was excessive. The defendant did not, however, appeal against this award. Thus, even though from the evidence only $989.92 was properly supported, I cannot reduce the amount of the award. The award must stay at its original level.

Whether the AR was correct in awarding $850 to the plaintiff for expenses incurred on physician prescribed services and equipment

47 The plaintiff claimed a total of $1,558.85 arising from seven items but the AR only awarded $850 because he considered that the need for some items had not been explained. The plaintiff appealed but there was no cross-appeal on the part of the defendant. It is not, however, clear from the AR's grounds of decision which of these seven items (described in schedule 16 to the plaintiff's

affidavit of evidence-in-chief) he accepted. I will go through these items and see whether they are reasonable.

48 The first item for $77.25 was the cost of an x-ray of the plaintiff's cervical spine. This was reasonable. Item no. 2 was related to the cost of a piece of equipment called an "OTO Hans Pulse Massager". Both the AR and the defendant pointed out that the plaintiff had not explained how this piece of equipment was to be used nor why it was necessary. Somebody had scrawled at the top of the receipt that the item was prescribed by Dr Lim. She, however, was not cross-examined on this. Given the lack of proof that this purchase was mandated by a doctor and the lack of explanation as to how it was relevant, the plaintiff's claim has not been justified. The fourth item ($56.72) was a claim for the cost of a book dealing with managing pain. The plaintiff stated that Dr Yeo had recommended the book to him. The defendant did not challenge Dr Yeo on this point in cross-examination. It was probably reasonable for the plaintiff to purchase this book to aid his management of his pain.

49 Items no 3 ($689 for an MRI x-ray), 5 ($271.20 for a pillow) and 7 ($90.68 for Heidelberg Osteo) were not supported by any receipt. Further, item no 7 appears to be related to the osteopathic treatment undergone by the plaintiff. As for item no 6 ($62 for Wan Yang medical products), although a receipt was produced, there was no explanation as to what products were purchased or how these products were necessary.

50 Looking at the evidence, therefore, it appears that only items no 1 and 4 set out in schedule 16 could be justified. Those items together add up to $133.97. Whilst this amount is below the amount awarded by the AR, since the defendant did not appeal in relation to this claim, I cannot reduce the amount of the award. The plaintiff's appeal, however, cannot be acceded to either.

Whether the AR was correct in awarding $2,000 to the plaintiff as expenses incurred on transportation

51 The AR's award of $2,000 was made on the basis that the plaintiff's claim for transport expenses in Singapore and Australia was excessive while his claim for the cost of "airplane flights for legal consultation" was not appropriate in an assessment of damages. Before me, the plaintiff did not pursue his claim for the air transport costs.

52 Before the AR, the plaintiff had claimed a sum of $13,700.19 under this head of damages. On appeal, however, the plaintiff argued that a sum of $5,000 would be fair and reasonable to cover past as well as future expenses incurred on transportation.

53 The defendant, on the other hand, pointed out that plaintiff had failed to produce documentary proof of any transportation expenses and had arbitrarily pegged the costs of each local medical visit at $25 and each medical visit in Australia to $50. In addition, the defendant submitted that only the transport costs until the end of February 2003 should be allowed, on the premise that the plaintiff should have recovered by then. Accordingly, the defendant argued that the plaintiff should only be allowed a sum of $240.

54 I do not agree with the AR that a sum of $25 for a roundtrip to the doctor in Singapore and $50 for a roundtrip to the doctor in Australia was manifestly excessive. It seems to me that a round taxi trip to and from the doctor would cost that much for a plaintiff living in Marine Parade and seeing a doctor in town. If it was excessive, it was only minimally so. Certainly, the $10 that the defendant contended would suffice for a round trip was clearly inadequate. However, I also note that no proof of the number of trips required was provided. Furthermore, the plaintiff had also claimed for visits by

the plaintiff to Integral Natural Treatment Centre (item no 13), the centre that provided the plaintiff with osteopathic treatment. Since the costs of that treatment could not be claimed, the costs of going for such treatment should, similarly, be disallowed. The plaintiff also claimed in items no 14 and 15 the transportation costs of visits by Just Law to the doctors, presumably for the purposes of preparing for this action. As with the costs of "airplane flights for legal consultation", this was not an appropriate claim in an assessment of damages.

