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

[2023] SGHC 215

Suit No 808 of 2020

Between

Poongothai Kuppusamy

… *Plaintiff*

And

(1) Huationg Contractor Pte Ltd
(2) Guru Murti A/L Maheshrou

… *Defendants*

JUDGMENT

[Damages — Measure of damages — Personal injuries cases]
[Damages — Mitigation — Tort]
[Damages — Assessment]
[Damages — Special damages]

TABLE OF CONTENTS

INTRODUCTION **1**

FACTS **2**

THE PARTIES 2

BACKGROUND TO THE DISPUTE 2

PROCEDURAL HISTORY 3

ISSUES TO BE DETERMINED **4**

PRE-TRIAL LOSS OF EARNINGS **5**

RELEVANT COMPONENTS OF MS KUPPUSAMY'S MONTHLY SALARY 7

POSSIBILITY OF JOB PROMOTION 11

ANNUAL INCREMENTS IN SALARY 14

DUTY TO MITIGATE 15

PAIN, SUFFERING, AND LOSS OF AMENITIES **19**

AMPUTATION OF LOWER LEFT LIMB 19

Decision *22*

AGGRAVATION OF OSTEOARTHRITIS IN RIGHT KNEE 26

Expert evidence *26*

NON-SURGICAL SCARS 28

LOSS OF FUTURE EARNINGS **31**

MULTIPLICAND 32

Basis of assessment *33*

Mitigation of losses *34*

MULTIPLIER 38

Number of working years remaining *39*

Approach for assessing the multiplier *41*

(1) Reliance on the *Actuarial Tables* 42

(2) Arithmetic Approach 44

CALCULATING DAMAGES FOR LFE 48

LOSS OF EARNING CAPACITY 50

CLAIMS FOR BOTH LEC AND LFE 50

WHETHER DAMAGES FOR LEC SHOULD BE AWARD AND IF SO, IN WHAT AMOUNT 53

MEDICAL EXPENSES 58

MES INCURRED IN MALAYSIA 59

FIRST PROSTHETIC LEG 59

Whether Ms Kuppusamy used the first prosthetic limb *60*

Whether Ms Kuppusamy obtained the first prosthetic limb without a doctor's recommendation *60*

REASONABLENESS OF MPCP PROSTHETIC 62

Assessment of Prosthetic Experts' recommendations *62*

Parties' submissions *64*

Decision *65*

FUTURE MEDICAL EXPENSES 68

REPLACEMENTS OF MS KUPPUSAMY'S PROSTHETIC LIMB 68

Whether the replacement prosthetics should be the MPCP or the MCP *69*

Cost of future replacement prosthetics to be awarded *72*

(1) Whether the damages should account for a 10% increase in the price of prosthetic components 75

(2) Whether the damages should comprise of the cost of just replacement prosthetics, *simpliciter* 76

TOTAL REPLACEMENT OF MS KUPPUSAMY'S RIGHT KNEE 77

ANALGESICS 80

PHYSIOTHERAPY 80

TRANSPORT EXPENSES 81

TES INCURRED FOR TRAVELING TO SINGAPORE 81

The number of trips Ms Kuppusamy made to Singapore for medical treatment 82

Whether Ms Kuppusamy incurred TEs for transport undertaken to Singapore 82

Appropriate quantum of TEs for each trip undertaken to Singapore 84

TES INCURRED IN MALAYSIA FOR 37 TRIPS TO MEDICAL APPOINTMENTS 85

TES INCURRED IN MALAYSIA FOR OTHER MEDICAL APPOINTMENTS 86

3 September 2021 86

23 February 2022 87

11 June 2022 89

12 to 14 October 2022 89

21 to 22 February 2023 89

FUTURE TRANSPORT EXPENSES 90

TRANSPORT TO KUALA LUMPUR FOR REPLACEMENTS OF PROSTHETIC LIMB 91

TRANSPORT WITHIN JOHOR BAHRU FOR PHYSIOTHERAPY 92

CONCLUSION 93

Poongothai Kuppusamy
v
Huationg Contractor Pte Ltd & Other

[2023] SGHC 215

General Division of the High Court — Suit No 808 of 2020
Kwek Mean Luck J
9–11 May, 17 July 2023

4 August 2023 Judgment reserved.

Kwek Mean Luck J:

Introduction

1 The plaintiff, Ms Poongothai Kuppusamy ("Ms Kuppusamy"), was involved in a road traffic accident on 23 September 2017. She was 48 years' old at the time. I found the first defendant, Huationg Contractor Pte Ltd ("Huationg"), to be wholly liable for her injuries: *Poongothai Kuppusamy v Huationg Contractor Pte Ltd and another (Motor Insurers' Bureau of Singapore, intervener)* [2021] SGHC 108. The assessment of damages subsequently took place before me. I set out my findings below.

Facts

The parties

2 Ms Kuppusamy and the second defendant, Mr Guru Murti a/l Maheshrou ("Mr Maheshrou"), are Malaysian citizens. Huationg is a company incorporated in Singapore.

Background to the dispute

3 Beginning on 1 August 2017, Ms Kuppusamy was employed as a Security Officer by Eve3r Knight Consultancy Services Pte Ltd ("Eve3r").[1] Eve3r is a company incorporated in Singapore. It is in the business of, amongst other things, supplying its customers with "Security Officers" (*ie*, security guards).[2] "Security Officers" must fulfil a range of duties, including dynamic (*eg*, patrolling) and static (*eg*, standing sentry) duties.[3]

4 On 23 September 2017, Ms Kuppusamy was riding pillion on a motorcycle ridden by Mr Maheshrou,[4] when they were involved in an accident with a lorry driven by an employee of Huationg (the "Accident").[5]

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1 Mohammad Riduan bin Osman's Affidavit of Evidence-in-Chief dated 5 December 2022 ("Riduan's AEIC") at para 3 and p 6; Poongothai Kuppusamy's Affidavit of Evidence-in-Chief (Quantum) dated 1 February 2023 ("Plaintiff's AEIC") at para 5.

2 Riduan's AEIC at para 2.

3 Riduan's AEIC at para 2.

4 Plaintiff's AEIC at para 3; Statement of Claim (Amendment No 1) dated 9 September 2020 ("Statement of Claim") at para 1.

5 Guru Murti a/l Maheshrou's Affidavit of Evidence-in-Chief dated 3 March 2021 at para 2; Amirthalingam Kanmani's Affidavit of Evidence-in-Chief dated 14 January 2021 at para 2; and Plaintiff's AEIC at para 3.

5 As a result of the Accident, Ms Kuppusamy has suffered: (a) a below-the-knee amputation of her left limb; (b) injury to her left popliteal region, requiring a skin graft; (c) pain over her knee; and (d) lower back pain.[6]

6 After the Accident, Eve3r paid Ms Kuppusamy her wages for September 2017, inclusive of overtime pay earned up to the date of the Accident.[7] Eve3r subsequently terminated her employment and she returned to Malaysia, residing in Johor Bahru. Ms Kuppusamy has received treatment in Singapore, at Tan Tock Seng Hospital ("TTSH") and National University Hospital ("NUH"),[8] and in Malaysia.

7 Ms Kuppusamy remained on hospitalisation leave until January 2018. Later that year, she obtained her first prosthetic limb in Malaysia. This prosthetic limb was unsuitable. Consequently, Ms Kuppusamy sought a second prosthetic limb. Ms Kuppusamy's prosthetic expert, Mr Santosh Kumar Prasad ("Mr Prasad"), recommended her the "Microprocessor-Controlled Prosthetic Limb" ("MPCP"). After three months of training beginning in October 2022, Mr Prasad fitted Ms Kuppusamy with the MPCP in February 2023.[9]

Procedural history

8 Ms Kuppusamy commenced proceedings against Huationg and Mr Maheshrou seeking, amongst other things, damages to be assessed against

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6 Statement of Claim at para 7.

7 Riduan's AEIC at para 4.

8 Agreed Core Bundle (Quantum) filed on 2 May 2023 ("Agreed Core Bundle") at pp 68–75.

9 Transcript for the hearing on 9 May 2023 ("Transcript (9 May 2023)") at p 45, lines 11–16.

both defendants.[10] This matter was bifurcated, with the issue of liability to be dealt with before the issue of damages. On 3 May 2021, I found Huationg wholly liable for Ms Kuppusamy's claim.

Issues to be determined

9 Ms Kuppusamy claims damages against Huationg under the following heads:

(a) pre-trial loss of earnings ("PTLE");

(b) pain, suffering, and loss of amenities ("PSL");

(c) loss of future earnings ("LFE");

(d) loss of earning capacity ("LEC");

(e) medical expenses ("MEs");

(f) future medical expenses ("FMEs");

(g) transport expenses ("TEs"); and

(h) future transport expenses ("FTEs").

Ms Kuppusamy and Huationg are referred to collectively as the "Parties".

10 During the assessment of damages, Ms Kuppusamy and Huationg called Mr Prasad and Ms Kalaivani a/p Vedaiyan Gurusamy ("Ms Gurusamy"), respectively, as their expert witnesses on prosthetic limbs (collectively, the "Prosthetic Experts"). Ms Kuppusamy and Huationg called Dr Yegappan Muthukaruppan ("Dr Muthukaruppan") and Dr Kamal Bose ("Dr Bose"),

[10] Statement of Claim at p 6.

respectively, as their expert witnesses on the former's claims for damages arising from PSL and FMEs.[11] Dr Muthukaruppan and Dr Bose are both orthopaedic surgeons.[12] In relation to the claim for FMEs, Ms Kuppusamy and Huationg called Dr Sankara Kumar ("Dr Kumar") and Dr Vivek Singh ("Dr Singh"), respectively, as expert witnesses.[13] Ms Kuppusamy also called as a witness, one Mr Mohammad Riduan bin Osman ("Mr Riduan"), Eve3r's Operations Manager.[14]

11 The issues to be determined in this judgment arise pursuant to the particular heads of claim for damages sought by Ms Kuppusamy. I examine them below. The Parties' submissions consistently apply an exchange rate of S$1 = RM3.3. I adopt this exchange rate for the purposes of my decision.

Pre-trial loss of earnings

12 In her Reply Submissions, Ms Kuppusamy agreed with Huationg's proposal for the relevant period in the determination of PTLE to be from November 2017 to May 2023 (*ie*, 67 months), and claims S$134,814.78. However, this sum mistakenly also includes a claim for overtime pay for September and October 2017.[15] Based on the relevant period, Ms Kuppusamy's claim is correctly for damages in the sum of S$134,150 for PTLE.[16] This is

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11 Scott Schedule (Dr Muthukaruppan & Dr Bose) filed on 2 May 2023.

12 Yegappan Muthukaruppan's Affidavit of Evidence-in-Chief dated 3 March 2023 at p 4; Bose Kamal's Affidavit of Evidence-in-Chief dated 31 March 2023 at para 1 and p 4.

13 Scott Schedule (Dr Kumar & Dr Singh) filed on 2 May 2023 at p 1.

14 Riduan's AEIC at para 1.

15 Plaintiff's Reply Submissions dated 15 June 2023 ("Plaintiff's Reply Submissions") at para 20; Plaintiff's Closing Submission dated 22 May 2023 ("Plaintiff's Closing Submissions") at para 26.

16 Plaintiff's Reply Submissions at para 20.

calculated based on multipliers and multiplicands submitted by Ms Kuppusamy as set out below:[17]

Time Period	**Number of Months**	**Multiplicand**	**Total**
Nov to Dec 2017	2	S$1,800	S$3,600
Jan to Dec 2018	12	S$1,850	S$22,200
Jan to Dec 2019	12	S$1,900	S$22,800
Jan to Dec 2020	12	S$1,950	S$23,400
Jan to Dec 2021	12	S$2,000	S$24,000
Jan to Dec 2022	12	S$2,200	S$26,400
Jan to May 2023	5	S$2,350	S$11,750
Total:			**S$134,150.00**

Notwithstanding the Parties' agreement on the multiplier, Huationg submits that Ms Kuppusamy's submission on the multiplicand is incorrect.

13 Accordingly, the key issue in this section relates to the applicable multiplicand. This raises further sub-issues in relation to:

(a) what components of Ms Kuppusamy's salary should be factored into the multiplicand;

(b) whether the multiplicand should account for possible job promotion;

(c) whether the multiplicand should account for annual increments; and

(d) whether Ms Kuppusamy satisfied her duty to mitigate her loss.

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17 Plaintiff's Reply Submission at para 20; Plaintiff's Closing Submission at para 26.

14 Before considering this issue, it is useful to first summarise the position on PTLE as set out in *Yap Boon Fong Yvonne v Wong Kok Mun Alvin and another and another appeal* [2019] 1 SLR 230 ("*Yap Boon Fong*") at [40]–[42]: (a) the courts are generally antipathic towards the idea of awarding compensation for loss which did not actually materialise (at [40]); (b) the plaintiff must prove his pre-trial losses as a matter of special damages (at [41]); (c) all pre-trial losses must be losses that have actually been incurred by the plaintiff and that can and must be specially proved (at [41] and [42]); and (d) the established approach is to "[examine] whether any actual provable loss had been suffered by the plaintiff" (at [40]).

Relevant components of Ms Kuppusamy's monthly salary

15 Ms Kuppusamy submits that the applicable multiplicand, as set out in the table at [12] above, should comprise of three components: her (a) basic salary; (b) allowances; and (c) overtime pay.[18] At the time of the Accident, Ms Kuppusamy's basic salary amounted to S$700 per month, her allowances amounted to S$600 per month, and overtime pay was payable at a rate of S$5.51 per hour.[19] Based on her submissions, Ms Kuppusamy's position is, in effect, that she would have worked overtime for an average of 90.7 hours per month, at least for the year of 2018, for an additional S$500 per month in overtime pay.

16 On the other hand, Huationg submits that the multiplicand should comprise only of Ms Kuppusamy's basic salary, amounting to S$46,900 for 67 months.[20] Huationg relies on Mr Riduan's evidence that only the receipt of

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18 Plaintiff's Reply Submissions at para 21.

19 Riduan's AEIC at p 6.

20 1st Defendant's Closing Submissions dated 23 May 2023 ("1st Defendant's Closing Submissions") at paras 7.4, 7.7–7.8.

