Tan Hun Hoe v Harte Denis Mathew
[2001] SGCA 68

Case Number : CA 170/2000 ,171/2000

Decision Date : 13 October 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Dr Myint Soe and Mohamed Abdullah (MyintSoe Mohamed Yang & Selvaraj) for the appellant in CA 170/2000 and the respondent in CA 171/2000; Raj Singam, Edmund Kronenburg and Tan Siu-Lin (Drew & Napier) for the appellant in CA 171/2000 and the respondent in CA 170/2000

Parties : Tan Hun Hoe — Harte Denis Mathew

Civil Procedure – Costs – Awarding costs to respondent despite failure to establish appellant's negligence in operation – Whether appellate court should interfere with order

Damages – Appeals – Future medical expenses – Fertility treatment plus medication – Number of cycles of treatment to be awarded – Hormone replacement therapy – Consultation fees payable – Drug tests – Age up to which hormone therapy should be allowed -Reduction of rate of discount

Damages – Appeals – Loss of future earnings – Respondent on secondment to Singapore office – Whether claim made out

Damages – Measure of damages – Personal injuries cases – Atrophy of both testes – Negligent post-operative care by doctor – Whether damages should be enhanced – Whether court should discount assessed damages by 40% due to respondent's own negligence

Tort – Negligence – Claim involving personal injuries – Proof required of plaintiff

(delivering the judgment of the court): These are two related appeals arising from a decision of the High Court which found a urologist and renal transplant surgeon, Dr Tan Hun Hoe (`Dr Tan`), wanting in post-operative care of the patient, Mr Harte, following an operation procedure known as `bilateral varicocelectomy` carried out by Dr Tan at Gleneagles Hospital. Dr Tan was found 60% liable for the atrophy of both the testes of Mr Harte due to his post-operation negligence.

Mr Harte is dissatisfied with the quantum of damages awarded by the High Court and appeals to have the quantum enhanced. Dr Tan`s appeal relates to the order on costs. The basis for Dr Tan`s appeal hinges on an offer he made to settle and which far exceeded the sum which the court below eventually awarded to Mr Harte. Although chronologically Dr Tan`s notice of appeal was filed earlier, it is, however, expedient that we deal with Mr Harte`s appeal first.

At the trial below, Mr Harte had also sued the Gleneagles Hospital for being vicariously liable for the negligent acts of Dr Tan. It was clear on the evidence that Dr Tan was never an employee or agent of the hospital. Dr Tan ran his own private clinic. What he had was an arrangement with the hospital which allowed him to use its facilities for operating on his private patients. So there could be no question of the hospital being vicariously liable for the acts of Dr Tan. In any event, Mr Harte`s claim against the hospital failed because, as will be seen later, the operation carried out by Dr Tan in the hospital was held to be without fault. The atrophy of the testes of Mr Harte was brought about by post-operation causes which will be described later. The court below thus dismissed his claim against the hospital with costs. There is no appeal by Mr Harte against this dismissal.

The background

Mr Harte, now aged 37, is a citizen of the United States. In 1989 he married his wife, Mrs Michelle Lynn Harte. She is now 38. They were living in New York. About five years after their marriage, they decided to start a family. After trying for some two years, their wish could not be realised. So in April 1996, Mrs Harte consulted a gynaecologist, Dr James Jones, who in turn advised Mr Harte to see a urologist, Dr Lawrence Dubin.

The tests done by Dr Dubin showed that the quality of Mr Harte`s sperms was in a sub-fertile range. This was due to poor morphology. Dr Dubin suggested that Mr Harte undergo a surgical procedure known as a left varicocelectomy to improve the sperm quality. The object of this procedure was to reduce the pool of warm blood in the varicose veins surrounding the testes, which increased the temperature in the spermatogonia and decreased the efficiency with which they turned into spermatids. By ligating the appropriate number of varicose veins in the scrotum, the pool of warm blood would be removed due to the mechanism of thrombosis. The temperature in the testicular area thereby would be correspondingly lowered and fertility would be enhanced. In June 1996 Dr Dubin carried out the surgery.

At the relevant time, Mr Harte was working with a New York company, ED & F Inc. In August, he was seconded by his company to work in Singapore as a trading manager with ED & F Man Asia Pte Ltd. This move was a step upwards for him. Soon Mrs Harte joined him here. They continued to try to have a family but without success in spite of the procedure carried out by Dr Dubin.

In April 1997 Mr Harte consulted Dr Tan at the recommendation of Mrs Harte`s Singapore gynaecologist, Dr Winnie Wun. Dr Tan`s clinic was located at the Gleneagles Medical Centre, a building adjacent to Gleneagles Hospital. Dr Tan had an arrangement with Gleneagles Hospital whereby he could use the facilities of the hospital to carry out surgical operations on his private patients. As Mr Harte had informed Dr Tan that subsequent to Dr Dubin`s procedure no seminal analysis was carried out, Dr Tan suggested that that be done. The result of the analysis showed adequate volume of semen but `low percentage sperm mobility and low percentage normal forms, with high percentage tail defects`. This showed that Dr Dubin`s operation did not improve Mr Harte`s condition but in fact worsened it. The percentage of the normal form of his sperms had dropped from 15% to about 3%.

Dr Tan`s clinical examination of Mr Harte showed that there was no abnormality in his genitalia and there was no varicocele. He then used the Colour Doppler Ultrasound Scan (CPUS) to try to detect the cause or source of the infertility. The scan showed that intermittent varicoceles were noted on the left side and very early minimal intermittent varicoceles noted on the right side. The trial judge found that Dr Tan did inform Mr Harte of all these. On Dr Tan`s advice, Mr and Mrs Harte agreed to the bilateral varicocelectomy, it being in Dr Tan`s view the best option in the circumstances.

Dr Tan assured Mr and Mrs Harte that there would be no complications arising from the surgery other than some minor swelling and general discomfort lasting for a few days. This was greatly comforting to Mr Harte as it meant that the side effects would be the same as those he experienced after the procedure in New York. However, the risk of atrophy was never mentioned to Mr and Mrs Harte. Be that as it may, the evidence showed that testicular atrophy was a remote consequence of such a simple surgery and the judge held that an omission to mention such a risk to Mr Harte did not constitute a negligent omission.

The bilateral varicocelectomy was carried out by Dr Tan on Mr Harte on 28 April 1997. The procedure lasted some one hour and twenty minutes. Thereafter, Mr Harte was wheeled to a recovery room in the day ward to rest.