55 In light of the above, the AR's award of $2000 was not "plainly wrong". This comprised an award of $1280 for local trips [(69 trips x $20) - $100 for multiple visits] and an award of $720 for Australian expenses. I am not inclined to interfere with the same.

Whether the AR was correct in disallowing the claim for future medical expenses

56 The plaintiff had claimed $184,660 for the costs of future medical expenses. However, all that was asserted before the AR in this regard was that:

> It is clear that the Plaintiff continues to undergo treatment, even as the assessment progressed. There is no evidence at all to the contrary. The amounts [in] Schedule 18 are the Plaintiff's best estimates and it is submitted ought to be awarded.

57 The AR had no hesitation in dismissing this claim on the basis that the plaintiff had "demonstrably failed to prove his case for future medical expenses on a balance of probabilities". The AR noted that there was nothing in the plaintiff's affidavit or oral testimony to show that the amounts claimed as set out in schedule 18 of the plaintiff's affidavit were reasonable. The AR observed that none of those figures had been substantiated and there was no evidence to show that the plaintiff would commence the supervised exercise programme claimed for or to support the cost of such a programme. Further, the plaintiff had not explained why a multiplier of 14 years for this head of claim was warranted.

58 On appeal, the plaintiff argued that:

> The Plaintiff respectfully submits that as the Plaintiff has been found to have suffered a severe whiplash injury with resultant persistent headaches and neck pain, it is reasonably foreseeable that the Plaintiff would invariably require treatment to help relieve and manage his condition. Accordingly, the Plaintiff's claim for future medical expenses should be allowed and, as such, treatment would be required for the Plaintiff's remaining life-span, the multiplier should be higher than that to be applied for loss of future earnings which is based on the Plaintiff's working life-span. It is submitted that based on the Plaintiff's age, a multiplier of 14 years is reasonable.

59 The plaintiff's arguments on appeal did nothing to fill in the gaps in his evidence or to establish that the amounts claimed were reasonable. I agree with the AR that this head has not been established and cannot be allowed.

Whether the AR was correct in disallowing the claim for "actual loss income"

60 In this part of the plaintiff's claim, he claimed for ascertainable income that he alleged he had lost, for the period between 1 January 2004 and 30 June 2005, due to the accident. In effect, he claimed that, had it not been for the accident, he would have completed his studies by 1 January 2004. Because of the accident, he had only commenced work on 30 June 2005. Hence, the plaintiff claimed that the defendant was liable for his loss of income between these two dates.

61 The plaintiff had quantified this claim at $93,085 on the basis that that sum was what a staff nurse in Portland, Oregon would have earned during that period of time. The plaintiff relied principally on two sources of information. First, he relied on an estimate provided by one Ms Patricia Mahrt. Ms Mahrt was the mother of a classmate of the plaintiff who subsequently worked as a registered nurse in the US. Second, the plaintiff relied on statistics compiled by an online website known as "salary.com".

62 The AR accepted that the plaintiff would have graduated on 1 January 2004 if the accident had not taken place. The AR, nonetheless, disallowed the claim for two main reasons. First, the AR pointed out that the plaintiff was not earning any income for over 3 years prior to starting his nursing course. That being the case, the AR considered that there had been no loss of income. He relied on the cases of *Lim Yuen Li Eugene v Singapore Shuttle Bus Service Pte Ltd* [2005] SGHC 189 ("*Eugene Lim*") and *Nirumalan*. The second reason for the AR's decision was that he found that the plaintiff had failed to prove that he would have been able to start work as a staff nurse in Portland, Oregon immediately after graduation. The AR found that there was no evidence that the plaintiff would have received a job offer immediately after graduation or that he was in a position to relocate immediately to the United States. Furthermore, the plaintiff would have had to pass further examinations and have a credential agency review the work he had done before he could become a registered nurse in the United States. This would have occasioned further delay.

63 On the appeal, the defendant adopted the AR's second ground. He also submitted that the AR was wrong in concluding that the accident caused the failure of the plaintiff to graduate from the University of Melbourne on 1 January 2004. Instead, the defendant asserted that such failure was caused by a combination of three factors: the plaintiff's own choice not to continue with his nursing course after the accident for personal reasons, the plaintiff's poor performance due to his personal weaknesses and the plaintiff's delay in obtaining a work permit.