Ms Kuppusamy's basic salary was certain.[21] The monthly allowances were subject to Ms Kuppusamy's full attendance and good conduct, while the overtime pay was discretionary.[22]

17 If the court is inclined to factor in overtime pay, Huationg submits that the quantum of damages should be S$73,840.24.[23] Huationg came to this figure by referencing Mr Riduan's testimony that Eve3r's Security Officers tend to work three overtime hours per day.[24] As Ms Kuppusamy's employment contract with Eve3r required her to work six days per week, she would have worked overtime for 18 hours per week, or 72 hours per month. At the contractual overtime pay rate of S$5.51 per hour, Ms Kuppusamy would have earned an overtime pay of S$396.72 per month. In addition to her basic salary of S$700, the monthly multiplicand should be S$1,096.72, for a total award of S$73,840.24.[25] Before moving on, I observe that this figure was incorrectly calculated. Multiplying a multiplicand of S$1,096.72 by a multiplier of 67 months amounts to S$73,480.24. I take this figure to be Huationg's submission here.

18 In response, Ms Kuppusamy submits that Huationg had misinterpreted Mr Riduan's evidence. On re-examination, Mr Riduan had clarified that the basic salary and allowances components of Ms Kuppusamy's monthly wages

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21 1st Defendant's Closing Submissions at para 7.4 referencing Transcript for the hearing on 10 May 2023 ("Transcript (10 May 2023)") at p 30, lines 3–14.

22 1st Defendant's Closing Submissions at para 7.4 referencing Transcript (10 May 2023) at p 16, line 17 to p 17, line 7.

23 1st Defendant's Closing Submissions at para 7.8.

24 1st Defendant's Closing Submissions at para 7.8 referencing Transcript (10 May 2023) at p 6, line 16 to p 7, line 6.

25 1st Defendant's Closing Submissions at para 7.8.

are a "package", such that her monthly wage would be a "minimum" of S$1,300.[26]

19 I agree that on the evidence, Ms Kuppusamy's monthly wage would have been at least S$1,300. In relation to the allowances, Mr Riduan testified that if not for the Accident, he expects that Ms Kuppusamy would have earned in subsequent months at least, if not more than, what she earned in August 2017 (*ie*, S$1,788.92). This suggests that Mr Riduan did not have any doubts as to whether she would be able to satisfy the requirements to obtain the allowances of S$600 per month. Further, Ms Kuppusamy was praised by clients during the short time that she was with Eve3r, indicating good conduct as required for receipt of allowances.

20 In relation to overtime pay, the fact that it would have been a variable component of Ms Kuppusamy's monthly wage does not preclude its inclusion in the multiplicand. As held in *Yap Boon Fong* at [40], the assessment of PTLE must be based on the provable state of affairs at the time of the Accident. Accordingly, the question is whether the evidence proves that at the time of the Accident, Ms Kuppusamy would have worked overtime, and if so, how many hours she would have worked.

21 During the hearing, Ms Kuppusamy testified that as she was single and did not have a family, she would have consistently worked overtime if employed at Eve3r.[27] Further, she expressed that as other Security Officers in Eve3r usually worked overtime, she would do the same.[28] This testimony was

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26 Plaintiff's Reply Submissions at para 21 referencing Transcript (10 May 2023) at p 47, lines 4–18.

27 Transcript (9 May 2023) at p 18, lines 5–7.

28 Transcript (9 May 2023) at p 18, lines 16–18.

corroborated by Mr Riduan, who stated that it was clear from the way Ms Kuppusamy spoke to him that she wanted to work overtime, as she was single and also needed the overtime pay.[29] Further, Mr Riduan testified that Eve3r's Security Officers did generally work overtime, contributing to increases in their monthly wages.[30] On the evidence, I find that Ms Kuppusamy has proven that she would have worked overtime, had she continued working at Eve3r. As such, I will factor overtime pay into the multiplicand. I next assess the quantum of the multiplicand.

22 Mr Riduan testified that Ms Kuppusamy received a gross salary of S$1,788.92 in August 2017, and S$1,635.22 in September 2017.[31] From these figures, Mr Riduan calculated that Ms Kuppusamy worked overtime for between 78 to 82 hours in August 2017, and around 56 hours over 22 days in September 2017, as of the date of the Accident (*ie*, 23 September 2017). Extrapolating the latter figure for the period of 30 days, Ms Kuppusamy would have worked overtime for about 76 hours in September 2017, if not for the Accident.[32] Taking the median point of the range provided by Mr Riduan for August 2017 and averaging the number of overtime hours worked during her two months at Eve3r, Ms Kuppusamy would have worked overtime for an average of 78 hours per month in August and September 2017. I consider this to be a reasonable initial reference point for the number of hours that she would have worked overtime every month.

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29 Transcript (10 May 2023) at p 13, lines 17–19.

30 Riduan's AEIC at para 4.

31 Riduan's AEIC at para 4.

32 Transcript (10 May 2023) at p 36, line 20 to p 37, line 19.

23 Nonetheless, I note that Mr Riduan highlighted that the law limits the maximum number of overtime hours worked to 72 hours per month, unless a company has an exemption to this rule.[33] Mr Riduan testified that Eve3r had such an exemption around the time of the Accident for about two or three years.[34] As an award for PTLE is a grant of special damages, I adopt a conservative approach towards this evidence and take the lower limit of this range to assume that Eve3r had this exemption for two years from 2017 to 2018. In light of this, I find that but for the Accident, Ms Kuppusamy would have worked overtime for 78 hours per month from November 2017 to December 2018 (*ie*, 14 months) and 72 hours per month from January 2019 to May 2023 (*ie*, 53 months).

Possibility of job promotion

24 Ms Kuppusamy's submissions on the multiplicand also factors in a promotion to "Senior Security Officer" ("SSO") from January 2022 onwards, such that the multiplicand is S$2,200 in 2022 and S$2,350 in 2023.

25 In his Affidavit of Evidence-in-Chief ("AEIC"), Mr Riduan stated that he expects that if Ms Kuppusamy were still working for Eve3r, she would presently earn at least S$2,100 per month, including allowances and overtime pay. He testified that Eve3r would promote Security Officers who have remained with the company for three to five years to the rank of SSO,[35] where they would earn around S$2,300 to S$2,400 per month. Mr Riduan claimed that this would have been Ms Kuppusamy's salary if she was still in the company.[36]

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33 Transcript (10 May 2023) at p 38, lines 11–12.

34 Transcript (10 May 2023) at p 39, lines 1–3.

35 Transcript (10 May 2023) at p 35, lines 7–9.

36 Transcript (10 May 2023) at p 32, lines 21–24.

26 On Mr Riduan's evidence, Ms Kuppusamy would have been promoted if she remained with Eve3r. Two sub-issues then arise in relation to this section:

(a) whether Ms Kuppusamy would remain in Eve3r for three to five years such that she would have enjoyed such a promotion; and

(b) what the quantum of the multiplicand should then be.

27 Huationg claims that there is no basis for the multiplicand to factor in an increase in basic salary following a promotion at Eve3r.[37] In support of this submission, Huationg highlighted the high attrition rate of security guards in Eve3r, and that there are currently only three to four persons, out of 45, who earn between S$2,300 to S$2,400 per month at Eve3r.[38]

28 In *Tan Siew Bin Ronnie v Chin Wee Keong* [2008] 1 SLR(R) 178 ("*Tan Siew Bin*"), Chan Seng Onn J (as he then was) explained at [25] in relation to PTLE that:

> … The actual state of affairs between the time of the accident and the time of trial would be known. Hence, there would be no 'unknown risks' or 'unknown factors' exacerbating the loss which must be accounted for. In a sense, all such 'unknowns' would be known and manifested in the actual income earned for the pre-trial period. For instance, *if there was a risk of termination, and he was in fact never terminated during the pre-trial period, the probability of termination during that period would be zero as no termination took place.*
>
> [emphasis added]

This *dicta* was affirmed by the Court of Appeal in *Yap Boon Fong* at [40].

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37 1st Defendant's Closing Submissions at para 7.7.

38 1st Defendant's Closing Submissions at para 7.6.

29 Although Eve3r suffers from a high attrition rate and there are few security guards who presently hold the position of SSO, these facts do not necessitate that Ms Kuppusamy would have left Eve3r or had her employment terminated, and consequently not enjoyed the promotion. Referencing the analysis in *Tan Siew Bin*, the high attrition rate connotes that there was a risk that Ms Kuppusamy would have resigned from her job at Eve3r at some point prior to being promoted to SSO. However, this risk had not materialised during the time Ms Kuppusamy was at Eve3r, and it would be unfair to impute the realisation of this risk onto her based on circumstances that are not specific to her. As such, I find that for the purposes of assessing damages for PTLE, the multiplicand should account for Ms Kuppusamy remaining with Eve3r, and consequently factor in an increase in her salary resulting from a promotion to SSO.

30 Notwithstanding, I recognise that the promotion did not materialise during Ms Kuppusamy's employment at Eve3r prior to the Accident. Coupled with the claim for PTLE being a claim for special damages, I will adopt a conservative approach in determining the multiplicand. According to her employment contract, Ms Kuppusamy was on probation for a period of three months (*ie*, from August to October 2017).[39] Mr Riduan's evidence was that Security Officers are promoted to SSO after remaining with Eve3r for three to five years. I will take the upper limit of this range – *ie*, promotion after five years of employment – and exclude the period of probation from this calculation. In other words, I assume that Ms Kuppusamy would have been promoted in November 2022. At which point, I find that the applicable multiplicand is that of the lower limit of the range provided by Mr Riduan – S$2,300 per month, inclusive of allowance and overtime pay. Assuming no

[39] Riduan's AEIC at p 6.

changes to her monthly allowance (*ie*, S$600 per month) and hourly rate of overtime pay (*ie*, S$5.51 per hour, totalling S$396.72 per month), Ms Kuppusamy's monthly basic salary for the year following the promotion is about S$1,303.28 per month.

Annual increments in salary

31 As seen from the table at [12] above, the quantum of damages claimed by Ms Kuppusamy for PTLE also accounts for annual increments of S$50 to her monthly wages from 2017 to 2021, an increment of S$200 for the year of 2022, and an increment of S$150 for the year of 2023. Huationg's submissions indicate that they do not accept any such increments to be factored into the multiplicand.[40]

32 Ms Kuppusamy's employment contract does not provide for specific annual increments but states that all salary adjustments are at Eve3r's discretion.[41] Notwithstanding, Ms Kuppusamy's submission for annual increments is supported by Mr Riduan's oral evidence. He testified that the security guards in Eve3r receive annual increments to their monthly basic salary of around S$70 to S$100, depending on their individual performance.[42] Further, Mr Riduan agreed that the annual increments sought by Ms Kuppusamy as set out in the table above at [12] are fair and reasonable.[43]

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40 1st Defendant's Reply Submissions dated 16 June 2023 ("1st Defendant's Reply Submissions") at para 5.4.

41 Riduan's AEIC at p 6.

42 Transcript (10 May 2023) at p 39, line 15 to p 40, line 7.

43 Transcript (10 May 2023) at p 40, lines 8–21.

33 In light of Mr Riduan's evidence, I accept Ms Kuppusamy's claim for annual increments of S$50 to her basic salary from November 2017 to December 2021 (see also *Lee Teck Nam v Kang Hock Seng Paul* [2005] 4 SLR(R) 14 ("*Lee Teck Nam*") at [41]–[43]). However, there is no evidence to support her claim of a S$200 increment to S$2,200 per month for 2022, and a S$150 increment to S$2,350 per month for 2023. Further, this rate of increase surpasses the range of S$70 to S$100 which Mr Riduan gave evidence for. In so far as these increments are intended to be attributed to a job promotion to SSO, I have dealt with this above at [30]. As such, I will apply an annual increment of S$50 to the relevant monthly multiplicand for every period of 12 months.

Duty to mitigate

34 Regardless, Huationg submits that Ms Kuppusamy had not satisfied her duty to mitigate her losses and hence, the applicable multiplicand should be reduced.[44] This duty arose from February 2018 to May 2023, following the end of her hospitalisation leave. Huationg's position is that Ms Kuppusamy has not been as aggressive in finding employment as she could have been, bearing in mind that she could have sought assistance from employment agents and disability associations to find employment.[45]

35 Huationg hence submits various alternative figures of monthly salaries which could be subtracted from the applicable multiplicand, depending on the extent of mitigation the court deems reasonable:

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44 1st Defendant's Closing Submissions at paras 7.9–7.19.

45 1st Defendant's Reply Submissions at para 5.5.

(a) RM1,797 (S$544.55) – based on the average salary of a person in Malaysia with the same level of education as Ms Kuppusamy, *per* the Department of Statistics Malaysia ("DOSM");

(b) RM1,500 (S$454.55) – based on the salary of a security guard in Malaysia, *ie*, a role which Ms Kuppusamy applied for; or

(c) RM1,200 (S$363.64) – based on the salary of a retail or sales assistant in Malaysia.

36 Huationg further submits that Ms Kuppusamy could have but failed to apply for interim payment earlier and was thus responsible for the delay in securing a prosthetic which would have restored her functions.[46]

37 In response, Ms Kuppusamy submits that she has been unable to find gainful employment in Singapore and Malaysia since the Accident. She was fitted with her first prosthetic limb in May 2018.[47] However, this first prosthetic leg required further assistance from a walking stick to allow her to move around.[48] Later, this first prosthetic limb caused her pain and by 2019, she was only wearing this prosthetic at home.[49] Ms Kuppusamy was fitted with her second and current, prosthetic limb in October 2022.[50] Following which, she underwent a period of training, with a final fitting of this prosthetic around February 2023.[51] She testified that she has tried looking for various jobs,

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46 1st Defendant's Reply Submissions at para 5.7.

47 Plaintiff's AEIC at para 9; Transcript (9 May 2023) at p 21, line 1–3.

48 Plaintiff's AEIC at para 9.

49 Transcript (9 May 2023) at p 20, line 24 to p 21, line 6.

50 Plaintiff's Closing Submissions at para 9; Agreed Core Bundle at p 51.

51 Transcript (9 May 2023) at p 54, line 7–19.

including as a security officer, cashier, and sales assistant. She was not successful.[52] She also testified that she not aware of any associations that could help disabled get jobs nor aware of employment agents who could do so.[53]

38 Before analysing the evidence, I highlight that the burden of proof is on Huationg to show that Ms Kuppusamy had failed to mitigate her loss (see *Teo Sing Keng and another v Sim Ban Kiat* [1994] 1 SLR(R) 340 at [45]–[46]).