An hour later in the recovery room a fateful event occurred. Against the advice of the hospital nurse,

Ms Tan Seng Eng (`Ms Tan`), attending to him, and who brought him a urinal and also offered him a bed-pan, Mr Harte insisted on using the toilet. Mrs Harte said that she would accompany him. The nurse, Ms Tan, and Mrs Harte, helped Mr Harte to sit on the toilet bowl. The nurse then left the toilet, leaving Mrs Harte there with Mr Harte.

While seated on the toilet bowl, Mr Harte fainted and fell off the toilet bowl. Mrs Harte tried to hold him but failed because he is a very big person. As a result, Mr Harte`s head hit the floor first. Nurses were called to help him up and put him on the bed. Upon notification of the fall, Dr Tan sent a neurosurgeon, Dr Balaji Sadasivam, to examine his head. Dr Balaji did not examine the scrotum area. Mr Harte said that on that day, he felt pain at the bump on his head, but not in his testes or scrotum. By the evening of that day, as there did not appear to be any further complication, Dr Balaji, having seen Mr Harte, discharged him from the hospital. There was no evidence then that his testicles were traumatised because of the fall. At that point in time, it would not be possible to realise the injury which eventually occurred.

It must be mentioned that when Mr Harte was discharged, he felt discomfort at the scrotal area, though he could walk slowly. Mr Harte thought that that must be the normal effects of the surgery in the light of what Dr Tan told him earlier. By bedtime, there was some swelling at the scrotum area. Again, Mr Harte thought that that was the normal effect of the surgery.

Post-operation care

We now come to the part where the court held Dr Tan to be wanting, that is, the post-operation care. The next morning, Mr Harte found that both his testes had swollen to what he felt was two to three times their normal size. The swelling was much more than what he experienced after the operation in New York by Dr Dubin. He further felt excruciating throbbing pain around his testicular area. At 9am Mr Harte called Dr Tan`s office but was told that he was busy. Eventually, Mr Harte spoke to Dr Tan and told the latter of how he felt. Dr Tan assured him that nothing needed be done, except to continue taking the prescribed pills and the swelling would subside. And so Mr Harte waited. But the swelling of his scotum got worse, about five to six times the normal size; and so did the pain.

On 30 April 1997, Mr Harte tried without success to speak to Dr Tan as the latter was away on a day trip to Kuala Lumpur. He made several calls because the swelling and pain got worse. He spoke to Dr Tan`s nurse who told him to continue taking the pills and to come and see Dr Tan on 2 May 1997, 1 May 1997 being a public holiday.

The trial judge found that Dr Tan and/or his nurses should have, on 29 April 1997, asked Mr Harte to come to the clinic immediately for an examination.

By 2 May 1997, Mr Harte`s scrotum had grown to a size of about 7 inches/5 inches. It was agonising for him to walk, even with Mrs Harte`s assistance, to Dr Tan`s clinic. Dr Tan explained that Mr Harte had a scrotal haematoma and prescribed painkillers, antibiotics and anti-inflamatory medication to ease the pain and reduce swelling. And if the swelling persisted, he would draw the blood from his scrotum. Dr Tan did not inform Mr Harte that the haematoma could lead to the atrophy of his testes. Neither was an ultrasound scan carried out. The next appointment was fixed for 9 May. What is pertinent to note is that between 2 and 9 May 1997, Mr Harte was so concerned that he called Dr Tan`s clinic every day for advice. Still Dr Tan did not ask him to come and see him ahead of the next appointment.

On 9 May 1997, Dr Tan examined Mr Harte`s scrotum with the ultrasound machine. The swelling had

started to subside although his scrotum was still hard. Because the swelling had subsided, Dr Tan did not think it necessary to draw out the blood from the scrotum.

By the time of the next consultation on 26 May 1997, all swelling had completely subsided. Dr Tan put Mr Harte on a three months` course of Povinorum, a drug containing a form of synthetic testosterone called mesteroline. However, Dr Tan did not explain to Mr Harte why he prescribed this drug. The judge thought that by this date Dr Tan knew that Mr Harte`s testes were irreparably damaged and could no longer produce sufficient testosterone. Neither did Dr Tan inform Mr Harte of this development.

On 29 August 1997, a seminal analysis revealed a dramatic reduction in the quantity and quality of his sperms, ie one million sperm per millilitre compared with 29 million in April 1997. A second seminal analysis a week later showed that there was no more sperm.

It was only on 9 October 1997, upon the inquiry of Mrs Harte, that Dr Tan explained that Mr Harte`s testes were not functioning properly. There was much dried blood in his scrotum. There was a small 3mm epididymal cyst on his left side. On 11 October 1997, Dr Tan dropped the bombshell to the Hartes that it was very unlikely that Mr Harte could ever father his own child.

Consequential physical disabilities

As a result of all that had happened, the level of testosterone in his blood was reduced, causing him to lose, inter alia, his stamina and libido. But after obtaining testosterone replacement, his libido improved. By then his right testicle had shrunk from 25cc to 6cc and his left from 15cc to 8cc. The testicles, having atrophied, are now permanently damaged and cannot produce sperm or testosterone. He can no longer father any child. Understandably this devastated him and also caused great pain to his wife. Further tests showed that his left testis could not produce any mature sperm but just some spermatids (ie immature sperm). His right testicle produced not even spermatids - it was completely non-functional.

Dr Schlegel, an Associate Professor of Urology at Cornell University and Visiting Associate Physician at Rockefeller University Hospital in New York, advised that he might be able to extract sperm from his left testis (`TESE`) and attempt the intracytoplasmic sperm injection procedure (`ICSI`) to fertilise one of Mrs Harte`s eggs. This might require several attempts to be successful. Dr Schlegel was hopeful.

Findings of the trial judge

The position taken by Dr Tan was that he did not encounter any problem in the course of the surgery on Mr Harte. The operation was uneventful. He attributed the scrotum haematoma to the fall sustained by Mr Harte in the toilet. The fall caused an impact on the scrotum, resulting in the very sensitive veins in the testes to burst and bleed.

It was common ground between the experts of both parties that bilateral testicular atrophy was not likely to occur following bilateral varicocelectomy unless the surgeon had not performed the surgery with sufficient care or he was simply incompetent.