64 I have held above that the AR was correct in deciding that the primary reason for the plaintiff's failure to return to school after the accident was the pain that he suffered from. Accordingly, I similarly reject the defendant's argument that the plaintiff chose not to continue with his nursing course after the accident for personal reasons. While the plaintiff's poor performance led to him having to take a 'clinical confirmation' which added one month to his graduation date, this is of no consequence to the present issue as the plaintiff's claim under this head commenced on 1 January 2004 and not on 1 December 2003. By January 2004, the plaintiff would have completed his 'clinical confirmation' (if one was needed) had the accident not taken place. Finally, the argument that the plaintiff delayed his application for a visa is also not material to the present issue since the plaintiff claimed for a loss of income as a registered nurse in the United States and not in Australia.

65 Turning to the first ground put forward by the AR, with respect, I do not agree that it was not possible for the plaintiff to prove that he had "lost income" because of the accident since the plaintiff had no income before the accident. While the plaintiff did not earn any income for over three years prior to the start of his nursing course, the plaintiff did look for and find a nursing job soon after he graduated from the University of Melbourne. That he did so even though he had not completely recovered from the effects of the accident demonstrated, to me, that the plaintiff had had every intention of finding employment after graduation and was studying for this purpose and not just out of academic interest. I therefore accept that were it not for the accident, the plaintiff would have started work on or shortly after 1 January 2004 rather than in June 2005. Therefore, his inability to attend school because of the accident could have caused the plaintiff to lose some income. The fact that the plaintiff was not making any income before the accident does not preclude the plaintiff from claiming a pre-trial loss of ascertainable income.

66 Neither of the cases cited by the AR supports the proposition that no award for pre-trial loss of earnings can be made if the plaintiff was not earning any income immediately prior to the accident. *Eugene Lim* was a case of a student injured just before his final examinations who claimed that his disabilities meant he had to take a lower paying job than that he had been training for. This does not mean, however, as the AR suggested, that the plaintiff there would not have been eligible for pre-trial loss of earnings had his studies been prolonged by the accident. *Eugene Lim* does not deal with that point.

67 The plaintiff in *Nirumalan* did not stop work even though he was injured. Therefore, Kan J found that the plaintiff's pre-trial earnings were not affected. This was not so in the present case as the plaintiff had stopped studying for a period because of the accident. The AR relied on Kan J's observation to support his finding that the plaintiff should not be awarded pre-trial loss of earnings for the period 1 January 2004 to 31 May 2005. Kan J had said at [35]:

> If a student was injured, and continued to be in full-time studies up to the trial, his earning capacity,
> even if impaired, would not be used. He suffered no loss of earnings.

I do not see how the above statement supported the AR's contention that if the plaintiff was not earning any income before the accident, he cannot be awarded any loss of income. Clearly, the statement referred to a situation where the student continued to study in spite of his injuries. This was not the situation here as the plaintiff was forced to postpone his studies for a season because of his injuries.

68 On the facts here, however, I agree with the AR's finding that the plaintiff had failed to prove, on a balance of probabilities, that he would have been able to work as a registered nurse in Portland, Oregon from 1 January 2004 to 31 May 2005, had it not been for the accident. First, there was little concrete evidence that the plaintiff would, in fact, move or relocate to the United States for work after he graduated from the University of Melbourne. In support of his contention that he would, the plaintiff produced numerous telephone bills evincing calls made to the United States. While these, at the highest, may prove that the plaintiff had considered studying in the United States at the relevant time, it does not follow that the plaintiff would definitely have relocated to the United States to work. This is especially since the plaintiff had made a conscious choice, after making the calls, to study in Australia rather than the United States. It may well be that the very same factors that persuaded him, as an American citizen, to study in Australia would also have persuaded him to take up employment in Australia, as he has indeed done, too. After all, he had graduated from an Australian university and had relatives in Australia.

69 Furthermore, the AR correctly pointed out that even if the plaintiff had had such an intention, the plaintiff would definitely not have been able to find immediate employment on or around 1 January 2004. The plaintiff himself admitted in his affidavit of evidence-in-chief at paragraph 77 that he would have to have his nursing credentials verified and would then have to take an examination in either Australia or Oregon. This would, doubtless, have taken some time. There is no evidence as to exactly how long and what date would have been a realistic employment date.