39 I see no reason to reject Ms Kuppusamy's evidence. In my view, it is unreasonable to expect her to have immediately returned to work, or look for work, after the end of her hospitalisation leave in mid-January 2018, especially without the aid of any prosthetic limb. Also, although Ms Kuppusamy was fitted with her first prosthetic limb in May 2018, the issues caused by this prosthetic, especially the pain she experienced, would have made it difficult for her to return to work, even as a retail assistant.

40 Huationg submits that these issues could have been resolved by an earlier application for interim payment.[54] This was raised for the first time in Huationg's Reply Submissions. As such, this claim was not put to Ms Kuppusamy, nor was she cross-examined on this during the hearing. Furthermore, Ms Kuppusamy has not had the opportunity to respond to this unsubstantiated claim. Accordingly, I find that Huationg has not satisfied its burden to prove that Ms Kuppusamy failed to mitigate her PTLEs in this respect.

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52 Transcript (9 May 2023) at p 22, lines 11–20.

53 Transcript (9 May 2023) at p 47, line 22 to p 48, line 8.

54 1st Defendant's Reply Submissions at para 5.7.

41 From her testimony in court, Ms Kuppusamy did not strike me as someone who was unwilling to look for a job. On the contrary, she appears willing to look for a job but had been unsuccessful in finding employment thus far due at least in part to her physical disability. While Huationg submits that there are associations and employment agents that can help disabled persons find employment, it has not adduced any evidence of such association or agents, or evidence that they can indeed help someone with a physical disability to find jobs.

42 In light of the evidence before me, I find that on the whole, Huationg has not satisfied its burden to prove that Ms Kuppusamy had not mitigated her loss. Hence, I will not reduce the multiplicand.

43 Following from the above, I award Ms Kuppusamy damages for PTLE for the period from November 2017 to May 2023 in the sum of S$124,366.04:

Time Period (No. of Months)	**Multiplicand (S$)**				
	Basic Salary	Allowance	Overtime Pay	Total (Month)	Total (Period)
Nov 2017 to Oct 2018 (12)	700	600	429.78	1,729.78	20,757.36
Nov 2018 to Dec 2018 (2)	750	600	429.78	1,779.78	3,559.56
Jan 2019 to Oct 2019 (10)	750	600	396.72	1,746.72	17,467.20
Nov 2019 to Oct 2020 (12)	800	600	396.72	1,796.72	21,560.64
Nov 2020 to Oct 2021 (12)	850	600	396.72	1,846.72	22,160.64

Nov 2021 to Oct 2022 (12)	900	600	396.72	1,896.72	22,760.64
Nov 2022 to May 2023 (7)	1,303.28	600	396.72	2,300.00	16,100.00
Total					**124,366.04**

Pain, suffering, and loss of amenities

44 Ms Kuppusamy seeks damages for PSL that arise from:

(a) the below-the-knee amputation of her lower left limb;

(b) aggravation of osteoarthritis in her right knee; and

(c) extensive non-surgical scarring.

Amputation of lower left limb

45 Ms Kuppusamy seeks S$75,000 for PSL arising from the below-the-knee amputation of her lower left limb. Huationg submits that S$40,000 is sufficient.[55]

46 The Parties refer to Charlene Chee *et al*, *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) (the "Guidelines"). For pain and suffering caused by below-the-knee amputations of one leg, the Guidelines provide an estimated range of S$40,000 to S$70,000.

47 Ms Kuppusamy refers to three High Court cases and the awards of damages for PSL therein.[56] First, *Quek Yen Fei Kenneth v Yeo Chye*

[55] 1st Defendant's Reply Submissions at para 2.1.

[56] Plaintiff's Closing Submissions at para 8.

Huat [2016] 3 SLR 1106 ("*Kenneth Quek (HC)*"), where the plaintiff was 20 years' old at the time of the accident and was awarded S$80,000. There, the court considered the plaintiff's youth at the time of the accident, the pain and suffering he endured from the surgical attempt to salvage his leg, and the fact that the plaintiff continued experiencing pain four years after the accident. Second, *Hiak Chuak Kin v Teo Li Lian* (Suit No 608 of 2007, High Court) ("*Hiak Chuak Kin*"), where the plaintiff was 40 years' old at the time of the accident, underwent multiple surgeries, and was awarded S$80,000. Third, *Tan Juay Mui (by his next friend Chew Chwee Kim) v Sher Kuan Hock and another (Liberty Insurance Pte Ltd, co-defendant; Liberty Insurance Pte Ltd and another, third parties)* [2012] 3 SLR 496 ("*Tan Juay Mui*"), where the plaintiff was 48 years' old at the time of the accident and was awarded S$60,000.

48 As Ms Kuppusamy was 48 years' old at the time of the Accident, she submits that *Tan Juay Mui* bears the closest resemblance to the present case, but the applicable quantum should be adjusted upwards for, first, inflation.[57] She relies on *Lee Teck Nam* for her submission that the quantum of damages payable should be adjusted for inflation.[58] The S$60,000 award in *Tan Juay Mui* was granted in 2012. Using the Goods & Services Inflation Calculator on the Monetary Authority of Singapore's website (the "MAS Inflation Calculator"), the value of the award in *Tan Juay Mui* is S$67,587.28, or around S$68,000, in 2022.[59] Second, Ms Kuppusamy submits that a further uplift should be applied such that she be awarded S$75,000.[60]

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57 Plaintiff's Closing Submissions at paras 9–10.

58 Plaintiff's Opening Statement dated 2 May 2023 ("Plaintiff's Opening Statement") at para 5.

59 Plaintiff's Closing Submissions at para 10.

60 Plaintiff's Closing Submissions at para 12; Plaintiff's Reply Submissions at para 7.

49 Huationg submits that the damages should only be S$40,000.[61] Amongst other things, it claims that Ms Kuppusamy no longer experiences pain in the amputated region.[62] Huationg relies on Ms Kuppusamy's oral testimony that "there is no pain [in the amputated region]; even if there was any pain it's much lesser".[63] Huationg also relies on a report dated 7 August 2021 by Ms Kuppusamy's prosthetic expert, Mr Prasad, where he noted in relation to her left stump, "[p]hantom pain absent".[64]

50 Huationg further submits that this case may be distinguished from *Tan Juay Mui*.[65] First, Ms Kuppusamy did not suffer a life-threatening injury which necessitated the below-the-knee amputation, unlike the plaintiff in *Tan Juay Mui*.[66] Second, the plaintiff in *Tan Juay Mui* suffered from various complications as a result of the accident, such as low blood pressure, sepsis, significant retrograde amnesia, phantom limb pain and depression, which Ms Kuppusamy did not experience.[67] Third, the award in *Tan Juay Mui* Ms Kuppusamy relies on was a separate award for diabetic-related conditions, as opposed to being an award for leg injury.[68] Ms Kuppusamy is not known to

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61 1st Defendant's Reply Submissions at para 2.6.

62 1st Defendant's Closing Submissions at para 2.14.

63 1st Defendant's Closing Submissions at para 2.14 referencing Transcript (9 May 2023) at p 13, lines 12–15.

64 1st Defendant's Closing Submissions at para 2.13 referencing Santosh Kumar Prasad's Affidavit of Evidence-in-Chief dated 10 February 2023 ("Prasad's AEIC") at p 18.

65 1st Defendant's Reply Submissions at paras 2.6, 2.6.1, 2.6.2, and 2.6.3.

66 1st Defendant's Reply Submissions at para 2.6.1.

67 1st Defendant's Reply Submissions at para 2.6.2–2.6.3.

68 1st Defendant's Reply Submissions at para 2.7.2.

be diabetic.[69] Consequently, her claim of S$60,000 by analogy to *Tan Juay Mui* is overstated.[70]

51 Additionally, Huationg avers that the quantum of damages should not include adjustments for inflation or further uplifts.[71] It submits, first, that the range set out in the Guidelines already accounts for inflation.[72] In support of this, Huationg relies on *Quek Yen Fei Kenneth (by his litigation representative Pang Choy Chun) v Yeo Chye Huat and another appeal* [2017] 2 SLR 229 ("*Kenneth Quek (CA)*") at [41] and [110].[73] Second, Huationg submits that if the court were inclined to factor inflation into the quantum of damages, the applicable rate of inflation should be that in Malaysia (*ie*, approximately 3.3%) as Ms Kuppusamy has returned to Malaysia and will continue living there.[74]

Decision

52 Of the three precedents which Ms Kuppusamy referred me to, I agree with her that *Tan Juay Mui* bears the most factual similarity to the present case. This is because, in particular, Ms Kuppusamy was significantly older than the plaintiff in *Kenneth Quek (HC)* at the time of the accident and did not have multiple surgeries, like the plaintiff in *Hiak Chuak Kin*.

53 I am unable to agree with Huationg's submissions which seek to distinguish *Tan Juay Mui* from the present case. First, while it was not a "life-

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69 1st Defendant's Reply Submissions at para 2.7.2.

70 1st Defendant's Reply Submissions at paras 2.6 and 2.7.2.

71 1st Defendant's Reply Submissions at para 2.7.

72 1st Defendant's Reply Submissions at para 2.7.1.

73 1st Defendant's Reply Submissions at para 2.7.1, fn 41.

74 1st Defendant's Reply Submissions at para 2.7.1.

threatening injury" which necessitated the loss of her lower left limb, the Accident was nevertheless the cause for the loss of Ms Kuppusamy's limb. Second, the fact that she did not suffer from the same side effects as the plaintiff in *Tan Juay Mui* does not preclude the former's reference to the award there for leg injury. The plaintiff in *Tan Juay Mui* suffered not just a leg injury, but also a severe brain injury with blood collecting between the layers of the brain (*Tan Juay Mui* at [3]). This brain injury was responsible for many of the complications that the plaintiff in *Tan Juay Mui* suffered from, which Huationg claimed Ms Kuppusamy did not share. Significantly, Judith Prakash J (as she then was), in upholding the separate award for damages of S$170,000 granted by the court below for the plaintiff's brain injury, took into account the complications caused by the said brain injury (at [36]). Further, when granting the plaintiff an award of S$60,000 for the leg injury, Praksah J (as she then was) observed that there were side effects, such as weakness of the plaintiff's left side and impaired vision, which could not be attributed to her leg injury (at [54]). In other words, the court in *Tan Juay Mui* had considered the causes of the complications and side effects experienced by the plaintiff there and granted *distinct* awards of damages for the relevant injuries and complications. Third, the court in *Tan Juay Mui* granted two distinct awards for the plaintiff's diabetic condition and leg injury, respectively. As such, Ms Kuppusamy's reference to the award of S$60,000 in *Tan Juay Mui* is not a reliance on the award for the diabetic condition suffered by the plaintiff there.

54 I accordingly reference the figure of S$60,000 awarded in *Tan Juay Mui* as the baseline of the quantum of damages to be awarded to Ms Kuppusamy.

55 In relation to whether this figure should be adjusted for inflation, I concur with *Lee Teck Nam* at [13] that inflation may be factored into the quantum of damages awarded. The Court of Appeal in *Kenneth Quek (CA)* had

also recognised at [41] that the court may take into account changes in purchasing power since the time of the precedent in its award of damages. Contrary to Huationg's submission, *Kenneth Quek (CA)* at [110] does not support its claim that the range set out in the Guidelines accounts for inflation. The Court of Appeal at [110] recognised that the Guidelines were promulgated 18 years after the award in *Pang Teck Kong v Chew Eng Hwa* [1992] SGHC 31 was granted. In light of this passage of time, the authors of the Guidelines recommended a 40% increase in the maximum value of the award. Hence, contrary to Huationg's submission, the *dicta* in *Kenneth Quek (CA)* at [110] suggests that awards should account for inflation where the increase in the value of money, due to the passage of time, is significant.

56 Huationg submits that the rate of inflation should be that in Malaysia (*ie*, 3.3%) and the time period for which this rate of inflation should apply begins in 2010, the year that the Guidelines were published.[75] However, this submission is of a higher inflation rate and longer time period than that claimed by Ms Kuppusamy. Ms Kuppusamy references the award in *Tan Juay Mui*, which was granted in 2012. Additionally, the MAS Inflation Calculator, which she used to calculate the value of the award in *Tan Juay Mui*, applied the rate of inflation in Singapore. Over the same period as that submitted by Huationg, this rate was only 1.2%.[76] I find Ms Kuppusamy's submission reasonable and thus, I will apply the parameters as submitted by her, notwithstanding Huationg's submission.

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75 1st Defendant's Reply Submissions at para 2.7.1. and p 34.

76 Plaintiff's Supplemental Bundle of Authorities filed on 22 May 2023 at p 3.

57 Applying the MAS Inflation Calculator, the value of an award of S$60,000 in 2012 would be S$67,587.28 in 2022. I will hence adjust the reference figure of S$60,000 for inflation to S$67,500.

58 As to whether there ought to be a further uplift to this quantum for Ms Kuppusamy's pain, I note that while Mr Prasad reported that she did not feel phantom pains, the fact that Ms Kuppusamy did not feel pain around the time she met Mr Prasad does not preclude the possibility of her feeling pain on other occasions. Also, when Huationg asked Ms Kuppusamy if she felt pain now, her reply was no, but "even if there was… it's much lesser".[77] Her reply is hence that she did not feel pain at the point of the question, but she did feel pain on other occasions, but of a lesser degree. Ms Kuppusamy also stated while giving her testimony in court that "[her] leg [was] painful because [she had been] sitting for very long".[78] I find no reason to doubt her testimony during the hearing that she was experiencing pain. Her evidence is consistent with the statement by her orthopaedic surgeon, Dr Kumar, that she "has persistent left knee pain due to the scarring over the back of knee".[79] Additionally, Huationg's orthopaedic surgeon, Dr Singh, also recognised that the amputation was "traumatic".[80]

59 However, I do not find Ms Kuppusamy's pain to be so severe as to justify departing from the upper limit of the range set out in the Guidelines (see *Kenneth Quek (HC)* at [12]–[17]; affirmed by the Court of Appeal in *Kenneth Quek (CA)* at [41]). In light of the evidence on the pain suffered, I grant a further

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77 Transcript (9 May 2023) at p 13, lines 12-15.