The trial judge went into a very detailed analysis of the medical evidence touching on the cause of the atrophy. It is clear that the atrophy was caused by a vascular event, meaning the blood supply

to the testes had been compromised (ie reduced). There was the evidence of Dr Richard Notley (for Mr Harte) that a wholly unnecessary operation was done by Dr Tan, as the varicocele in the left testis had been removed by Dr Dubin in New York and there was no varicocele in the right testis. Dr Tan carried on the operation based on an assumption. However, this view of Dr Notley was not accepted by the trial judge.

Touching on the operation, the judge found that Dr Tan had adopted the correct procedure and had exercised reasonable care in relation thereto. Mr Harte`s contention, that it was due to an excessive division of veins by Dr Tan which caused the devascularisation, was rejected by the judge who held that Dr Tan had, in fact, left all the arteries, including the vasal artery, intact. Neither did he ligate and divide the vasal vein. There was blood supply to and sufficient venous drainage from both his testes.

We ought to mention that Mr Harte had also speculated or postulated various possibilities in which Dr Tan could have botched the operation and caused the dead testes. The judge, by a process of elimination, rejected all of them as without any foundation.

From a thorough examination of the medical evidence, the judge came to the conclusion that Mr Harte did suffer from extratesticular (scrotal) haematoma besides an internal haematoma and that the cause of both was physical contusion rather than surgery. That contusion occurred when Mr Harte collapsed and his scrotum pressed against the side of the toilet seat. It was a fairly hard squeeze. In coming to this determination he went into a careful examination of how the collapse of Mr Harte could have caused the contusion on the scrotum and the testes. For this purpose, he had the assistance of two associate professors from the engineering schools at NTU and NUS, who gave various projections based on science as to how the fall from the toilet seat could have caused the injuries to the scrotum and the testes. The judge also bore in mind the fact that the toilet bowl on which Mr Harte was seated was smaller than his large frame and his scrotum was slightly swollen because of the operation. This was how the judge described the situation ([para]394):

> *Since Mr Harte fell from a most vulnerable position when his slightly swollen scrotum after the operation was hanging deepest in the toilet bowl, the forward movement of the body during the fall would push his penis and scrotum to be jammed between the perineum and pelvic bone on the top, and the hard but smooth upper surface of the toilet seat at the bottom, whilst hemmed in at the same time by the inner thighs on both sides. The resultant effect is a fairly hard squeezing of the testicles on all sides for a short duration when his heavy body moved forward and fell eventually, pulling along with it and crushing the scrotum and testes as they passed over the smooth edged toilet seat, which consequently resulted in the contusion injury.*

The judge found that the swelling of the scrotum and the pain were due to the contusion. His fall caused his rather large scrotum to be caught and squashed between his body and the top of the toilet seat. The contusion involved only a moderate non-impact force - a gradual squeezing of the testes, as his heavy body rolled over his scrotum during the fall off the toilet seat. The resulting pain arising from this rolling over was probably not acute and would have diminished quickly. Therefore, it was not realised by Mr Harte by the time he regained consciousness. But it probably caused internal microvascular damage within the testicular tissues. The micro bleeding caused the intratesticular haematoma to swell and stretch the intact tunica albuginea, and then the pain would be felt gradually.

The judge did not find Dr Tan to be wanting in exercising due care by not seeing Mr Harte on the day

before his discharge from hospital. This is because, in his view, it would have made no difference as Dr Tan would not have been able to diagnose a potentially dangerous intratesticular haematoma developing at that stage, especially when Mr Harte had not complained of any serious pain and there were no obvious signs of bruising or swelling of the scrotum area.

But the judge found that Dr Tan exercised less than reasonable care when he failed to see Mr Harte immediately after being informed of the swelling and the pain on the next day, 29 April 1997. Dr Tan also did not exercise due care when he saw Mr Harte on 2 May 1997 as he should have investigated further into the swelling like using the ultrasound machine, which he did only on 9 May 1997. This test was essential in the light of the fact that the scrotum swelled to the size of a mango, with the testes not palpable. This latter condition indicated all the more of the need for an ultrasound investigation to ascertain the existence of intratesticular haematoma.

The haematoma disrupted the blood flow to the testes, thereby depriving the testes of the oxygen they required to function. This resulted in the tissues in the testes dying, leading to atrophy.

The judge seemed to hold that there were two contributory causes of the atrophy: the fall and the post-operation negligence. Liability was apportioned 40:60 in favour of Mr Harte.

Assessment of damages

The judge quantified the damages for the injuries suffered. Based on 100% liability, he awarded Mr Harte a total of S$50,000 for general damages in respect of pain and suffering, made up as follows:

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

As for special damages, Mr Harte claimed under a number of items. The judge disallowed Mr Harte`s claims for medical expenses incurred before and for the operation itself because Dr Tan was not negligent in respect of the advice he gave before the operation and for the operation itself. However, he granted in respect of:

(1)	local medical expenses post-operation	S$4,992.70
(2)	overseas medical expenses post-operation	US$4,982.08

But he did not allow Mr Harte`s claim on expenses incurred on air travel to the United States for fertility treatment. The reason for this decision was because those trips were undertaken as part of home leave or on business and the expenses were paid by the company. The obtaining of treatment on those trips was incidental. This disallowance is not challenged before us.

However, the judge only allowed partially Mr Harte`s claims for future cost of fertility treatment which would involve two procedures, namely, TESE (testicular sperm extraction) and ICSI (intracytoplasmic sperm injection), to be undertaken at Cornell University Medical Centre, New York. He allowed three cycles (Mr Harte claimed 10) of the TESE procedure at US$7,000 each, plus other expenses and pain and inconvenience on account of this and gave a total award of US$30,000 for the item.

However, as regards the cost for the ICSI procedure, the judge held that even if Mr Harte did not suffer any testicular atrophy, the ICSI procedure would still be needed. This was because his sperms, being so weak, would not likely be able to fertilise his wife`s eggs. Thus, assistance would be required in any event.

The judge did not allow Mr Harte`s claim for loss of earnings, estimated by Mr Harte at $2.4m. This was allegedly on account of his having to give up his job in Singapore and return to United States in order that he might obtain the TESE-ICSI treatment at Cornell University Medical Centre so that his wife could conceive their child. The judge found that the Hartes wanted to go back to New York on their own volition. He also found that there was no evidence that his employer had decided to extend his assignment in Singapore upon the completion of his three-year term. Moreover, even if the Hartes were to undertake the TESE-ICSI treatment, it would not have required him and his wife to be stationed in New York. They could make short trips to New York for this purpose.