70 The plaintiff faced considerable difficulty in establishing quantum because of the question of the admissibility of the evidence provided by the plaintiff as to how much a registered nurse working in Portland, Oregon would earn. The figures provided by Ms Mahrt and Salary.com were inadmissible as hearsay evidence. The plaintiff also produced data published on the internet apparently by the United States Bureau of Labor Statistics. The weight of this evidence is in doubt because of its generalised nature. Further, different figures were given for different types of nurses working in different areas in

Oregon and it would be really speculative to calculate the plaintiff's loss on the basis of such figures in the absence of reliable evidence of exactly where in Oregon he could be employed and at what level.

71 For the reasons enumerated above, I am not persuaded that I should interfere with the AR's refusal to make an award for loss of actual pre-trial income.

Whether the AR was correct in disallowing the claim for loss of future earnings

72 The plaintiff made a claim for loss of future earnings on the basis that he would have, had it not been for the accident, been employed either as a nurse anaesthetist or nurse practitioner in the United States from 1 June 2005. He quantified his claim as being either $867,115 if he had been employed in the former position or $217,613 if he had secured a post in the latter position. In coming to these figures, the plaintiff took into account the earnings he was expecting to make as a nurse in Australia during the period from 2005 to 2020 when he would reach the retirement age of 64 years old.

73 The AR's reasons for disallowing this claim were based on the lack of evidence to support the following assertions of the plaintiff:

(a) that he had intended to return to the United States to work after he graduated from the University of Melbourne; and

(b) that he intended to work in the United States as a nurse practitioner or nurse anaesthetist.

In his grounds of decision, the AR contrasted the present case with the situation in the *Eugene Lim* case. He said at 21:

> In *Lim Yuen Li Eugene*, the Plaintiff provided the Court with evidence that he would have worked as a pilot in the Air Force, based on his earlier acceptance by the RSAF to participate in its pilot selection test. As for his proposed future earnings, the Plaintiff brought two witnesses whom he intended to rely on as benchmarks to testify as to future salary and increments. This stands in stark contrast with the Plaintiff in the present case. The Plaintiff has not shown any concrete evidence that he would have been employed as a specialist nurse in the United States. Furthermore, he has also relied on hearsay evidence to prove his basis of calculation for his future earnings. I will address the hearsay issue separately in this judgment. At this juncture, it is sufficient to note that the Court in *Lim Yuen Li Eugene* held that the plaintiff had not provided sufficient evidence for a proper calculation of loss of future earnings. It must follow that the Plaintiff in the present case – who has provided the Court with even less evidence – must also fail for *(sic)* his claim for loss of future earnings.

74 On the appeal, the plaintiff submitted that because of the permanent disabilities that he now experienced, he had not been able to realise his plans of returning to the United States to work as a nurse. Instead, he had found employment in Australia as a psychiatric nurse, a position which made fewer physical demands and was therefore less likely to exacerbate his head and neck pain. Since the salary paid to a psychiatric nurse in Australia was less than that paid to an anaesthetist nurse or nurse practitioner in the United States, he had suffered a loss of income. Alternatively, even if the court was not convinced that he would be able to get a job as a specialised nurse in the United States, it was likely that he would have returned to work there as a registered nurse and since there

was a difference of $3,951.60 per month in the salary of a registered nurse in the United States and his present earnings in Australia, he had still suffered a loss of future earnings for which he should be compensated.

75 The plaintiff was not, however, able to point to any evidence which filled in the gaps in his evidence that the AR had noted and relied on. The defendant pointed out that the plaintiff had made no attempts to even apply for a job in the United States even though he claimed that he had hoped to return there to work. Further, the fact that he had not left for the United States either to study or work there but had instead migrated to Australia and now lived there confirmed that he had no plans to study or work in the United States at any time. It should also be noted that the plaintiff had made no effort to study nursing in the United States in the first place which would have been the logical thing to do had he really intended to work there after graduation since, as the defendant pointed out, the nursing degree course there would have been in tune with the needs of the profession in the United States and the clinical attachments would have been done in American hospitals and would therefore have provided the experience that the plaintiff would have needed to work as a nurse in that country.

76 Having considered the plaintiff's arguments on appeal, I find no reason to disagree with the AR's decision nor any basis on which I can hold that it was against the weight of the evidence. The appeal on this ground cannot succeed.