78 Transcript (9 May 2023) at p 38, lines 24–25.

79 C Sankara Kumar a/l Chandrasekaran's Affidavit of Evidence-in-Chief dated 22 February 2023 at p 21.

80 Vivek Ajit Singh's Affidavit of Evidence-in-Chief dated 30 January 2023 at p 50.

S$2,000 uplift to award Ms Kuppusamy damages in the sum of S$69,500 for PSL caused by the below-the-knee amputation of her lower left limb.

Aggravation of osteoarthritis in right knee

60 Ms Kuppusamy seeks damages for the aggravation of osteoarthritis in her right knee. She relies on *Pandian Marimuthu v Guan Leong Construction Pte Ltd* [2002] SGDC 189, where the court awarded S$5,000 in 2002 for osteoarthritis in the knee.[81] Basing her claim on this figure, Ms Kuppusamy used the MAS Inflation Calculator to determine the value of this award in 2022 – *ie*, S$7,234.72.[82] Ms Kuppusamy rounds this figure up and claims S$7,500.[83]

61 Huationg submits that no award of damages should be granted under this sub-head.[84] As a preliminary point, Huationg submits that this claim was not sufficiently pleaded and that it did not have adequate notice of this claim.[85] Amongst other things, Huationg claims that any aggravation of osteoarthritis in Ms Kuppusamy's right knee was caused by her use of ill-fitting prosthetics and her decision to stop using said prosthetics without first obtaining medical advice.[86]

Expert evidence

62 Ms Kuppusamy and Huationg called Dr Muthukaruppan and Dr Bose (collectively, the "Experts") as their expert witnesses for this head of claim,

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81 Plaintiff's Closing Submissions at para 15.

82 Plaintiff's Closing Submissions at para 15.

83 Plaintiff's Closing Submissions at para 15.

84 1st Defendant's Reply Submissions at para 2.18.

85 1st Defendant's Reply Submissions at para 2.2.2.

86 1st Defendant's Reply Submissions at para 2.11.

respectively. During the hearing, both Experts affirmed that they did not have radiological images of Ms Kuppusamy's knees prior to the Accident. As such, they could not testify as to the changes to her knee due to the Accident. Notwithstanding, both Experts agreed that the post-Accident radiological images showed similarities in both knees. In light of this similarity, Dr Bose testified that his presumption is that the state of both knees is not related to the Accident.[87] Dr Muthukaruppan testified that it is possible that the current osteoarthritic conditions of both knees are age-related.[88] Huationg emphasises these views of the Experts.[89]

63 Ms Kuppusamy accepts the Experts' evidence that her osteoarthritic condition in both knees is likely a pre-existing one. However, she relies on their evidence that there *could* have been an increase in loading on the right knee due to the amputation of her lower left limb in support of her claim.

Decision

64 Given the radiological similarities in both knees, I find Dr Bose's view that Ms Kuppusamy's osteoarthritic condition is likely age-related to be compelling and logical. Even Huationg's expert, Dr Muthukaruppan, agrees that the radiological similarities lend support to Dr Bose's view. On the other hand, there is no evidence to support that there actually was any aggravation of osteoarthritic symptoms due to the amputation of Ms Kuppusamy's lower left limb. I consequently disallow her claim for damages for aggravation of

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87 Transcript (10 May 2023) at p 94, lines 18–25.

88 Transcript (10 May 2023) at p 94, lines 1–8.

89 1st Defendant's Reply Submissions at paras 2.10 and 2.13.

osteoarthritis in her right knee. In view of this, it is unnecessary for me to deal with Huationg's objection on the ground of lack of pleading.

Non-surgical scars

65 Finally, Ms Kuppusamy seeks S$10,000 in damages for PSL caused by extensive non-surgical scarring. Huationg submits that this has not been pleaded[90] and that it was consequently not able to give proper attention to the evidence relevant to this claim.[91] Its position is that no award of damages should be made.[92]

66 As a result of the Accident, Ms Kuppusamy received a split skin graft ("SSG") at her left popliteal fossa (*ie*, back of her left knee), which left a scar measuring 9cm by 8cm. She also has two scars measuring 18cm by 6cm and 13cm by 6cm at the SSG donor site on her left thigh. Ms Kuppusamy references *Kenneth Quek (HC)* where the court awarded the plaintiff S$7,000 for two small scars measuring 3cm each and submits that S$10,000 was reasonable given that her scars were much larger than that in *Kenneth Quek (HC)*.

67 Huationg submits that in *Kenneth Quek (CA)*, the scars suffered by the plaintiff were caused by the accident itself, without any surgical interference, unlike the scars suffered by Ms Kuppusamy.[93] Ms Kuppusamy's scars are also capable of being easily hidden under common articles of clothing and hence do not have adverse aesthetic effect.[94] In the event that the court is inclined to award

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90 1st Defendant's Reply Submissions at para 2.2.3.

91 1st Defendant's Clarification Submissions dated 11 July 2023 at para 2.17.

92 1st Defendant's Reply Submissions at para 2.25.

93 1st Defendant's Reply Submissions at para 2.23.

94 1st Defendant's Reply Submissions at para 2.23.

damages for non-surgical scarring, Huationg highlights that Ms Kuppusamy's mature age should decrease the quantum of such award.[95]

68 I will deal first with Huationg's preliminary objection on the lack of pleading as Ms Kuppusamy only surfaced this particular claim in her Closing Submissions.[96] Notwithstanding, I observe that Ms Kuppusamy had expressly stated in her Statement of Claim that her injuries include an "[i]njury to the left popliteal region requiring skin graft". The scars for which she claims damages arose as a direct result of this skin graft.

69 In *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] SGCA 21 ("*How Weng Fan*"), the Court of Appeal explained at [19] that "*only* material *facts* … supporting each element of a legal claim … must be pleaded" [emphasis in original omitted; emphasis added in italics] (*ie*, the "Material Facts Principle"). Notwithstanding, the court may permit a claim for which the material facts supporting its elements were not pleaded "where there is no irreparable prejudice caused to the other party in the trial that cannot be compensated by costs or where it would be clearly unjust for the court not to do so" (*How Weng Fan* at [20]).

70 Applying the Material Facts Principle, the Court of Appeal in *How Weng Fan* held at [30(a)] that where a plaintiff *does* plead the material facts underlying a claim in negligence but does not frame this specifically as a claim in negligence, the court can find the defendant liable for negligence unless there is clear evidence that the defendant will be unduly prejudiced. In this case, I find that the material facts for this claim have been pleaded. Further, in any event, I

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95 1st Defendant's Reply Submissions at para 2.24.

96 1st Defendant's Reply Submissions at para 2.2.3.

do not consider Huationg to be unduly prejudiced, as the Parties' dispute is centred on legal submissions, and not evidential disagreements.

71 In *Kenneth Quek (HC)*, the award was given at [27] in relation to scars arising directly from the accident. Surgical scars arising from the amputation stump were considered separately under the damages awarded for the amputation. The issue of non-surgical scars, as a distinct head of claim, did not arise there. The question thus arises here, as to whether an award should be given for the scars arising from the SSG. Pertinently, the SSG (and consequently the scars from it) would not have arisen but for the Accident. Huationg did not dispute this but submitted that if they had known of such a claim, they could have asked Ms Kuppusamy whether she did suffer from pain arising from having such scars.[97] However, the consideration of damages for scarring in *Kenneth Quek (HC)* at [27] proceeded on an assessment of whether there was objectively an aesthetic defect. This is in contrast to the court's earlier consideration there at [15] in relation to the plaintiff's claim for continuing pain, which took into account both subjective (*ie*, the plaintiff's views on pain) and objective evidence. In this case, I am satisfied that from the medical reports, there is sufficient evidence of the nature of the scar, such that Huationg is not unduly prejudiced from having this claim considered.

72 I will consequently award Ms Kuppusamy damages for the scars that she received as a result of the SSG. In respect of quantum, I note that the plaintiff in *Kenneth Quek (CA)* was 20 years' old at the time of the accident while Ms Kuppusamy was 48 years' old. I also acknowledge that the scars she suffered, on the back of her left knee and on her left thigh, are easily concealed under common articles of clothing. This is similar to that of the plaintiff in

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97 Minute Sheet of 17 July 2023 hearing at p 3.

Kenneth Quek (CA), whose scars were on his right knee and right shoulder. Notwithstanding, Ms Kuppusamy's scars are substantially larger compared to those of the plaintiff in *Kenneth Quek (CA)*. As such, I award Ms Kuppusamy S$7,000 for her non-surgical scars.

73 In summary, I award Ms Kuppusamy a total of S$76,500 in damages for PSL.

Loss of future earnings

74 Ms Kuppusamy also claims damages for LFE. As a preliminary matter, I note that Huationg's position on LFE is inconsistent. It submits on the one hand that there should be an award of S$57,380 for LFE and no award for LEC as the latter is included in the LFE calculations.[98] At the same time, Huationg also submits that there should be no award for LFE.[99] As Huationg has not provided submissions as to why the LFE award should be $57,380 but has made submissions to justify why there should be no award of LFE, I will examine its case on the basis of the latter.

75 In *Mykytowych, Pamela Jane v V I P Hotel* [2016] 4 SLR 829 ("*Mykytowych*"), the Court of Appeal explained at [140] that an award of LFE is "a form of *special* damages awarded for real assessable loss proved by evidence (see *Fairley v John Thompson (Design and Contracting Division) Ltd* [1973] 2 Lloyd's Rep 40 at 42)" [emphasis in original]. In assessing damages for LFE, the Court of Appeal elaborated at [141] that:

> … the court should award a global sum after taking into account all the factors which are relevant to the particular case

98 1st Defendant's Closing Submissions at para 1.4.

99 1st Defendant's Closing Submissions at para 3.14.

> at hand, *eg*, the plaintiff's age, his skills, the nature of his disability, whether he is capable of undertaking only one type of work or whether he is capable of undertaking other types of work as well …
>
> [references omitted]

76 In Singapore, the method for calculating LFE is the multiplier-multiplicand approach, as affirmed in *Kenneth Quek (CA)* at [42]. This approach involves determining the multiplier and the multiplicand, and multiplying the two figures to calculate the present value of losses in earnings that Ms Kuppusamy will suffer in the future.

Multiplicand

77 I will first assess what the multiplicand should be. Ms Kuppusamy submits that the multiplicand should be calculated based on a monthly wage of S$2,350.[100] This figure is the median point of the salary range provided by Mr Riduan of a SSO – *ie*, S$2,300 to S$2,400 per month (see [25] above).[101] Ms Kuppusamy expects that it will take her three to four months to find gainful employment,[102] from May to August 2023. Hence, the applicable multiplicand for this period should be the full sum of S$2,350.[103] From September 2023 (inclusive) onwards, Ms Kuppusamy submits that she would earn about RM1,200 (S$363.64) per month. On this basis, the applicable multiplicand should be S$1,900 – *ie*, the difference between the monthly wage of S$2,350 she would have earned and the S$363.64 she expects to earn, rounded down.[104]

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100 Plaintiff's Closing Submissions at para 19.

101 Transcript (10 May 2023) at p 32, lines 21–24.

102 Transcript (9 May 2023) at p 55, line 18 to p 56, line 1.

103 Plaintiff's Closing Submissions at paras 20 and 22.

104 Plaintiff's Closing Submissions at para 20.

78 Huationg submits that, first, the basis of the multiplicand should not be S$2,350 as the range provided by Mr Riduan is not a reasonable estimate of Ms Kuppusamy's future earnings.[105] Second, the multiplicand from September 2023 onwards should be lower, on the basis that Ms Kuppusamy is likely to earn a higher monthly salary of RM1,757 (S$532.42).[106]

79 From the Parties' submissions, two sub-issues arise:

(a) what quantum should form the basis of the assessment; and

(b) what amount should be deducted from the figure derived above to account for mitigation of Ms Kuppusamy's losses.

Basis of assessment

80 Ms Kuppusamy submits that the multiplicand should be based on a monthly wage of S$2,350 (see [77] above).[107] Huationg submits that the multiplicand should be based only on her basic salary of S$700, excluding allowances and overtime pay.[108]

81 Ms Kuppusamy testified that if not for the Accident, she would have continued working in Singapore and presently be a SSO.[109] Her evidence on this was not challenged.

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105 1st Defendant's Reply Submissions at para 3.4.1.

106 1st Defendant's Reply Submissions at para 3.4.2.

107 Plaintiff's Closing Submissions at para 19.

108 1st Defendant's Reply Submissions at para 3.4.1.

109 Plaintiff's AEIC at para 8.

82 As canvassed above, the evidence before me suggests that Ms Kuppusamy is likely to have satisfied the requirements for the monthly allowances, which is given to employees as part of a "package". Additionally, the evidence also shows that she would have worked overtime for about 72 hours per month and have been promoted to SSO. Consequently, and consistent with my finding above at [19]–[21] in relation to PTLE, I find it reasonable for the multiplicand to account for the basic salary, allowances, and overtime pay that Ms Kuppusamy would have earned if she remained at Eve3r. Notwithstanding, I refer to the analysis at [33] above and reiterate that Ms Kuppusamy's claim that her monthly wage would have been S$2,350 per month is not justified. I also observe that she did not claim that the multiplicand used to assess damages for LFE should factor in annual increments in her basic salary. As such, I will apply S$2,300 per month as the base for determining the applicable multiplicand.

Mitigation of losses

83 Ms Kuppusamy stated that she is likely to find employment as a sales assistant in three to four months (*ie*, she would be gainfully employed by September 2023). In her written submissions, she claims that she would earn RM1,200 per month as a sales assistant.[110] However, her oral evidence was that she expected to earn RM1,500 per month.[111] In light of her testimony that this figure does not account for future increases in salary,[112] which would decrease the loss she suffers and the amount of damages Huationg is liable for, I will take

110 Plaintiff's Closing Submissions at para 20.

111 Transcript (9 May 2023) at p 26, lines 12–17.

112 Transcript (9 May 2023) at p 26, lines 18–22.

the higher figure of RM1,500 per month as the monthly wage of a sales assistant in Malaysia.