Finally, in respect of an item on the cost of hormone replacement therapy, he allowed it at US$1,828.48p[thinsp]a until Mr Harte reached the age of 60. Bearing in mind that there was accelerated payment, and applying a discount rate of 5%p[thinsp]a, he arrived at the global figure of US$25,230, which he rounded up to US$26,000.

Except for the claims for cost of future treatment/therapy, interest was awarded in respect of the other items, for sums in Singapore dollars at 3%p[thinsp]a and US dollars 5%, from the date of the writ.

Mr Harte`s appeal

As mentioned before, Mr Harte`s appeal is only in relation to the quantum of damages awarded. However, before going into the consideration of the individual items of claim which are being challenged, either on the ground of the quantum being so low or that it was unjustifiably disallowed, there is a need for us to consider Mr Harte`s general contention that the court was wrong to have discounted the assessed amount of damages by 40%. This discount was made by the judge following his finding that, had there been `prompt intervention by Dr Tan on the morning after the surgery, perhaps 60% of Mr Harte`s testes may be saved from atrophy`.

Mr Harte`s contention goes as follows: if 60% of his testes could have been saved, but for Dr Tan`s negligence, that would mean that the testes would still have retained much of their normal functions, as the 40% atrophy of the testes, which was attributed by the court to Mr Harte himself, would not have caused the testes to lose their functional capabilities. Furthermore, as Mr Harte`s testes were much larger than the average man, a saving of 60% of his testes must therefore mean that there was

more than an even chance of saving the functional capabilities of the testes.

It seems to us that this contention is wholly without any foundation. It is true that if a person has one good testis and a damaged testis, he is still capable of producing sperm to father a child. But it is wholly erroneous to infer from that that if both testes were damaged up to 50%, that person is in the same position as one who has one good testis and one bad testis. There is no parallel between the two situations. One does not follow from the other. The extent to which the functions of a human organ are damaged is not a matter upon which a conclusion may be drawn based on mathematical calculation or analogy. There is simply no evidence before the court to show how effective the testes would be, if the atrophy suffered by the testes of Mr Harte were 60% less than they now are. Moreover, there is also no evidence to indicate that a bigger testis is more resilient functionally than a normal or smaller sized one.

Reliance is placed by Mr Harte on the case of **Hotson v East Berkshire Area Health Authority** [1987] AC 750[1987] 2 All ER 909 where a boy aged 13 fell from a tree and suffered an acute traumatic fracture of the epiphysis of the left thigh bone. Because of an erroneous diagnosis, the injury remained untreated for five days, and it developed into avascular necrosis of the femoral apiphysis, a disability of the hip joint. The trial judge found that even if prompt and correct treatment had been given, there was still a 75% chance that avascular necrosis would have developed. The trial judge awarded the plaintiff 25% of the assessed damage for the disability and it was affirmed on appeal. However, the House of Lords reversed that decision and held that no damages were payable as the plaintiff had not proven causation. Once causation was proven then the defendant would be liable for the entire injury. As Lord Ackner said ([1987] AC 750 at 793; [1987] 2 All ER 909 at 922):

> *Once liability is established, on the balance of probabilities, the loss which the plaintiff has sustained is payable in full. It is not discounted by reducing his claim by the extent to which he has failed to prove his case with 100 per cent certainty.*

It is settled law that in a personal injuries claim, the plaintiff must always establish that the act/omission of the defendant is the cause, or a cause, of the injuries. Causation must be proved on the balance of probabilities. In a case where it is proved that there were several causes, then the court is bound to determine the extent to which each cause contributed to the injuries.

We do not propose to go into the other cases which have been cited to us. In each instance it is a question of fact. Reverting to the instant case we note that throughout the trial, Mr Harte proceeded on only one basis, namely, that Dr Tan botched up the operation and was, therefore, wholly responsible for the resulting incapacity. While Dr Tan did, during the course of the trial, raise the issue that the incapacity was due to the collapse of Mr Harte while sitting on the toilet bowl, there was hardly any evidence led by Mr Harte as to Dr Tan`s post-operation care and on how this lack of care had contributorily caused the incapacity of the testes.

While the trial judge did not, in his judgment, expressly find that Dr Tan`s post-operation negligence caused the atrophy of the two testes, that must be implied, as he held that had prompt attention been given by Dr Tan to Mr Harte`s complaint, 60% of the testes might have been saved. But, as mentioned before, there is no medical evidence before the court to indicate how incapable or unproductive the two testes would have become had they been damaged or atrophied only to the extent of 40%. There is nothing to show that the rate of deterioration of the capability of a testis corresponds directly with the extent of its atrophy. The finding of the trial judge on this seems to assume that the rate of deterioration of a testis would be that of a straight line. The truth is there is

no answer obtainable from the evidence before the court.

The evidence of Dr Schlegel suggested that permanent injury will set in within four to six hours of the contusion to the testes. Similarly, Dr Notley was pessimistic about the chances of salvaging the testicular tissues even if Dr Tan had intervened promptly with proper medical treatment. Both these experts were Mr Harte`s witnesses. The evidence of Dr Tay Kah Phuan, a defence witness, seemed to be consistent with that of Dr Notley, when he expressed the view that where an injury to the testis resulted from trauma, tissues in the testicles would die in any event notwithstanding any efforts to save them. On this evidence, the atrophy could not be said to have been caused by Dr Tan.

It would appear that in coming to his conclusion the judge relied mainly on the evidence of Prof Li Man Kay. But Prof Li`s opinion was really quite tentative. On being asked about the chances of Mr Harte`s testes being saved, if prompt treatment had been given by Dr Tan, he really only hazarded a guess when he said `I would assume that there will be fifty-fifty chance`. It is also not entirely clear, when Prof Li stated that there could be a 50-50 chance of saving the testes, what he meant. Did he mean saving such that there would be no reduction in the functional capabilities of the testes? That was not explored.