Whether the award for loss of earning capacity should have been made, and, if so, whether the quantum of the award was correct

77 Having rejected the plaintiff's claim for loss of future earnings, the AR held that the appropriate award would be one for loss of earning capacity. He accepted that the plaintiff may face difficulties in career advancement due to his whiplash-related syndromes. He also accepted the plaintiff's evidence that shift work affected his quality of sleep and caused him headaches and that he had had to avoid taking on management responsibilities due to his poor short term memory. As regards the quantum of this award, the AR considered the *Ronnie Tan*, *Nirumalan* and *Margaret Chew* cases. The plaintiff had submitted various cases in which the amount of the awards had ranged between $40,000 and $180,000. In the AR's view, however, such figures could only be meaningfully compared when viewed against the annual income of the plaintiff in question. In *Margaret Chew*, the award was about five times that plaintiff's monthly income but in *Ronnie Tan*, the sum awarded was about ten times that plaintiff's monthly income. In this case, the plaintiff's monthly income was $3,951.60. In coming to the award of $35,000, the AR stated:

> Taking all the factors of this case into consideration, including the Plaintiff's relatively low income when compared with the plaintiffs in similar precedent cases, I am awarding a sum of $35,000 to the Plaintiff for loss of future capacity.

78 Both parties appealed against the above award: the plaintiff contested the quantum whilst the defendant contested both the issue of whether there had been a loss in earning capacity and the issue of quantum.

79 The defendant's objection was based on the submission that the plaintiff had failed to prove that he was still suffering from any disabilities arising from the accident and that he was at risk of any loss of employment. The basis of this submission was that the plaintiff had failed to call any of the Australian doctors and therapists who were allegedly treating him to establish his current condition. The only evidence before the court on the plaintiff's current condition was therefore his bare assertion. As for the risk of loss of employment, whilst the plaintiff had claimed that his employers had

given him an appraisal which pointed out several areas of weakness, he did not disclose this to the court. Further, he had been made an "in charge" at work which entailed more responsibility than that borne by an ordinary nurse in the ward and was considered a more senior level with a third more pay. The fact that the management was prepared to entrust the plaintiff with additional responsibility proved, it was submitted, that the plaintiff's assertions about his difficulties at work or performance at work were bogus. At the most the court should have awarded a token sum of $5,000.

80 The plaintiff's evidence was that he had been "forced" to undertake late shift work as work in the evenings permitted him a more adequate sleep routine which reduced his headaches. However, his requests for late shift work had not always been permitted. Further, he had difficulties managing the ward and due to these difficulties he had been deprived of additional compensation. The plaintiff had also testified that due to his inability to cope with the demands of his job, he had been forced to change his job status from permanent part time to casual employment. Thus, his earning capacity had been adversely and significantly affected by his disabilities.

81 On this first issue, I must reject the defendant's submission. I am satisfied, as was the AR, that the plaintiff did sustain whiplash-related injuries which led to permanent disabilities. The medical evidence put forward by the defendant was that the plaintiff's injury was slight and should have been resolved within a few weeks. Whilst the accident happened in October 2002, doctors whom the plaintiff consulted who saw him in July and August 2003 discerned objective evidence which supported the plaintiff's complaints in the form of tension in his neck muscles and tenderness over his neck, shoulder and head. His doctors' evidence supported the plaintiff's claim that he had suffered a whiplash injury of sufficient severity to result in constant neck pain, headaches and tinnitus. The fact that the plaintiff did not call any evidence from doctors in Australia who had been treating him after he migrated there did not, therefore, have an adverse impact on the credibility of the plaintiff's claim.

82 As for the plaintiff's difficulties in relation to his employment and future career, although the only evidence provided was the plaintiff's own testimony, the AR had the benefit of hearing the testimony and observing the plaintiff. He believed this evidence. Since that is so and since I have accepted that the medical evidence established that the plaintiff has permanent disabilities of a nature which can interfere with his work performance, it is difficult for me to disturb the AR's finding on this issue. Therefore, I reject the defendant's submission that there should be only a nominal award because no risk of loss of employment was proved.

83 Moving to quantum, the plaintiff argued that the amount of the award should be increased to $120,000 bearing in mind the plaintiff's age, income and the case authorities. In this connection, the plaintiff produced evidence to show that his net income was $35,277 in year of assessment 2006 and A$35,029 in year of assessment 2007. He also stated that average yearly increases in wages in Australia under applicable collective agreements averaged some three percent per year. Further, for nurses, salaries would increase yearly by about 3.64% by reason of the yearly nursing pay grade rise. To warrant further pay scale upgrades, the nurse has to take on a managerial or more independent practice position. The plaintiff gave figures showing what he thought the average earnings of a nurse would be in Australia between 2006 and 2020 but he did not give any detailed breakdown of how he arrived at the figure of $120,000.