84 Huationg submits that there should be no award of damages for LFE as Ms Kuppusamy is capable of returning to her pre-Accident job as a security guard in Singapore.[113] In support of its submission, Huationg relies on: (a) Ms Kuppusamy's testimony that she is capable of undertaking employment as a security guard, and had hence applied for a job as a security guard in Malaysia;[114] (b) the evidence of its prosthetic expert, Ms Gurusamy, that Ms Kuppusamy is able to work as a security guard with the use of the "Mechanically Controlled Prosthetic" ("MCP") that Ms Gurusamy recommended;[115] (c) Mr Riduan's testimony for the claim that Eve3r is willing to re-employ Ms Kuppusamy;[116] and (d) the lack of evidence proving that she is unable to find work as a security guard in Singapore.[117]

85 In the event where the court is inclined to find that Ms Kuppusamy is indeed unable to return to work as a security guard in Singapore, Huationg submits that there is no evidence to support the proposition that she is limited only to working as a sales assistant.[118] Huationg highlights that other persons in Malaysia with the same level of education as Ms Kuppusamy earn about

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113 1st Defendant's Closing Submissions at paras 3.1–3.14.

114 1st Defendant's Closing Submissions at para 3.8 referencing Transcript (9 May 2023) at p 23, lines 6–10.

115 1st Defendant's Closing Submissions at para 3.1, referencing Transcript (9 May 2023) at p 136, lines 1–6.

116 1st Defendant's Closing Submissions at paras 3.2–3.7.

117 1st Defendant's Closing Submissions at paras 3.8–3.11.

118 1st Defendant's Reply Submissions at para 3.4.2.

RM1,757 (S$532.42).[119] As there are other employment opportunities available, and given Ms Kuppusamy's level of education, the multiplicand should factor in a deduction of RM1,757 (S$532.42).[120]

86 First, I observe that Huationg has overstated Eve3r's willingness to re-employ Ms Kuppusamy. In his AEIC, Mr Riduan stated that he "would not hire [Ms Kuppusamy] on behalf of [Eve3r] because [their] customers will not accept someone with a physical disability and also because security work is physically demanding."[121] During the hearing, Mr Riduan clarified that he would be willing to re-employ Ms Kuppusamy if there were medical documents stating that she was fit to fulfil the duties of a security guard and if Eve3r's customers were comfortable with her, despite her disability.[122] Furthermore, Ms Kuppusamy would need to successfully pass the medical examinations conducted by the Singapore Ministry of Manpower ("MOM") in order to obtain a work permit that would allow her to work in Singapore.[123] Accordingly, there were several conditions that had to be satisfied before Eve3r would consider re-employing Ms Kuppusamy, as opposed to an unqualified willingness to re-employ her.

87 Huationg's position is that Eve3r should have taken steps to determine whether the requisite conditions for re-employing Ms Kuppusamy were satisfied. However, this position is unfounded. It fails to recognise that Eve3r owes no obligation to Ms Kuppusamy and is under no duty to check with their customers if they would indeed have accepted someone who is an amputee as a

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119 1st Defendant's Closing Submissions at para 7.14; 1st Defendant's Reply Submissions at para 3.4.2.

120 1st Defendant's Reply Submissions at para 3.4.2.

121 Riduan's AEIC at para 9.

122 Transcript (10 May 2023) at p 29, line 18 to p 30, line 2.

123 Transcript (10 May 2023) at p 18, line 17–18.

Security Officer. Hence, the fact that Eve3r did not make further checks does not diminish Eve3r's position, as set out by Mr Riduan, that they would hire Ms Kuppusamy only if the requisite conditions are satisfied.[124] Accordingly, the fact that Eve3r is conditionally willing to re-employ Ms Kuppusamy does not justify denying her an award of damages for LFE.

88 While Mr Riduan's statement was made on behalf of Eve3r as Ms Kuppusamy's former employer, I consider that the difficulties that Mr Riduan raised are likely to also reflect the difficulties faced by other companies in Singapore when considering whether to employ her as a security guard. Ms Kuppusamy will likely face similar obstacles when applying to other companies in Singapore to be a security guard. Huationg has not in its cross-examination of Mr Riduan or Ms Kuppusamy suggested that this may not be so. Hence, in view of Mr Riduan's extensive evidence highlighting the difficulties of hiring a disabled person as a "Security Officer", I find that Ms Kuppusamy has, on balance, sufficiently shown that it is not likely that she would be able to find work as a security guard in Singapore, given her disabled condition.

89 Additionally, I observe that Ms Gurusamy had not considered that a security guard has patrolling duties, sentry duties or guardhouse duties, and that a certain level of fitness is needed to handle emergency situations when she claimed that Ms Kuppusamy would be capable of returning to her job as a security guard with use of the MCP.[125] Ms Gurusamy also recognised that there are several limitations with the MCP in relation to handling inclines, stairs and movement on flat ground. Therefore, even if Ms Kuppusamy had been fitted

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124 Transcript (10 May 2023) at p 29, line 18 to p 30, line 2.

125 Transcript (9 May 2023) at p 137 line 12 to p 138 line 12.

with the MCP, she would have been limited in her ability to perform the duties of a security guard.

90 Ms Kuppusamy testified that she is likely to obtain employment as a sales assistant in Malaysia, with a salary of RM1,500 (S$454.55). For the reasons above, I accept her evidence that this is her likely employment, and also accept her oral evidence on the likely salary. I note, in any event, that the 1st Defendant submits, albeit in relation to PTLE, that the salary of a security guard in Malaysia would also be RM1,500 (S$454.55).[126] Hence, I will deduct S$454.55 from the base monthly wage of S$2,300 to obtain a multiplicand of S$1,845.45 per month, applicable from September 2023 onwards.

91 For completeness, I observe that although the average monthly wage of a person working in Malaysia with the same education level as Ms Kuppusamy is RM1,757 (S$532.42), as stated by the DOSM, there is no evidence that this figure applies equally to persons of the same education level *and* disability as her. As such, I find that it would be inappropriate to factor this figure into the multiplicand on the facts of the present case.

Multiplier

92 The multiplier is "the mathematical tool used to calculate the lump-sum present value of the stream of future periodic losses across … the remaining working life … of the claimant": *Kenneth Quek (CA)* at [42]. In *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 ("*Hafizul*"), the Court of Appeal noted at [48] that there are at least four approaches that may be adopted in determining the multiplier: (a) referencing the multiplier awarded in comparable cases (the "Precedent Approach"); (b)

126 1st Defendant's Closing Submissions at para 7.15.

applying a pure arithmetical discount to the expected period of future loss on account of accelerated receipt and other vicissitudes of life (the "Arithmetic Approach"); (c) adopting the multiplier set out in actuarial table(s) (the "Actuarial Approach"); and (d) applying a formula fixed by legislation.

93 In relation to determining the multiplier, two issues arise:

(a) what the applicable number of years remaining in Ms Kuppusamy's working life is; and

(b) what approach should be adopted to determine the multiplier.

Number of working years remaining

94 Ms Kuppusamy submits that her remaining number of working years should be calculated based on a retirement age of 63 years' old.[127] She relies on Mr Riduan's oral evidence that the oldest Malaysian citizen working at Eve3r as a "Security Officer" is 62 years old and that this Security Officer's work permit from the MOM had been extended until the age of 63.[128] As Ms Kuppusamy is presently 54 years' old, she calculates that she has nine more working years and that the multiplier should be determined accordingly.

95 On the other hand, Huationg submits that the minimum retirement age in Malaysia is 60 years' old. Therefore, Ms Kuppusamy has a remaining working life of five years and eight months as of the assessment of damages hearing.[129] This submission, and the evidence supporting it, was raised for the first time, after the trial, in Huationg's Reply Submissions. As such,

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127 Plaintiff's Closing Submissions at para 21.

128 Plaintiff's Closing Submissions at para 21.

129 1st Defendant's Reply Submissions at para 3.6.

Ms Kuppusamy has not had the opportunity to cross-examine Huationg or any expert on this, or adduce evidence in response. Accordingly, I do not allow Huationg's application to adduce such evidence after the trial, nor accept its submission. For completeness, I observe that in any event, such evidence is not germane to the issue at hand. 60 years' old is the *minimum* retirement age, prior to which a Malaysian employer may not retire an employee. Huationg has not shown that there is a legislative bar precluding Ms Kuppusamy from continuing to work beyond this minimum retirement age. Moreover, this minimum retirement age applies to persons working in Malaysia and not Singapore, where Ms Kuppusamy would have continued working but for the Accident.

96 I accept Ms Kuppusamy's submission, based on Riduan's evidence,[130] that she could have worked as a security guard at Eve3r until the age of 63. As she was born in February 1969,[131] she would turn 63 years' old in February 2032. Ms Kuppusamy claims damages for LFE for the period starting May 2023.[132] However, in light of the Parties' submission for damages for PTLE to include the loss of earnings for May 2023,[133] the relevant period for assessing LFE begins from June 2023. Ms Kuppusamy has not submitted as to whether the remaining number of working years should be calculated with reference to the end of the year she turns 63 years' old (*ie,* 31 December 2032) or the date on which she turns 63 years' old (*ie*, 4 February 2032). As damages for LFE constitute special damages, I will adopt a conservative approach and find that the relevant period for determining the multiplier ends on the date which

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130 Transcript (10 May 2023) at p 41, lines 15–19.

131 Plaintiff's AEIC at para 7.

132 Plaintiff's Closing Submissions at para 22.

133 Plaintiff's Reply Submissions at para 20; 1st Defendant's Closing Submissions at para 7.1.1.

Ms Kuppusamy turns 63 years' old (*ie,* 4 February 2032). Consequently, eight years and eight months remain in Ms Kuppusamy's working life, including the three months she expects to spend finding employment. The multiplier should hence be calculated on the basis of 8.67 years remaining.

Approach for assessing the multiplier

97 Referencing Hauw Soo Hoon *et al*, *Actuarial Tables with Explanatory Notes for use in Personal Injury and Death Claims* (Academy Publishing, 2021) ("*Actuarial Tables*"), Ms Kuppusamy submits that if the Actuarial Approach is adopted, the multiplier should be 8.3.[134] On the other hand, if the Arithmetic Approach is adopted, the multiplier should be 7.97.[135] Huationg did not submit on which approach should be adopted, but did submit in relation to FMEs that the multiplier should not be determined with reference to the *Actuarial Tables* as this applies only to Singapore citizens.

98 In *Pollmann, Christian Joachim v Ye Xianrong* [2021] 5 SLR 1111 ("*Pollmann*"), the court held at [16]:

> … [i]n the absence of authoritative actuarial tables for Singapore lives, and in the absence of any formula fixed by legislation, the precedent approach and the arithmetic approach are to be preferred in Singapore. These two approaches are to be used independently, with the precedent approach used to cross-check the result obtained by the arithmetic approach so as to ensure consistency with past awards in like cases (*Kenneth Quek* at [54]).

99 Based on the Parties' submissions, and the court's holding in *Pollmann*, two sub-issues arise in relation to the calculation of the multiplier:

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134 Plaintiff's Closing Submissions at para 21.

135 Plaintiff's Closing Submissions at para 23.

(a) whether Ms Kuppusamy can rely on the *Actuarial Tables*; and

(b) if not, what the outcome of adopting the Arithmetic Approach is.

(1) Reliance on the *Actuarial Tables*

100 Ms Kuppusamy's position is that the *Actuarial Tables* may be relied on if the multiplier is adjusted to account for differences in life expectancy.[136] According to the *Actuarial Tables*, the applicable multiplier based on a working life ending at the age of 63 is 8.91.[137] Ms Kuppusamy submits that this figure may be adjusted downwards by 6.87% to obtain a multiplier of 8.3, in order to account for the difference between life expectancy of women in Singapore (*ie*, 85.9 years) and that in Malaysia (*ie*, 80 years).[138]

101 Even if the court does not adopt the Actuarial Approach with reference to the *Actuarial Tables*, Ms Kuppusamy submits that the multiplier derived from the *Actuarial Tables* should not be totally excluded. The Personal Injury (Claims Assessment) Review Committee ("PIRC"), using data from the Central Intelligence Agency World Factbook on life expectancy, found that there was no significant impact after applying the mortality rate in Bangladesh and China compared to a Singaporean male aged 30 (multiplier of 24.1 and 23.7 versus 24.6 respectively). Ms Kuppusamy submits that on this basis, the multiplier derived based on *the Actuarial Tables* can act as a "check-post" for the Court in selecting the appropriate multiplier.

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136 Plaintiff's Closing Submissions at para 21.

137 Plaintiff's Closing Submissions at para 21.

138 Plaintiff's Closing Submissions at para 21.

102 Huationg submits, albeit in relation to the multiplier for FME, that the multipliers set out in the *Actuarial Tables* should not apply. In *Hafizul*, the Court of Appeal at [53] rejected an adoption of the United Kingdom's Ogden Table in Singapore "because [the Ogden Tables] are based on projected mortality rates in the UK". Applying the same reasoning, Huationg's position is that the *Actuarial Tables* should not apply to *foreign* plaintiffs.

103 It is undisputed that the *Actuarial Tables* are based on data of the life expectancy of Singapore residents and that Ms Kuppusamy is a Malaysian citizen. In the Explanatory Notes to the *Actuarial Tables*, there is an explicit caveat that the multipliers in the *Actuarial Tables* are based on the mortality rates of Singapore residents, and hence the use of the tables may not be suitable for non-Singapore residents such as migrant workers. In addition, three significant elements are built into the *Actuarial Tables*: (a) they are based on a yield curve that represents expected investment returns for investments of different periods of time in Singapore; (b) it caters for inflation by adopting the historical average price inflation in Singapore of 2%; (c) there is a built-in mortality improvement of 2.6% *per* annum for both genders in Singapore, derived using a simple average of the mortality improvement over the past ten years. Ms Kuppusamy has not submitted as to how the multiplier derived from the *Actuarial Tables* can be adjusted to account for the differences between these factors and that in Malaysia.

104 While the Preface to the *Actuarial Tables* mentions that the PIRC used data from the Central Intelligence Agency World Factbook on life expectancy in Bangladesh and China to arrive at equivalent multipliers for a Chinese and Bangladeshi male, it does not state the methodology used to derive these equivalent multipliers. Consequently, it is not clear if Ms Kuppusamy's approach of applying a discount to the multiplier derived from the *Actuarial*

Tables to reflect *only* differences in life expectancies is sufficiently robust. This approach is also not substantiated with any submissions or evidence. Moreover, as highlighted above, the *Actuarial Tables* contain three significant elements that are peculiar to Singapore and Ms Kuppusamy has not addressed how these elements are taken into account by her proposed discount. In view of the above, I do not consider the multiplier set out in the *Actuarial Tables*, with or without Ms Kuppusamy's proposed adjustment for life expectancy, to be directly applicable here. It is, at most, a reference point, and even then, to be referred to with caution.