It is also not clear to us how the judge arrived at his conclusion that, had prompt attention been given by Dr Tan, perhaps 60% of Mr Harte`s testes might have been saved from atrophy. It seems to us that what the judge probably did was first to randomly increase the chances of saving the testes by 10% to 60% (it appears this increase has no evidential basis) and, secondly, taking a broad brush approach, to assume that if there was a 60% chance of saving the testes from atrophy it would mean that the extent of the atrophy would accordingly be lessened by 60%. Of course, the critical question is not the extent of the atrophy but the extent to which any degree of atrophy would affect the functional capabilities of the testes. In our view, the correct question should be: would a testis which is atrophied by up to 40% (for which Mr Harte is responsible) be completely destroyed? Could it be saved so that it could function normally? If not, what would be its remaining capabilities? Perhaps, the judge was merely seeking to achieve broad justice in all the circumstances.

Be that as it may, and most importantly, Dr Tan has not appealed against that finding. Neither has he appealed against the quantum of damages awarded against him. As for Mr Harte`s appeal, apart from questioning the specific quantum given in respect of each item of claim, or challenging those items which the judge had disallowed, he contends that, following ***Hotson*** (supra), the discount of 40% from the quantum should not be made. He is not challenging the finding that Mr Harte himself caused 40% of the atrophy.

The burden of proof as to the extent of disability or incapacity suffered by a plaintiff rests with him. In the light of what has been discussed above, it could be said that Mr Harte had not proven causation. ***Hotson*** (supra) is in fact against Mr Harte. What is in his favour is that passage cited in [para]46 above. This is because strictly, a 50-50 chance does not constitute sufficient proof on the balance of probabilities. On that basis, the award of 60% of the assessed damages to Mr Harte is thus more than what he is entitled to.

We should state that ***Hotson*** (supra) and this case are clearly reconcilable. In ***Hotson*** , the question addressed by the House was whether the hospital authorities` negligence caused the avascular necrosis. As the medical opinion tendered showed that even if proper treatment had been given, there was a 75% probability that the disability would have set in, the House of Lords held that it was not proved, on the balance of probabilities, that the doctors` negligence caused that disability. In our case, the judge found that Mr Harte`s collapse, while sitting on the toilet bowl, caused contusion of

the testes. That was a direct cause of the atrophy. What the judge also found was that the extent of the atrophy could have been reduced by 60% if not for the post-operation negligence of Dr Tan. So what that means is that the atrophy of both testes of Mr Harte had two contributory causes - the fall and lack of prompt post-operation treatment. On this basis, we think the judge is correct to have awarded Mr Harte only 60% of the assessed damages.

There would have been a parallel between ***Hotson*** (supra) and this case if the judge had found that even if Dr Tan had rendered prompt medical attention to Mr Harte the chances of saving his testes from being so atrophied was, say, only 25%. But in this latter event, following ***Hotson*** , Dr Tan would not have been held to have caused the atrophy.

There is a final point we would like to make about ***Hotson*** (supra). If causation had been proven there, ie that prompt action ***would have prevented the onset of avascular necrosis*** , then it is perfectly understandable why their Lordships held that the defendant should have to pay the full amount of the damages for that disability. This was not what the judge below found in this case. Here, the judge was saying that even in the absence of the post-operation negligence, there would have been 40% atrophy of the testes.

The situation here, as determined by the judge, is not unlike that in an ordinary motor accident claim. The law reports and the court records are littered with cases where the courts had in those cases found the plaintiff 25% to blame and the defendant 75% to blame and damages sustained were accordingly apportioned. In some of the cases the plaintiffs were to be blamed for even less than 25%. In every of these cases, it would mean that the court had found there were more than one contributory cause to the accident and had apportioned fault accordingly. Here, the judge found that both Mr Harte and Dr Tan had caused the eventual atrophy of the testes and went on to apportion liability at 40-60, in favour of Mr Harte.

General damages

On the award of general damages made by the judge, Mr Harte contends that the judge only took into account `pain and suffering` and not the `loss of amenities`, such as his feeling of lethargy and the loss of libido. We do not think this criticism is valid and may be disposed of shortly. This head of damage `pain and suffering and loss of amenities` is sometimes referred to simply as `pain and suffering`. To say that the judge had not given anything for `loss of amenities` is to ignore the sum of $13,000 given for `partial penile impotence and impaired libido`. It is, therefore, clear to us that the judge had used the term `pain and suffering` to also include `loss of amenities`. However, such a form of abbreviation without further explanation, especially in a written judgment, should be avoided altogether in order to prevent the sort of arguments raised by Mr Harte here.

Ariffin bin Omar v Goh Beng Kee Ng Hock Chye v Singapore Shuttle Bus Yeap Boon Onn v Neo Hui Nee It is true that the judge did not give any reasons for the various sums he awarded under general damages. We agree that there should be a fair measure of consistency between awards for similar injuries/incapacities. Mr Raj Singam for Mr Harte, relied upon the following five cases to show that the overall quantum of $50,000 awarded is too low:

(1) In **Low Swee Tong v Liew Machinery** [1993] 3 SLR 89 , the High Court awarded $45,000 for impotence.

(2) In (Suit 1603/88), our High Court awarded $55,000 for rupture of urethra and impotence.

(3) In (Suit 442/89), our High Court awarded $40,000 for penile impotence.

(4) In **Lai Wee Lian v Singapore Bus Service (1978)** [1984-1985] SLR 10 [1984] 1 MLJ 325 , the plaintiff was awarded $45,000 for pain and suffering in respect of his inability to have sexual intercourse. In addition, she was given $40,000 for the loss of amenities (to have a marriage and family).

(5) In (MC Suit 14442/97), the magistrate court awarded $15,000 for the atrophy of a testicle, without loss of sexual function.

While it may be difficult to compare one set of injuries with another, though they may be similar, Mr Harte`s condition seems to be more serious than any of the above cases. The main disabilities which he now suffers are:

(1) the atrophy of both testes;

(2) loss of ability to produce sperms (admittedly before the operation by Dr Tan, the quality of his sperms was below normal);

(3) complete loss of capacity to produce testosterone which gave rise to, inter alia, loss of masculinity, loss of libido, and the need to have hormone replacement therapy which treatment over the long term could give rise to an increased risk of liver cancer;

(4) the need to resort to TESE and ICSI procedures in order that Mr Harte may have a chance of fathering a child.

While modern medical science has found a cure for impotency, there is as yet no discovery which would enable a dead testis to produce sperm or testosterone. We further agree with Mr Singam`s submission that taking the award in ***Yeap Boon Onn*** as an example, it does not follow because the atrophy of one testis attracted an award of $15,000 that the amount to be awarded for the atrophy of both testes would only be twice. The devastating effect of the loss of both testes must be given due consideration. As mentioned above, a man with one good testis can still father a child. A man with both testes dead cannot do that. Even a man who is really impotent can father a child by artificial insemination.