84 The plaintiff relied on four cases: *Hwang Soo Chiat v Salleh Bin Mustan Sintha* [2004] SGDC 165 ("*Hwang*"), *Karuppiah Nirmala v Singapore Bus Services Ltd* [2002] 3 SLR 415 ("*Karuppiah*"), *Nirumalan* and *Koh Soon Pheng v Tan Kah Eng* [2003] 2 SLR 538 ("*Koh Soon Pheng*"). I do not think that the last of these is relevant to the discussion here as the circumstances were very different in that the plaintiff there was a self-employed owner of a motorcycle repair workshop whose ability to repair motorcycles was affected by the accident and whose business takings were therefore

adversely affected by the accident. The issue was not so much one of the plaintiff's being at risk of losing employment but of his ability to earn as much as he had previously because he would have to employ others to do work he had once done and the only reason that the award was for loss of earning capacity rather than for loss of future earnings was that there was not enough evidence in the case to fix a multiplier. On the facts there, I found the quantum granted by the assistant registrar was reasonable as it translated into about the cost for eight years of employing another person to do what the plaintiff could no longer do and that such cost would reduce his earning capacity accordingly.

85 In *Hwang*, the plaintiff was a university lecturer who was 53 years old at the time of the hearing. He alleged that, as a result of the accident, he suffered from neck pain a few times a year. District Judge Irene Wu found that the plaintiff's income was $3,750 a month. Taking into consideration that the plaintiff enjoyed security of tenure with SMU until he was 62 years old, that there was no prospect of loss of his permanent employment but that there was a loss of earning capacity as regards the part time work he had been undertaking, DJ Wu awarded a sum of $40,000 to the plaintiff as damages for loss of earning capacity. That sum represented an award of $500 a month for 6 years.

86 In *Karuppiah*, the plaintiff worked as an editor earning $4,300 a month before she was involved in an accident which caused her pain in her neck and shoulder. The plaintiff was 42 years old at the time of the hearing. Subsequent to the accident, she resigned as an editor and found work as a part-time lecturer and as a practicum supervisor, earning approximately $2,500 a month. I found that the plaintiff was capable of earning at least another $1,000 a month despite the disabilities that had resulted from the accident. On this basis, I awarded her a sum of $70,000 as damages for loss of earning capacity, representing a rounded figure of $500 a month for 11 years (the sum of $500 being derived, roughly, from the difference between $4,300 and $3,500).

87 The injuries suffered by the plaintiff in *Nirumalan* are stated in [21] above. To add to the details stated therein, the plaintiff was an advocate and solicitor and managing partner of a law firm he had established. He was 50 years old at the time of the assessment but it was unclear from the judgment as to the income he was making. Kan J proceeded on the basis that the plaintiff would have worked till he was 65 years old and that, as founding member of the firm, he was unlikely to be forced out of his firm. In the circumstances, Kan J awarded a sum of $180,000 as damages for loss of earning capacity.

88 The defendant relied on two cases. The first was *Margaret Mei* (see [24] above) where the plaintiff had been awarded $20,000 for loss of earning capacity. There was no appeal against this award. Therefore when the case came before Woo Bih Li J on appeal on other issues, the judge, although considering that there was no evidence that the plaintiff would be at a significant disadvantage when competing with the others for the same job, did not interfere with the award. Since there was no discussion as to why $20,000 was a suitable figure in the circumstances, this case is of no assistance to the defendant in relation to quantum. In the second case *Yeow Mong Inn v Imran bin Mohd Hassan* DC Suit No 28 of 2000, the plaintiff, a 50 year old horticulturalist who suffered a skull and other fractures, lacerations and abrasions, was awarded a sum of $20,000 for loss of earning capacity. This case is not of much assistance either since no reasons were given for the award and there were no details of how the plaintiff's injuries had an impact on his earning capacity. The fact that the plaintiff in that case had more serious injuries than the plaintiff in this case would not by itself mean that his earning capacity would be more deeply affected by his injury than the earning capacity of the plaintiff here.