(2) Arithmetic Approach

105 In the alternative, Ms Kuppusamy submits that if the *Actuarial Tables* do not apply because she is a migrant worker, the Arithmetic Approach using the formula set out in *Kenneth Quek (CA)* at [72] should be adopted.

106 At the outset, I note that Ms Kuppusamy's submission for the formula in *Kenneth Quek (CA)* to apply, includes the discount rate applied therein.[139] In *Kenneth Quek (CA)*, the Court of Appeal observed at [78] that "the implicit rate of return for awards of damages in Singapore has been between 4% to 5% per annum". Notwithstanding, the court there applied a discount rate of 5.44% because the relevant number of periods was 50 years. Despite this significantly longer time period compared to the present case, I note that Ms Kuppusamy did not submit for a lower discount rate. Huationg also did not make any submissions in this regard. Accordingly, my analysis proceeds on the basis of adopting a discount rate of 5.44%.

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139 Plaintiff's Closing Submissions at para 23.

107 Applying a discount rate of 5.44% *per* annum on the basis of nine remaining working years, Ms Kuppusamy submits that the multiplier should be 7.97. However, I observe that this multiplier is calculated based on ten remaining working years, not nine years as she submits. Based on her submission of nine remaining working years, referencing the Annexure of *Kenneth Quek (CA),* the multiplier sought by Ms Kuppusamy should be 7.35, and not 7.97. As such, I will consider her submission with reference to a multiplier of 7.35.

108 Before giving my decision on this, I reiterate that the relevant time period to apply to the formula set out in *Kenneth Quek (CA)* would be 8.67 years (*ie*, the remaining number of working years that Ms Kuppusamy has), as opposed to nine years, as she submitted. I also make one additional clarification. As recognised in *Kenneth Quek (CA)* at [43(b)], the multiplier is undergirded by, amongst other things, "the receipt of compensation for the future losses by the claimant as an immediate lump sum, which can almost invariably be invested at a rate over and above that of inflation to make a profit". This lump sum payment is the aggregate of periodic, usually annual, payments that may be paid out, hypothetically speaking, at the beginning or the end of each period (*eg*, 1 January or 31 December). Depending on the court's decision as to whether each periodic payment should take place at the beginning or the end of the period, the relevant formula differs. The effect of the decision as to payment date is that, for example, the multiplier for payments on 1 January is higher than that for payments on 31 December.

109 The table in the Annexure of *Kenneth Quek (CA)* sets out payments that begin at Year 0 (*ie*, at the beginning of the period, when the award is granted by the court; *eg*, 1 January). The present value of this first payment, as a fraction of its nominal value, is 1.00 – *ie*, the first payment is not discounted. This

suggests that the formula applied there to calculate the applicable multiplier connotes that the periodic payment takes place on 1 January:

$$Multiplier = 1 + \frac{1 - (1 + r)^{-(n-1)}}{r}$$

Here, "n" refers to the number of periods (in years) while "r" refers to the applicable discount rate.

110 In contrast, the High Court in *Pollmann* at [78] and *Muhammad Adam bin Muhammad Lee (suing by his litigation representatives Noraini bte Tabiin and Nurul Ashikin bte Muhammad Lee) v Tay Jia Rong Sean* [2022] 4 SLR 1045 at [197] applied the following formula to the calculation of the multiplier:

$$Multiplier = \frac{1 - (1 + r)^{-n}}{r}$$

Similarly, "n" refers to the number of periods (in years) while "r" refers to the applicable discount rate. The effect of this formula is that the "payments" are not treated as beginning at Year 0 (*ie*, when the award is granted by the court). Instead, the first payment is treated as occurring at the end of Year 0 (*eg*, on 31 December). As such, this first payment must also be discounted according to the relevant discount rate, as reflected in the differences between the applicable formula in *Kenneth Quek (CA)* and *Pollmann*.

111 On the facts of the present case, and Ms Kuppusamy's submission for the formula in *Kenneth Quek (CA)* to be used (see [105] above), I will assess the damages for LFE on the basis of periodic "payments" at the beginning of the relevant period. Applying the discount rate submitted by Ms Kuppusamy of

5.44% and 8.67 years as the number of periods, the applicable multiplier is 7.14 (to two decimal places):

$$\mathbf{7.14} = 1 + \frac{1 - (1 + 0.0544)^{-(8.67-1)}}{0.0544}$$

112 For completeness, I observe that the applicability of the Precedent Approach is limited to that of a "check" to ensure consistency with cases involving similarly situated claimants (*Kenneth Quek (CA)* at [54]). The lack of information about the real interest rates in Malaysia also affects the reliability of using the Precedent Approach here. In *Hafizul*, the plaintiff returned to Bangladesh (and was to invest his lump sum award in Bangladesh) but no real interest rate information on Bangladesh was available. Having observed this, the Court of Appeal in *Kenneth Quek (CA)* stated at [53] that simply applying the multipliers used in past cases which involve local claimants would be unsatisfactory where the claimant in the instant case is a foreigner. In this case, Ms Kuppusamy is a Malaysian citizen who will be living in Malaysia (and likely investing her lump sum award there), but no information on real interest rates in Malaysia has been adduced by either party.

113 Further, neither party surfaced any precedent which has used a multiplier that could apply in respect of Ms Kuppusamy's claim for LFE. I note that Huationg highlights, in relation to the multiplier for FMEs, *Toh Wai Sie and another v Ranjendran s/o G Selamuthu* [2012] SGHC 33 ("*Toh Wai Sie*"). Huationg's submission is that this case is not applicable and Ms Kuppusamy has not relied on *Toh Wai Sie* in her submissions. Nevertheless, *Toh Wai Sie* provides a reference point of an applicable multiplier, in the absence of other precedents. There, the plaintiff had a remaining life expectancy of nine years,

similar to the number of years remaining of Ms Kuppusamy's working life. No discount was applied, and the multiplier used by the court was nine.

114 I next compare the multiplier derived from the *Actuarial Tables* (*ie*, 8.30), with that derived from the Arithmetic Approach (*ie*, 7.14), and the multiplier used in *Toh Wai Sie* (*ie,* 9) *per* the Precedent Approach, for the purposes of cross-checking. The common limitation with each of the approaches is that the Parties have not adduced evidence of the real interest rates or the yield curves in Malaysia for a proper comparison with that in Singapore. Notwithstanding, the multiplier derived from the Arithmetic Approach, applying the discount rate Ms Kuppusamy submits, does not deviate too excessively as to be unduly inconsistent with past cases or the *Actuarial Tables*. Additionally, comparing the multiplier to that which she submits (*ie*, after correcting for the number of periods, see [107] above), the multiplier of 7.14 is not unfair to Ms Kuppusamy on the facts of this case. I will hence adopt the multiplier of 7.14 derived from the Arithmetic Approach.

Calculating damages for LFE

115 Before calculating the quantum of damages for LFE by multiplying the multiplier by the multiplicand, I first address an oversight in Ms Kuppusamy's submissions on quantum. Applying the Arithmetic Approach as set out in *Kenneth Quek (CA)*, she claims that the quantum of damages for LFE should be S$191,116,[140] based on the following:

Time Period	**Multiplicand**	**Multiplier**	**Total**
May to Aug 2023 (*ie*, 4 months)	S$2,350	-	S$2,350 x 4 months = S$9,400

[140] Plaintiff's Closing Submissions at para 23.

Sep 2023 to Retirement (*ie*, 9 years)	S$1,900	7.97	S$1,900 x 12 months x 7.97 = S$181,716
Total Quantum Claimed by Plaintiff			S$191,116

116 It is evident from the table above that Ms Kuppusamy did not apply the multiplier to the period from May to August 2023, during which she submits she would be looking for employment. A multiplier incorporates an appropriate discount rate to account for the present value of the total award. In other words, no discount rate was applied to the damages claimed for the period from May to August 2023. Furthermore, the effect of Ms Kuppusamy's method of calculation is that she would receive an award of damages comprising of "payments" for a period of nine year and four months, and not nine years.

117 In light of my observations, I do not adopt Ms Kuppusamy's method of calculation. Instead, given that the assessment of damages took place in May 2023, and taking the period from June 2023 to February 2032 (months inclusive – *ie*, 105 months), I derive the annual multiplicand as follows.

Time Period	**Gross Multiplicand - Deduction for Mitigation**	**Net Multiplicand (Month)**	**Net Multiplicand (Time Period)**
Jun to Aug 2023 (3 months)	S$2,300 – S$0	S$2,300	S2,300 x 3 = S$6,900
Sep 2023 to Feb 2032 (102 months)	S$2,300 – S$454.55	S$1,845.45	S$1,845.45 x 102 = S$188.235.90
Total Amount Payable			S$195,135.90

Average Monthly Multiplicand	S$1,858.44
Annual Multiplicand	S$1,858.44 x 12 = **S$22,301.28**

118 Multiplying the annual multiplicand of S$22,301.28 by the multiplier of 7.14, I award Ms Kuppusamy damages for LFE in the sum of S$159.231.14.

Loss of earning capacity

119 Ms Kuppusamy seeks damages for LEC[141] while Huationg submits that there should not be any such award.[142]

120 Three issues arise in relation to the Parties' submissions on Ms Kuppusamy's claim for damages for LEC:

(a) whether Ms Kuppusamy can claim damages for *both* LEC *and* LFE;

(b) whether she should be entitled to damages for LEC; and

(c) if so, at what quantum.

Claims for both LEC and LFE

121 Ms Kuppusamy submits that it is settled law that damages for both LEC and LFE can be awarded as they are both distinct and different heads of claims. She relies on *Mykytowych* at [140].

141 Plaintiff's Closing Submissions at para 25.

142 1st Defendant's Closing Submissions at p 3 and para 4.6.

122 Huationg submits that there should not be such an award. Instead, any damages for LEC would be included in the damages for LFE.[143] The damages claimed for LEC and LFE arise out of the loss of earnings which Ms Kuppusamy would have earned as a security guard in Singapore.[144] To award both LEC and LFE would amount to double recovery.[145] Huationg relies on *Chang Ah Lek and others v Lim Ah Koon* [1998] 3 SLR(R) 551 ("*Chang Ah Lek*") at [31].

123 I note that *Chang Ah Lek* did not specifically address the issue of whether a claim for LEC can be made even if an award for LFE has been made. Indeed, the Court of Appeal's decision at [32] to award damages for LFE in place of LEC, was based on its finding that the evidence before the court supported damages for LFE, as opposed to LEC. Regardless, this specific issue was considered by the Court of Appeal in *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 ("*Samuel Chai*"), *Mykytowych* and *Lua Bee Kiang*. These decisions support Ms Kuppusamy's position that LEC and LFE are distinct heads of claim and that an award of damages for one head does not preclude an award of the other.

124 In *Mykytowych*, the Court of Appeal explained the distinction between LEC and LFE at [140]. There, the Court of Appeal explained that LEC and LFE are distinct types of awards and that it is open to grant both types of awards:

> …these two types of awards are meant to compensate for different kinds of loss. An award for loss of future earning capacity is given as part of *general* damages in order to compensate a plaintiff for the weakening of his competitive position in the open labour market (see *Smith v Manchester*

143 1st Defendant's Closing Submissions at p 3.

144 1st Defendant's Reply Submissions at para 4.1.

145 1st Defendant's Opening Statement at para 3.8.

> *Corporation* [1974] 17 KIR 1 ("*Smith*") at 8), whereas an award for loss of future earnings is a form of *special* damages awarded for real assessable loss proved by evidence (see *Fairley v John Thompson (Design and Contracting Division) Ltd* [1973] 2 Lloyd's Rep 40 at 42). Whether the court will: (a) grant both types of awards; (b) grant an award for loss of future earning capacity while refusing to grant an award for loss of future earnings; or (c) *vice versa* is dependent on and determined by the evidence before the court (see *Chai Kang Wei* at [21]).

125 The Court of Appeal elaborated at [141] on the approaches to assess the quantum of damages for LFE and LEC. When determining the quantum of damages for LEC, the court:

> … must take a 'rough and ready' approach … and calculate the loss of earning capacity 'in the round' … ultimately arriving at a figure that it considers reasonable in the particular circumstances to compensate the particular plaintiff for the disadvantage which he faces in the open employment market due to his disabilities …
>
> [references omitted]

126 Further, the Court of Appeal in *Samuel Chai* at [23] rejected the argument that where a substantial award was made for LFE, only a nominal award for LEC should be given:

> In making this contention, the Appellant assumed that there was an inverse relationship between the two heads of damages. No authority was cited in support of this proposition. Given that we have pointed out earlier that the two heads of damages are separate and distinct, it must also naturally mean there is simply no remaining logical basis for such an argument to succeed. The Appellant's proposition of an inverse relationship seemed to assume that there was an overlapping loss component in both heads of damages. However, the Appellant failed to point out any overlapping compensatory factor to support a proposition that such an inverse relationship existed.

127 It is clear from the Court of Appeal's explanations in these cases, and in *Lua Bee Kiang*, that a plaintiff can claim damages for both LFE and LEC, and that a substantial award of damages for LFE does not bar an award for LEC.

Whether damages for LEC should be award and if so, in what amount

128 In *Lua Bee Kiang*, the Court of Appeal held at [50] that the question was not whether the plaintiff was at risk of losing his post-accident job, but whether he has been prevented from competing for his *pre-accident* job.[146] On the evidence, the court found that the plaintiff had been so prevented as he could no longer work as a carpenter following the accident. Instead, he had to work as a cleaner, for which he was paid less than as a carpenter.

129 In this case, Ms Kuppusamy worked as a security guard prior to the Accident. She submits that, now as an amputee, she is unable to do security work.[147] Further, she claims that she will not be able to find a job as a security guard even with a prosthetic leg.[148] As such, the injury caused by the Accident has prevented her from competing in the market for her pre-Accident job. Instead, she will have to undertake jobs that would pay her less than she would have otherwise earned, such as being a sales assistant.[149]

130 In terms of the quantum of damages, Ms Kuppusamy seeks S$15,000 and distinguishes her case from *Lua Bee Kiang* in terms of the respective plaintiffs' remaining number of working years.[150] In *Lua Bee Kiang*, the court found that the plaintiff would work for another six years, and the plaintiff was awarded S$5,000. In comparison, Ms Kuppusamy submits that she would have

146 Plaintiff's Opening Statement at para 16.

147 Plaintiff's Closing Submissions at para 24; Plaintiff's Reply Submissions at para 19.

148 Plaintiff's Opening Statement at para 17.

149 Plaintiff's Opening Statement at para 17.

150 Plaintiff's Closing Submissions at para 25.

been able to work in Singapore for another nine years (*ie*, until the age of 63) and in Malaysia thereafter for another 12 years (*ie*, until the age of 75).[151].