Taking into consideration the amounts awarded in those cases referred to by Mr Singam and all the circumstances here, including the fact that Mr Harte`s loss is not just one testis but two and yet, on the other hand, he was before the operation already infertile to a fair extent, we are of the opinion that the amount awarded by the trial judge was clearly on the low side and ought to be enhanced. We would accordingly enhance the amount for general damages to $120,000, made up as follows:

Atrophy of both testes and complete loss of fertility	$	60,000
Partial penile impotence and impaired libido	$	45,000
Increased risk of liver cancer on account of testosterone treatment	$	10,000

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

We would add that if Mr Harte had, before the accident, been a normal fertile man, then the sum we would have awarded would be more than what we have given above.

Finally, there is a point of policy which Mr Singam has raised before us. He said the courts in Singapore should follow the approaches adopted by the courts in Hong Kong and England (see **Chan Pui Ki v Leung On** [1996] 2 HKLR 401 and **Heil v Rankin** [2000] 3 All ER 138) of making a general upward revision of all awards to reflect the current improved social and economic conditions in the country. In ***Heil v Rankin*** , a specially empanelled quorum of five judges of the English Court of Appeal came to the conclusion that the awards for the most serious of injuries needed to be increased by about one-third and a lesser margin of increase for the less serious injuries.

We accept the principle that the compensation to be awarded to a victim must be fair, reasonable and just. We also recognise the fact that no amount of compensation can really make up for the loss of an organ or a limb. The law seeks to do the best it can, using money as the medium, of striking a balance between the interests of the individual and the overall interest of the society. However, we do not think this is an appropriate occasion to undertake a general review of the tariff for personal injuries. There will be socio-economic implications. This court does not have the essential data to help it to come to an informed conclusion. We have only a brief submission by Mr Harte`s counsel. However, we wish to point out that a perusal of some of the awards made by the courts over the years indicate that awards for the same injury have risen.

But in so far as the present case is concerned, we are of the opinion that the award for general damages is inadequate and have accordingly revised it upwards as indicated above.

Expenses incurred for the operation

We now turn to Mr Harte`s claim for special damages. The judge below disallowed the claim for expenses incurred by Mr Harte before the operation as well as for the operation. His main reason for the decision was that as he found Dr Tan not to be negligent in carrying out the operation and as the haematoma of the testes and the scrotum was caused by Mr Harte`s fall from the toilet bowl, those expenses should be borne by him.

Mr Singam argued that Dr Tan`s post-operation negligence effectively removed all the benefits that Mr Harte had received from Dr Tan before and during the surgery. He gave this example and we will quote him verbatim:

> *A man sends his car to a mechanic to be repaired. The mechanic completes the repairs, and he draws up an invoice for S$5,000. The mechanic`s last duty is to drive the car back to the man`s house. In this process, the mechanic drives negligently and wrecks the car, rendering it totally inoperable and unsalvageable. The man has totally lost the benefit of his car being repaired. Because of the negligence of the mechanic, there is now no car to speak of. Should the man still pay the mechanic the S$5,000 for repairing his car?*

We do not think this example is apt. In that example there was no intervening act on the part of the owner. Here, there was: Mr Harte`s fall from the toilet bowl, and the judge`s finding that the fall caused a contusion to the scrotum, which in turn caused the haematoma in the testes and the scrotum. Unlike the example given, it was the act of Mr Harte which negated the work done by Dr Tan. With respect, we think counsel missed this angle. Dr Tan should only be liable for his own act/omission and nothing more.

Even in the example given, while the car owner need not pay for the repairs effected by the mechanic, he cannot, in claiming for damages for the loss of the car, claim for the value of a good working car. If he claims for the value of a good working car, then he must pay the mechanic the costs of the repair or a deduction be made for that. Otherwise, he would be unjustly enriched.

Loss of future earnings

This item of claim is based on the premise that had Mr Harte stayed on and worked in Singapore he would have enjoyed the very attractive expatriate package which was extended to him by his Singapore employer, which included a higher salary and other perks like housing and a car. Because of what happened, he had to return to New York and to a lower paying job. In the court below he claimed for the loss of earnings, being the difference between what he earned in New York and what he would have earned if he had remained in Singapore, for up to 15 years. Before us, he is asking only for five years. Mr Harte said that he and his wife had to leave Singapore for two main reasons. First, this place brought back all the bad memories relating to this terrible episode. The Hartes hoped that by leaving Singapore it would reduce the mental and emotional pain and suffering they experienced due to Dr Tan`s negligence. By returning to the United States they would also be among friends and relatives who would be able to help them overcome their pain. Second, in order that the TESE-ICSI procedures may be carried out by Dr Schlegel of the Cornell University Medical Centre, they needed to be in the United States.

The trial judge noted that their decision to return to the United States was based on the premise that it was Dr Tan`s negligence which caused Mr Harte to be in the state in which he found himself in. This assumption, in the light of what the judge found, is no longer correct. Second, he held that Mr Harte has not proven on the balance of probabilities that he would have been offered employment in Singapore for a long time but for his need for fertility treatment in New York under the charge of Dr Schlegel. Third, he found that if it were true that Mr Harte`s Singapore employer would have offered him an extended term in Singapore, then he should have stayed on. If he had opted to remain in Singapore, he could always fly to New York to receive the fertility treatment, although this would involve some inconvenience, because of the distance. He had a duty to mitigate. The judge further added:

> *I regard his resignation to take up a lower paying job in New York so that he could go for a few day surgeries (spread out perhaps over 2 or 3 years) as most unreasonable.*

He also found that the Hartes decided to return to New York on their own volition.