89 The more relevant authorities were those of *Ronnie Tan* and *Margaret Chew*, which the AR

relied on. The injuries suffered by the plaintiff in *Ronnie Tan* have been stated in [20] above. The plaintiff there was a lawyer who had established his own law firm just two months prior to the accident. By the time of the AR's assessment, he was already 47 years old. Chan J found that he enjoyed a post-trial income of $120,000 per annum ($10,000 a month). On that basis, Chan J agreed with the AR that an award of $100,000 as damages for loss of earning capacity was fair. As the AR in the present case pointed out, this was ten times the plaintiff's post-trial monthly income.

90 In *Margaret Chew*, the plaintiff was a partner in a firm and it was found that she earned a post-accident income of $150,000 a year ($12,500 a month). The assistant registrar who assessed the damages there found that her headaches arising from the accident had affected her ability to work. The assistant registrar, who was guided by the approach in *Nirumalan*, took into consideration her age, her annual salary and that she had an unrelated medical condition which also affected her working capacity before awarding $60,000 as damages for loss of earning capacity.

91 The AR had suggested in his grounds that there is perhaps a loose guide of awarding an amount equivalent to five times the plaintiff's monthly salary at the time of assessment as damages for loss of earning capacity. My reading of the cases does not support such a rule. It was not applied in *Karuppiah* or *Nirumalan* or *Ronnie Tan* though *Margaret Chew* would support it. On the other hand, the approach taken in *Hwang* and *Karuppiah* where the award was made by ascertaining, insofar as it was possible, the earnings foregone per month because of the injuries suffered by the plaintiff and multiplying that by the length of time the plaintiff was expected to work for, is also not very satisfactory as it makes the award akin to an award for loss of future earnings. The assessment for damages for loss of earning capacity can be an exercise in speculation as often the court does not know the extent to which a plaintiff will be disadvantaged by his disabilities if he has to seek a new position. In the end, it is clear from the cases that the assessment is a rather rough and ready one which really reflects the amount that the particular court thinks is reasonable in the particular circumstances to compensate the particular plaintiff for the disadvantage he has been put into in the job market by his disabilities.

92 In this case, the evidence was that the plaintiff preferred late shift work so as to better regulate his pain. Such a preference may affect his chances of improving his grades and holding a permanent nursing position. The plaintiff had asserted also that he had shifted from a permanent part time position to a casual position but he gave no evidence on what his earnings in this casual position are. One also cannot rule out further improvement in the plaintiff's condition so as to permit him to move back to permanent part time work. At the time of the assessment, therefore, it was impossible to quantify exactly how the plaintiff's disabilities would affect his earning capacity in the long term.

93 On the figures that the plaintiff gave, he had earned roughly the same net amounts in years of assessment 2006 (A$35,277) and 2007 (A$35,029). The AR's award of $35,000 was roughly equivalent to 80% of one year's income on the basis of the rate of exchange between the Australian dollar and the Singapore dollar in July 2008. If the AR's award is considered on the basis of the plaintiff's monthly income then taking his net monthly income as A$2,917 or $3,791 (on the basis of an annual net income of $35,000), the AR's award works out to 9.2 months' income. On the other hand, if the method used in *Karuppiah* and *Hwang* were applied, then using a multiplier of six based on the plaintiff's age of 52 at the time of the assessment, the plaintiff would have been awarded $486 a month for six years as loss of earning capacity. It would not be correct to make this calculation on the basis of 14 years even if the plaintiff himself expected to be able to work to the age of 64 since one has to take into account the exigencies of life and the accelerated receipt of the funds. Using all these bases to test the award made by the AR, I find that it was reasonable. Though some may consider it on the high side, in my judgment, it was not excessively high. I therefore would not interfere with this award. The plaintiff certainly did not justify the basis on which he should be

awarded $120,000. His monthly income was much less than those of the plaintiffs in *Nirumalan, Margaret Chew* and *Ronnie Tan* and his loss of earning capacity must therefore be similarly lower.

Conclusion

94 For the reasons given above, the defendant's appeal against the AR's decision must be dismissed. As far as the plaintiff's appeal is concerned, I will allow it in part and vary the award in his favour by increasing it by $2,055.78 as stated in [37] above. The plaintiff, however, fails in relation to the other points of his appeal. On the issue of costs, the plaintiff has succeeded in resisting the defendant's appeal while failing on most of the items of his appeal apart from one rather minor matter. I therefore think it fair that the defendant should pay the plaintiff as costs half of the plaintiff's costs in his own appeal and in defending the defendant's appeal, such costs to be taxed if not agreed.