131 Huationg cites *Chang Ah Lek* and submits that Ms Kuppusamy should not be entitled to damages for LEC. In *Chang Ah Lek*, the Court of Appeal held at [31] that:

> … [a] case for compensation for loss of earning capacity would arise only if the respondent had been employed as an ironmonger, full time on a fixed remuneration, by Hock Seng Engineering Works and Hock Seng Engineering Works continued to employ him after the accident, notwithstanding his disability, as an ironmonger or in some other capacity without any loss in his emoluments. In this case if for some reason Hock Seng Engineering Works terminated the respondent's employment then he would be thrown on to the labour market and his competitive edge to find employment as an ironmonger or indeed any labour intensive work would be severely handicapped by his disability. In this case it would be proper to compensate the respondent for loss of earning capacity by looking at the weaknesses in the round and by taking note of the various contingencies and doing the best one could to arrive at an assessment which would do justice to the respondent (per Scarman LJ in *Smith v Manchester Corporation*). But this is not the case here.

132 Here, Eve3r did not continue to employ Ms Kuppusamy after the Accident. Huationg submits that Ms Kuppusamy is thus not entitled to damages for LEC.

133 Huationg also submits that the evidence barely supports Ms Kuppusamy's claim that she had lost her competitive position in the labour market as a security guard.[152] Huationg repeats substantial portions of its

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151 Plaintiff's Closing Submissions at para 25.

152 1st Defendant's Closing Submissions at para 4.5.

submissions against an award of LFE in support of this.[153] In particular, that: (a) Ms Kuppusamy testified that she was capable of undertaking employment as a security guard;[154] (b) she is able to return to work as a security guard with the use of the prosthetic;[155] (c) Eve3r may be willing to re-employ her;[156] and (d) she has not proven that she is unable to find work as a security guard (see above at [84]).[157]

134 Further, Huationg's position is that Ms Kuppusamy had overstated her remaining number of working years.[158] As alluded to above, Huationg sought leave after the trial to adduce evidence referencing Malaysian legislation and information published by the International Labour Organisation. Huationg relies on this evidence to submit that the minimum retirement age in Malaysia is 60 years' old.[159] Hence, based on Ms Kuppusamy's age as at the date of the hearing for the assessment of damages (*ie*, 48 years' old), her remaining working life is only five years and eight months' long.[160]

135 In my view, Huationg misreads *Chang Ah Lek*. The plaintiff there was a self-employed ironmonger who was subcontracted by larger organisations, such as Hock Seng Engineering Works. The Court of Appeal found at [30] that there

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153 1st Defendant's Closing Submissions at para 4.5.

154 1st Defendant's Closing Submissions at para 3.8 referencing Transcript (9 May 2023) at p 23, lines 6–10.

155 1st Defendant's Closing Submissions at para 3.1, referencing Transcript (9 May 2023) at p 136, lines 1-6.

156 1st Defendant's Closing Submissions at paras 3.2–3.7.

157 1st Defendant's Closing Submissions at paras 3.8–3.11; 1st Defendant's Reply Submissions at para 4.5.

158 1st Defendant's Reply Submissions at para 4.3.

159 1st Defendant's Reply Submissions at para 4.4.

160 1st Defendant's Reply Submissions at para 4.4.

was no direct evidence that the plaintiff could not obtain work as an ironmonger on sub-contract from other engineering organisations, as a result of his disability. The court then contrasted this at [31] with a hypothetical situation where the plaintiff was a full-time employee of Hock Seng Engineering Works. The court observed that if the plaintiff was an employee who lost his employment with Hock Seng Engineering Works and was thrown into the labour market, his competitive edge to find employment as an ironmonger would be severely handicapped by his disability. In such a case, he would be entitled to damages for LEC. Accordingly, a key consideration in *Chang Ah Lek* for entitlement to LEC is the claimant's competitiveness on the labour market for the same work that he did prior to the accident.

136 This is consistent with the more recent Court of Appeal decisions in *Mykytowych* and *Lua Bee Kiang*. Indeed, the Court of Appeal in *Lua Bee Kiang* stated specifically at [50] that the question is not whether a plaintiff is at risk of losing his current, post-accident employment, but whether he has been prevented from competing in the market for his *pre-accident job*. At the final hearing for this matter, Huationg accepted this reading of *Chang Ah Lek*, but further submitted that as a matter of evidence, the case for LEC has not been met.[161]

137 I find that in this case, there is evidence that Ms Kuppusamy has been prevented from competing in the market for her *pre-accident* job as a security guard *in Singapore*. While she is willing to, and considers herself able to, take on such a job, this is not a view unconditionally shared by her former employer. Mr Riduan testified on behalf of Eve3r that "Security Officers" need to attend

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161 Minute Sheet for the hearing on 17 July 2023 at p 4.

to and assist in emergency cases and incidents.[162] Consequently, Mr Riduan expressed the view that it would be quite risky for Eve3r's customers to accept a Security Officer with Ms Kuppusamy's disability.[163]

138 While Mr Riduan accepted that there was a possibility that Eve3r could rehire Ms Kuppusamy if various conditions were met, he also explained that the satisfaction of these conditions posed difficulties. First, Eve3r would need to inquire into whether its customers are comfortable with being supplied with a security guard suffering from a disability. Second, there are also concerns over Ms Kuppusamy's ability to successfully complete MOM's medical examinations to obtain a work permit for her to work in Singapore. The consistency of Mr Riduan's evidence is further supported by his testimony that he does not have any experience applying to MOM for a work permit to employ a potential "Security Officer" suffering from any handicap.[164] In addition, Ms Kuppusamy had also applied unsuccessfully for a job a security guard job in Malaysia. While this was only one application, the rejection does fortify the testimony of Mr Riduan about the difficulties with rehiring Ms Kuppusamy as a security guard.

139 Consequently, applying the test as framed in *Lua Bee Kiang*, I find that it is clear that Ms Kuppusamy has been prevented from competing for her *pre-accident* job as a security guard. As such, I find that she is entitled to an award of damages for LEC.

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162 Transcript (10 May 2023) at p 7, line 24 to p 8 line 1.

163 Transcript (10 May 2023) at p 18, lines 8–11.

164 Transcript (10 May 2023) at p 18, lines 17–25.

140 In terms of the quantum, I observe that Ms Kuppusamy has not proven that she would be able to work in Malaysia until the age of 75. As for Huationg's submission on the minimum retirement age of 60 years old in Malaysia, I reiterate my observations above (at [95]) that there is nothing precluding Ms Kuppusamy from working beyond the age of 60 and that this retirement age applies to persons working in Malaysia, not Singapore. As Ms Kuppusamy had been working in Singapore as a security guard at the time of the Accident, in my view, the assessment of damages should account for her disadvantage on the open employment market in *both* Malaysia *and* Singapore, where she was likely to have continued working as a security guard if not for the Accident. Given that Eve3r has an employee who has been renewed for employment until the age of 63 and Singapore's minimum retirement age, I award Ms Kuppusamy damages for LEC up to the age of 63. In this case, the award for LEC takes into account a working period of eight years and eight months (*ie*, from June 2023 to February 2032), as compared to the six working years in *Lua Bee Kiang*. In light of these factors, I award her damages of S$7,500 for LEC.

Medical expenses

141 In relation to her MEs, Ms Kuppusamy claims damages for:

(a) MEs incurred in Singapore;

(b) MEs incurred in Malaysia, excluding the price of the MPCP that Ms Kuppusamy is fitted with by Mr Prasad; and

(c) the cost of the MPCP Ms Kuppusamy is fitted with.

142 The Parties agree that the quantum of damages for MEs incurred in Singapore is the revised amount of S$29,842.69.[165] The remaining issues to be determined in relation to the damages for the claims above are:

(a) what the MEs incurred in Malaysia amounted to;

(i) this includes the sub-issue of whether the claim for Ms Kuppusamy's first prosthetic leg should be allowed; and

(b) whether it was reasonable for her to be fitted with the MPCP.

MEs incurred in Malaysia

143 Ms Kuppusamy initially sought RM29,568.70 (S$8,960.21) in damages for MEs incurred in Malaysia. However, after Huationg highlighted a double counting of the same transaction amounting to RM1,557,[166] Ms Kuppusamy adjusted her claim of damages for the MEs she incurred in Malaysia (excluding the expense for the MPCP) to RM28,011.70 (S$8,488.39).[167]

First prosthetic leg

144 Ms Kuppusamy's above claim for MEs incurred in Malaysia includes the cost of her first prosthetic limb, amounting to RM26,477.90 (S$8,023.61).[168] Huationg claims that Ms Kuppusamy did not use this first prosthetic limb and obtained this prosthetic independent of a doctor's recommendation.[169] Hence,

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165 1st Defendant's Closing Submissions at para 8.2 referencing Transcript (10 May 2023) at p 43, lines 21–22; Plaintiff's Reply Submissions at para 32.

166 1st Defendant's Closing Submissions at para 8.3 referencing Agreed Core Bundle at pp 53, 131, and 132.

167 Plaintiff's Reply Submissions at para 33.

168 1st Defendant's Closing Submissions at para 8.5; Plaintiff's Bundle of Documents (Quantum) dated 1 February 2023 at pp 53–54, line items 15–26, 28, 31, and 37.

169 1st Defendant's Closing Submissions at para 8.5.

she should only be entitled to damages for MEs incurred in Malaysia amounting to RM1,533.[170]

Whether Ms Kuppusamy used the first prosthetic limb

145 Ms Kuppusamy disagrees with Huationg's claim that she did not use the first prosthetic. She submits that she used it for more than a year, albeit with the aid of a walking stick. This was also her oral testimony. Notably, counsel for Huationg did not question her on whether she used the first prosthetic limb. Instead, she was asked whether the first prosthetic limb "help[ed]" her.[171] Counsel for Huationg put to Ms Kuppusamy that since it did not help her, Huationg should not pay for the first prosthetic limb.[172] As Huationg has provided no substantiation for its claim that Ms Kuppusamy did not use the prosthetic, and in light of the latter's evidence, I find that she did use the first prosthetic.

Whether Ms Kuppusamy obtained the first prosthetic limb without a doctor's recommendation

146 Huationg also submits that Ms Kuppusamy obtained the first prosthetic limb from Teh Lin Prosthetic & Orthopaedic Co Sdn Bhd ("Teh Lin Prosthetic") independently, without a doctor's recommendation. Relying on a quotation dated 12 March 2018 (the "Quotation"), Huationg claims that Ms Kuppusamy obtained this prosthetic on this date,[173] as opposed to in or around May 2018, as stated in her AEIC.[174] If so, Ms Kuppusamy would have obtained her first

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170 1st Defendant's Reply Submissions at para 7.3.

171 Transcript (9 May 2023) at p 21, lines 10–18.

172 Transcript (9 May 2023) at p 21, lines 1–18.

173 Agreed Core Bundle at p 120.

174 Plaintiff AEIC at para 9.

prosthetic limb before she consulted Dr Amitabha Lahiri Amitabha ("Dr Lahiri"), a doctor at NUH who had treated Ms Kuppusamy soon after the Accident. Dr Lahiri assessed Ms Kuppusamy on 19 April 2018,[175] and provided a "Specialist Medical Report" dated 3 May 2018 detailing the findings of the assessment she performed on the former date.[176] As such, Huationg should not be liable for the cost of the first prosthetic limb.

147 Huationg's claim that Ms Kuppusamy had obtained the first prosthetic limb without a doctor's recommendation is premised on the date of the Quotation (*ie*, 12 March 2018). However, being a quotation, it is not clear from this document alone whether Ms Kuppusamy obtained her first prosthetic leg on this date, as suggested by Huationg, or at a later date, *per* the former's AEIC. This issue was not put to Ms Kuppusamy during the hearing. Additionally, her testimony that she had obtained the first prosthetic limb in May 2018 was consistent throughout the trial.[177] In other words, there is no other evidence that clearly contradicts the evidence in Ms Kuppusamy AEIC that she obtained the first prosthetic limb in May 2018.

148 I will hence allow Ms Kuppusamy's claim of damages for MEs incurred in Malaysia amounting to RM28,011.70 (S$8,488.39), which includes the cost of her first prosthetic leg at RM26,477.90 (S$8,023.61).

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175 Amitabha Lahiri's Affidavit of Evidence-in-Chief dated 18 January 2023 ("Lahiri's AEIC") at para 2.

176 Lahiri's AEIC at para 2, and pp 4–5.

177 Transcript (9 May 2023) at p 21, lines 1–3, p 42, line 23 to p 43, line 3.

Reasonableness of MPCP prosthetic

149 The next issue relates to whether it was reasonable for Ms Kuppusamy to be fitted with the MPCP such that Huationg should be liable for damages incurred from the cost of this prosthetic. As stated above (at [7]), Ms Kuppusamy's prosthetic expert, Mr Prasad, recommended and fitted her with the MPCP. In contrast, Huationg's prosthetic expert, Ms Gurusamy, recommended the MCP.

Assessment of Prosthetic Experts' recommendations

150 Generally, different types of prosthetics exist to support different intensities of activity, which range from levels K0 to K4. K4 prosthetics support the highest intensity of activity. Both experts agreed that Ms Kuppusamy needed a prosthetic that supports activity at K2 to K3 levels, to walk and climb stairs, but not run with them.