It is clear from the evidence of both the Hartes, particularly Mrs Harte, that they could not stand to live in Singapore any further. Moreover, they would like to have the fertility treatment administered by Dr Schlegel. The idea of obtaining that treatment was first suggested to them in Cabrini Medical Centre Pathology Consultation Report of 27 October 1998 which stated that:

> *In the United States, at New York Hospital, Drs Goldstein and Schlegel have reported that (they) are able to remove sperm from testicles such as yours and together with intracytoplasmic sperm insertion, achieve pregnancies and embryoes. You might want to consult with them. My own opinion at the moment is extremely guarded in that area.*

Therefore, counsel for Mr Harte argued that returning to the United States in order to get the required treatment so that the Hartes could have a child of their own should be considered to be a step taken by Mr Harte to mitigate the injury caused by Dr Tan. A necessary cost of undertaking this mitigating step would involve his leaving his job here, and the consequential loss of his attractive pay package. Mr Singam relied on the case **The World Beauty** [1970] P 144[1969] 3 All ER 158 where Winn LJ said ([1970] P 144 at 156; [1969] 3 All ER 158 at 163):

> *... it is implicit in the principle, that if mitigating steps are reasonably taken and additional loss or damage results notwithstanding the reasonable decision to take those steps, then that will be in addition to the recoverable damage and not a set-off against the amount of it.*

As we see it, Mr Harte will have to satisfy two conditions before he could succeed on this item of claim. First, he must show that his Singapore employer had agreed to extend or was likely to extend his assignment in Singapore. Second, if the first condition is met, whether it was reasonable for Mr Harte to leave such a good paying job so that he could receive the TESE-ICSI treatment by Dr Schlegel in New York.

On the first condition, the evidence came mainly from Mr Trevor Johnson, the Managing Director of ED & F Man Asia Pte Ltd (Mr Harte`s Singapore employer), who found Mr Harte to be a very good employee, hardworking and motivated, and should be the person to take over his job. He would have extended Mr Harte`s term in Singapore. He also said that he recruited one Mr Hutchinson from London, not to take over from Mr Harte but to `strengthen the team`. He asked Mr Harte to stay on for another three months after the expiry of his three-year term in order that there would be a period of overlap between Mr Harte leaving and Hutchinson joining the company.

Understandably, Mr Johnson was sympathetic to the plight of Mr Harte, having regard to the pain and disappointment the latter had to endure. Of course, at the time he gave evidence he was under the impression that all of Mr Harte`s misery was brought about because Dr Tan botched the operation. In any event, there is no concrete evidence to show that ED & F New York had even considered extending the secondment of Mr Harte in Singapore. The documents discovered shows that Mr Harte was seconded to Singapore for three years only `after which (Mr Harte) will return to the US`. In a further letter of 25 May 1997, his Singapore employer stated:

> *Further to our recent discussions, this letter clarifies the Terms and Conditions on which you are seconded to ED & F Man Cocoa (Singapore) Pte Ltd (The "Company") based in Singapore for a period of approximately three years.* ***The assignment commenced on 1st August, 1996. At the termination of this secondment you will revert to your ED & F Man Inc contract****. [Emphasis is added.]*

There is no further correspondence about extending the secondment from either his New York

employer or the Singapore employer. The judge further noted the fact that Mr Hutchinson was engaged and assumed office (in July 1999) even before the term of Mr Harte had expired. This would necessarily mean that the recruitment exercise, culminating in the engagement of Mr Hutchinson, must have been initiated sometime before that. There is no document which indicates that the company would have liked Mr Harte`s secondment be extended but for his medical needs. The evidence also suggests that no serious consultation was made with Dr Schlegel to experiment with the TESE-ICSI procedures until the second half of 1999.

The truth of the matter is that after the full extent of Mr Harte`s injury became apparent in October 1997, Mrs Harte felt depressed and started to `hate Singapore and anything associated with it`. It seems to us clear that that was the real reason for them leaving Singapore upon the expiry of the contract. However attractive the expatriate package was, it was of no significance and no thought was given to that. Mr Harte thus did not seek any extension. He stayed on for a further three months to help Mr Hutchinson get acquainted with his job.

Having considered all the circumstances, there is really no basis for us to dissent from the finding of the court below that the Hartes left these shores on their own free will and on the expiry of his secondment term. They did not seek any extension. Neither was there any consultation between the Singapore employer and the New York employer, to extend his secondment in Singapore. In view of this determination, it follows that the first condition has not been proved. Therefore, it is not necessary for us to consider whether the second condition spelt out in [para]76 has been met.

Future medical expenses

ICSI PROCEDURE

As mentioned before, the trial judge disallowed this claim because it was a procedure which was needed in any case as Mr Harte`s sperms did not have the `ability to do what they are supposed to do`. Mr Singam submitted that here the judge had gone wrong in a fundamental respect. The purpose of undergoing the bilateral varicocelectomy was precisely to improve the quality of his sperms. As the operation was successful (but for the fall and the lack of post-operation care extended by Dr Tan) and based on Dr Tan`s opinion and on the studies which were placed before the court, there should be more than an even chance that Mr Harte`s sperm quality would have improved. That would mean that there was probably no necessity for Mrs Harte to have to undergo ICSI, or any assisted means of fertilisation in order to achieve pregnancy.

We accept that this contention of counsel is logical and reasonable. The judge should have allowed the expenses relating to the ICSI procedure which costs US$16,000 per cycle.

A related item of claim made by Mr Harte, and which was not addressed by the judge, was the medication which is required prior to the TESE-ICSI procedures. This medication is required for both Mr and Mrs Harte and it would stretch over a period of five months before the procedure. The cost for each such five-month medication course amounts to US$7,028.25 per person. This should have been allowed.

The final argument raised by counsel on this item relates to the number of TESE-ICSI cycles which should have been allowed. The court below gave three cycles for TESE. Counsel refers to the fact that the first attempt undergone by the Hartes in October 2000 failed. The attempt was aborted

because Mrs Harte had not produced sufficient eggs for the procedure to succeed.

In coming to his conclusion as to the number of TESE cycles that needed to be provided, the judge took into account the fact that frozen sperm could be stored indefinitely without any degradation in the sperm quality and that there was a risk associated with multiple incisions on the tunica albuginea of the testes, as repeated TESE attempts may cause permanent ischaemic testicular injury. Indeed Dr Schlegel told the court that if he failed in his first attempt to find any sperm, he would not make any further attempts.

The trial judge had given careful consideration to the matter before he came to the conclusion that only three cycles of the TESE should be allowed. This is fair, as sperm may be stored. But the same does not apply to the ICSI procedure. There is nothing to be saved. If a cycle of ICSI failed, it has to be started again. Accordingly, we would increase the allowable cycles of the ICSI procedure for Mrs Harte to five.

HORMONE REPLACEMENT THERAPY

On this item of claim, Mr Singam contends that the award given by the trial judge is erroneous in three respects. First, the judge was wrong to hold that Mr Harte should only be required to see his endocrinologist once every six months. However, in accordance with US law, the endocrinologist can only prescribe one-month dosage of testosterone at a time, as it is an anabolic steroid. So Mr Harte has no option in the matter. There has to be 12 consultations a year. Second, there is clear evidence that Mr Harte has to go for blood test once every three months to monitor the risk of cancer. There is no evidence to suggest that quarterly blood test is unreasonable. Indeed the judge was under the mistaken impression that Mr Harte was asking for monthly blood test. Third, the judge was wrong to have provided this therapy to Mr Harte only up to the age of 60. He was also wrong not to have applied the straight line calculation in determining the amount which should be allowed under this item; no discount should have been made.

In the respondent`s case, no answer was offered as to the foregoing. In our opinion, there is clear validity in the first two arguments made by counsel. We would allow the sum US$2,957.20p[thinsp]a, being the fees for 12 consultations and the sum of US$640p[thinsp]a, being the costs for quarterly blood tests. The drug cost per annum (not disputed) is US$1,421.88. Thus the total annual cost for the hormone therapy is US$5,019.08.

As regards the third argument, the trial judge in providing hormone therapy only up to the age of 60, took into account the various contingencies of life, such as, early death due to illness or accident. While we agree that the judge was entitled, in this exercise, to take into account the various contingencies of life, it must also be borne in mind that the average lifespan of human beings has improved over the years. With better living conditions and medical care, people nowadays do live longer. Thus, we think, the provision by the trial judge is on the low side and would instead provide that the hormone therapy be continued until Mr Harte attains the age of 65.

Lastly, there is the point relating to the discount made by the judge on the lump sum awarded under this item. The basis for making that discount was, in the words of the judge, `to take account of the accelerated payment of a lump sum at the present value`. The judge adopted the discount rate of 5%, it being `an estimate of future long term bank interest rates in the United States`. This worked out to a multiplier of 14.2 instead of a straight multiplier of 24 (from age 36 to 60).

Counsel for Mr Harte argued that there should be no deduction as the costs of medication would probably go up in later years due to inflation. The bank interest earned on the lump sum would be

offset by inflation. This court recognises that there will be inflation in so far as the cost of obtaining of medical services is concerned, eg consultations and blood tests. But even as regards the cost of drugs, we doubt the cost will really go down. With rapid advancements made in medical sciences, perhaps more potent or effective drugs may be discovered. But this may not necessarily lead to lowering of costs. Indeed, research and development (which involves human effort) is an expensive venture.

At the end of the day, we should be awarding to Mr Harte a sum which would adequately provide for his needs for hormone therapy, taking into account both factors, namely, the interest which an advance payment would earn and the fact that there will be inflation as far as the costs of medical services are concerned. We think it is probably more equitable that the rate of discount to be adopted should be adjusted downwards from 5% to 3%. This would increase the multiplier to 19.6.

Therefore, the award for the cost of hormone therapy should be US$98,373.97 which we take it to be US$98,374.

In the result the appeal of Mr Harte succeeds to the following extent:

(1) general damages are increased to $120,000;

(2) an award of US$80,000 for ICSI procedure;

(3) an award of US$56,226 for eight courses of pre TESE-ICSI medication (three for Mr Harte and five for Mrs Harte); and

(4) the award for hormone therapy is revised to US$98,374.

Of course, in line with the apportionment of liability made by the judge, Dr Tan has to bear 60% of the foregoing.

We tabulate hereunder the total damages payable to Mr Harte, including those items not disputed in this appeal. In respect of each item Mr Harte is only entitled to 60%:

(1)	General damages of S$120,000		S$	72,000.00
(2)	Special damages of S$4,992.70		S$	2,995.62
(3)	Special damages of US$4,982.08		US$	2,989.25
(4)	Future TESE treatment, US$30,000		US$	18,000.00
(5)	Future ICSI treatment, US$80,000		US$	48,000.00
(6)	Pre-TESE/ICSI medication, US$56,226		US$	33,735.60
(7)	Hormone replacement therapy, US$98,374		US$	59,024.38
Total		S$	74,995.62	
		US$	161,749.23	

		(converted at the rate adopted by trial judge at US$1 [equals] S$1.74, this amounts to S$281,443.66)	
Grand total		S$	356,439.28

As ruled by the judge below, items (1) and (2) shall carry interest at 3%, and item (3) at 5%, from the date of the writ.

Dr Tan`s appeal on costs

We now turn to Dr Tan`s appeal on costs. The judge made three orders on costs. First, Dr Tan was to pay Mr Harte`s costs of the action. Second, Mr Harte was to pay the costs of Gleneagles Hospital. He refused a Bullock/Sanderson order asked for by Mr Harte. Third, the judge allowed two counsel for each party and their costs to be taxed on the High Court scale, notwithstanding the total sum awarded to Mr Harte was less than $250,000.

Mr Harte has not appealed against the order requiring him to pay the costs of Gleneagles Hospital. However, Dr Tan contends that the order requiring him to pay the full costs of Mr Harte is wrong. This is because he had made an offer to settle under O 22A r 9(3) and Mr Harte recovered an amount very much less than the sum of $300,000 which was offered on 16 May 2000. However, in the light of our decision above in enhancing the damages payable to Mr Harte, this question has become academic. The damages we award herein to Mr Harte exceed the sum offered.

Before we conclude this judgment, there is another point on costs, which we need to mention. Counsel for Dr Tan argues that much time and effort were spent on determining whether Dr Tan was negligent in carrying out the operation. He was vindicated on that. Therefore, Mr Harte should not be given the full costs of the trial. However, having regard to the complex nature of the claim, the close link between the post-operation negligence and the operation itself and the conduct of Dr Tan as alluded to by the judge below, we do not think he was wrong to have ordered full costs of the trial to Mr Harte and we are not inclined to interfere with the judge`s exercise of his discretion in the matter.

Judgment

In the result the appeal of Mr Harte is allowed to the extent as indicated above. However, as he failed on the two main issues - the question that damages should not be reduced by 40% and the claim for loss of future earnings - we would, therefore, only allow him half the costs of this appeal. The security for costs, with any accrued interest, shall be refunded to Mr Harte or his solicitors.

In view of Mr Harte`s success in his appeal on quantum, the appeal on costs of Dr Tan will have to be, and is, dismissed with costs. The security for costs shall be paid out to Mr Harte or his solicitors to account of his costs of the appeal.

Outcome:

Order accordingly.

Copyright © Government of Singapore.