151 Mr Prasad testified that the MPCP would generally allow patients to recover 80–85% of their former functionality. In making his recommendation, Mr Prasad took into account factors such as Ms Kuppusamy's age, the need to avoid falls as she gets older, the need for her to go back to work in places such as shopping malls, and that she is not married and thus may have to live alone. Mr Prasad's view was that the MCP would not be as effective as the MPCP. Amongst other things, recipients of the MCP would have to walk on their toes to go down slopes and lift their thighs higher to go up stairs.[178]

152 Ms Gurusamy considered it reasonable for Mr Prasad to recommend the MPCP. When drafting her report, Ms Gurusamy had sight of Mr Prasad's report

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178 Transcript (9 May 2023) at p 103, line 21 to p 104, line 2.

and recommendation. During the hearing, she agreed with Mr Prasad that the MCP would be more effective for someone with K3 to K4 level of activity, and less effective to support K2 to K3 levels of activity – *ie*, Ms Kuppusamy's categorised levels of activity.[179] She also agreed that the MPCP was more effective for handling inclines and stairs, and even for movement on flat ground.[180] Ms Gurusamy also testified that with the MCP, there would be a need to go to a doctor for adjustment in various situations, such as when the height of the recipient's shoe changes.[181]

153 As Ms Kuppusamy had already committed to and made payment for the MPCP by the time Ms Gurusamy's report came out, Ms Gurusamy said that in these circumstances, Ms Kuppusamy should continue using MPCP.[182] Further, she stated that once Ms Kuppusamy was comfortable with the MPCP, it was reasonable not to expect the latter to change from the MPCP to the MCP.[183]

154 Although Ms Gurusamy recommended the MCP in her report, it is notable that when asked by counsel for Huationg if she considered the MCP to be a fair and reasonable recommendation, her response was that if cost was not a consideration, the MPCP is actually reasonable for Ms Kuppusamy, as it mimics natural walking and was more effective.[184]

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179 Transcript (9 May 2023) at p 133, line 19 to p 134, line 21.

180 Transcript (9 May 2023) at p 129, lines 19–21, and p 131, line 21 to p 132, line 4.

181 Transcript (9 May 2023) at p 134, line 22 to p 135, line 2.

182 Transcript (9 May 2023) at p 118, lines 12–22.

183 Transcript (9 May 2023) at p 113, line 17 to p 114, line 13.

184 Transcript (9 May 2023) at p 136, line 23 to p 137, line 3.

Parties' submissions

155 Despite its prosthetic expert's testimony, Huationg maintains that the use of the MPCP and the cost incurred for it was not reasonable.[185] In particular, it relies on Mr Prasad's testimony that he did not undertake an assessment of Ms Kuppusamy's financial means when recommending the MPCP.[186] Huationg also submits, albeit in relation to FMEs, that Mr Prasad had failed to consider alternative prosthetics, including prosthetics that were more commonly used and/or those subsidised by the Malaysian government.[187] Additionally, Huationg highlights that the MPCP is deficient to the MCP in that the latter allows for running and would better facilitate Ms Kuppusamy's ability to return to her role as a security guard.[188] In relation to Ms Gurusamy's evidence in court, Huationg submits that this should be understood as evidence given in the context that cost is not an issue, when in fact, the cost of the prosthetic limb cannot be disregarded completely[189]

156 In response, Ms Kuppusamy submits that whether the recommendation and use of the MPCP is reasonable is not dependent on a financial assessment of her means.[190] She asserts that Huationg's position runs counter to the principle of compensation to reinstate the victim to a state of affairs as if the tort had not occurred, or as close to such state as possible.[191] In addition, there is no

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185 1st Defendant's Closing Submissions at paras 8.7–8.13; 1st Defendant's Reply Submissions at para 7.4.

186 1st Defendant's Closing Submissions at para 8.7 referencing Transcript (9 May 2023) at p 107, lines 4–6.

187 1st Defendant's Reply Submissions at para 6.5.

188 1st Defendant's Closing Submissions at paras 8.10–8.11.

189 1st Defendant's Reply Submissions at para 6.6.

190 Plaintiff's Reply Submissions at para 37.

191 Plaintiff's Reply Submissions at para 37.

basis for Huationg's submission that Mr Prasad did not consider other alternatives or government subsidies in selecting the MPCP, since even Ms Gurusamy agreed that the MPCP is suitable for her. Finally, Ms Kuppusamy highlights, albeit in relation to her claim for FMEs, that Huationg has not led evidence that she was eligible for subsidised medical care in Malaysia.[192]

Decision

157 A claimant's impecuniosity and financial means, or lack thereof, should not be a consideration as to whether the cost incurred by the claimant as a result of the accident caused by the tortfeasor, is reasonable. The effect of Huationg's submission is that a claimant who is impecunious would only be entitled to cheaper compensatory remedies, simply because of their relative financial means. This cannot be right. It cannot lie in the mouth of the tortfeasor to deny the claimant of the costs of a remedy which was made necessary only by the tortfeasor's actions. This is consistent with the compensation principle as set out by the Court of Appeal in *ACES System Development Pte Ltd v Yenty Lily (trading as Access International Services)* [2013] 4 SLR 1317 at [14] (affirmed by the Court of Appeal in *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2021] 1 SLR 689 at [58]), citing Lord Blackburn's *dicta* in *Livingstone v The Rawyards Coal Company* (1880) 5 App Cas 25 at 39 that compensation should "put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong".

158 It is thus clear that it is not a claimant's financial means that determines the remedy which the claimant should receive. Instead, the remedy, and the

192 Plaintiff's Reply Submissions at para 28.

award for the cost of that remedy, should be one which puts the claimant in a position as close to if the tort did not occur. Huationg submits that even this principle is subject to the test of reasonableness, citing *Pollmann* at [150]. However, what Vinodh Coomaraswamy J observed there was that the defendant in that case made a submission that the principle of compensation (set out above) is subject to a test of *reasonableness*. Coomaraswamy J then explained at [151] that the requirement of reasonableness is not a qualification of the general principle of *restitutio in integrum* and that the "requirement of reasonableness is simply an aspect of the plaintiff's so-called "duty" to mitigate his loss: a plaintiff will not be able to recover any loss which he has incurred by acting unreasonably after suffering the tort". Applying this principle to the facts of this case, there is no suggestion that Ms Kuppusamy was acting unreasonably in approaching Mr Prasad and relying on his recommendation. Indeed, Huationg's submission is that Mr Prasad in making his recommendation should have taken into account Ms Kuppusamy's impecuniosity, but as seen from above, there is no legal foundation for such a submission.

159 It is useful to see how this compensatory principle was applied by Tay Yong Kwang J (as he then was) in *Kenneth Quek (HC)*. There, the plaintiff's activity level was assessed to be at a K3 level. Hence, Tay J (as he then was) held that the plaintiff was only entitled to a K3 prosthesis, as opposed to a K4 level prosthesis that the plaintiff claimed for. There is no suggestion here that the MPCP is for an activity level beyond what Ms Kuppusamy needs. In *Pollmann*, Coomaraswamy J found that an award for employing a caregiver, as opposed to a private nurse, would have been reasonable as the former is less expensive while still capable of satisfying the plaintiff's needs with more or less the same effectiveness. In this case, Huationg has not adduced evidence of an alternative prosthesis that satisfies Ms Kuppusamy's needs with more or less

the same effectiveness. Even Huationg's own prosthetic expert, Ms Gurusamy, testified to the limitation of the MCP that she recommended.

160 As such, I find that Ms Kuppusamy's financial means relative to the cost of the MPCP is not a relevant factor as to whether the use of the MPCP is reasonable. Instead, the focus of the inquiry is whether the MPCP would put her in a position as close to that if the Accident did not occur.

161 For the same reason, Ms Gurusamy's recommendation for Ms Kuppusamy to have been fitted with the MCP does not undermine her testimony that if cost was not a consideration, the MPCP is actually a reasonable option for Ms Kuppusamy. In any event, Ms Gurusamy's evidence as to the relative limitations of the MCP and that it is less effective than the MPCP for Ms Kuppusamy's categorised activity level of K2 to K3, were not made in the context of cost considerations. These limitations also undermine Huationg's submission that the MCP would better facilitate Ms Kuppusamy's return to work as a security guard.

162 In relation to FMEs, Huationg submits that Mr Prasad should have considered other alternative prosthetics, including those subsidised by government and those commonly used. As this submission is relevant to the present issue, I will deal with this submission here. I find that this submission is not supported by any evidence of such alternatives, other than the MCP.

163 Considering and comparing the experts' assessment of the MPCP and the MCP, I find Ms Kuppusamy's use of the MPCP is reasonable, as were the MEs incurred for the MPCP. This is in view of Mr Prasad's cogent explanations as to why he recommended and fitted Ms Kuppusamy with the MPCP, and the views of Huationg's own prosthetic expert that the use of the MPCP is

reasonable and more suitable for Ms Kuppusamy's level of activity compared to the MCP. I will hence allow Ms Kuppusamy's claim for MEs for the MPCP (*ie*, her second prosthetic limb) in the amount claimed of RM250,650 (S$75,954.55).

164 In totality, I grant Ms Kuppusamy damages for MEs totalling S$114,285.63, according to the following breakdown:

Medical Expenses		**Quantum**
MEs incurred in Singapore		S$29,842.69
MEs incurred in Malaysia	MEs (Including first prosthetic limb, excluding the MPCP)	S$8,488.39 (RM28,011.70)
	MPCP	S$75,954.55 (RM250,650)
Total		**S$114,285.63**

Future medical expenses

165 I next assess Ms Kuppusamy's claim of damages for FMEs. Specifically, she claims FMEs for the cost of:

(a) replacements of her prosthetic limb;

(b) total replacement of her right knee;

(c) analgesics; and

(d) physiotherapy.

Replacements of Ms Kuppusamy's prosthetic limb

166 In relation to Ms Kuppusamy's claim for damages arising from future replacement of her prosthetic limb, two issues arise:

(a) whether it is reasonable for the replacement prosthetics to be the MPCP, as opposed to the MCP; and

(b) following from this, the cost of the future replacements for which damages should be awarded.

Whether the replacement prosthetics should be the MPCP or the MCP

167 As stated above (at [149]), Mr Prasad recommended and fitted Ms Kuppusamy with the MPCP while Ms Gurusamy recommended the MCP. However, Ms Gurusamy acknowledged that the MPCP was a reasonable recommendation for Ms Kuppusamy.

168 Mr Prasad was of the view that Ms Kuppusamy would be able to continue using the MPCP without difficulties even as she ages and her activity levels decrease.[193] Mr Prasad also considered but ultimately did not recommend using a prosthesis that could support a lower level of activity, at K1 to K2 levels, after she retires. He was of the view that ageing would not mean that Ms Kuppusamy would be rendered wheelchair-bound. Instead, she would need to be active.[194] Also, there would be adaptation problems from adjusting to a lower model, especially when she is older.[195]

169 As Ms Kuppusamy had already committed to and made payment for the MPCP by the time Ms Gurusamy's report came out, Ms Gurusamy said that in the circumstances, Ms Kuppusamy should continue using MPCP.[196] She stated that once Ms Kuppusamy was comfortable with the MPCP, it was reasonable

193 Transcript (9 May 2023) at p 76, lines 1–14.

194 Transcript (9 May 2023) at p 76, lines 15–16.

195 Transcript (9 May 2023) at p 77, line 3 to p 78, line 3.

196 Transcript (9 May 2023) at p 117, line 19 to p 118 lines 4 and 12–22.

not to expect her to change from the MPCP to the MCP.[197] Ms Gurusamy further testified that if financial considerations were not accounted for, Ms Kuppusamy could continue using the MPCP.[198]

170 Huationg submits that Ms Kuppusamy's future replacement prosthetics should be the MCP, and not the MPCP. Huationg's submissions on this mirror its submissions on the reasonableness of the MPCP as set out above at [155]. Primarily, Huationg submits that the MPCP is more costly than other alternatives; is unable to restore Ms Kuppusamy to her full function or allow her to completely resume her duties as a security officer;[199] and Mr Prasad failed to consider the applicability of any government subsidies to Ms Kuppusamy,[200] or other prosthetic alternatives.[201]

171 As highlighted above at [157], Ms Kuppusamy's financial means and ability to afford the MPCP is not a relevant factor that affects the reasonableness of its use. In the same vein, it does not affect the reasonableness of the MPCP for future replacement prosthetics. As such, the relatively higher price of the MPCP compared to the MCP and Mr Prasad omitting to consider the applicability of government subsidiaries to Ms Kuppusamy are not relevant considerations. In any event, Huationg has not provided any evidence that Ms Kuppusamy is eligible for government subsidies.[202]

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197 Transcript (9 May 2023) at p 113, line 17 to p 114, line 13.

198 Transcript (9 May 2023) at p 118, line 17 to p 119, line 4.

199 1st Defendant's Closing Submissions at paras 5.4–5.10, and 5.15.

200 1st Defendant's Closing Submissions at paras 5.9–5.10.

201 1st Defendant's Closing Submissions at para 5.8 referencing Transcript (9 May 2023) at p 70, lines 7–23.

202 Plaintiff's Reply Submissions at para 28.

172 In addition, Huationg's own prosthetic expert, Ms Gurusamy, testified that the MPCP is "more efficient" for walking long distances and climbing stairs, in comparison to the MCP which she recommended.[203] She also agreed that the MPCP is "more effective" on flat ground.[204] In other words, the MPCP would allow Ms Kuppusamy to recover a higher degree of functionality than the MCP. Her evidence is consistent with Mr Prasad's testimony.[205] Ms Gurusamy's evidence also undermines Huationg's submission that the MCP is more effective than the MPCP in allowing Ms Kuppusamy to recover the functionality that she might need for jobs, such as that of a security guard.

173 Finally, while Huationg submits that Mr Prasad failed to consider other alternative prosthetics, it has not provided any evidence of what such alternatives might be, other than the MCP, which I have dealt with above at [162]. In any event, Huationg's submission that Mr Prasad failed to consider other alternative prosthetics is overstated. Mr Prasad testified that he did not consider other *brands* of prosthetics.[206] However, Mr Prasad agreed with Huationg's counsel that Ottobock, the company which produces the MPCP, has a wide range of prosthetics. He testified that he did consider Ottobock's alternative offerings but recommended the MPCP for its greater stability as Ms Kuppusamy had been having difficulties walking with her old protheses.[207] He also testified that the MPCP was a better alternative compared to the more

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203 Transcript (9 May 2023) at p 129, lines 8–20.

204 Transcript (9 May 2023) at p 132, lines 1–4.

205 Transcript (9 May 2023) at p 73, lines 3–5.

206 Transcript (9 May 2023) at p 70, lines 13–14.

207 Transcript (9 May 2023) at p 70, lines 2–12.

commonly used prosthetic leg in Malaysia, in terms of functionality[208] and in terms of durability.[209]

174 In *Kenneth Quek (CA)*, the court found at [84] that even if the activity level of the plaintiff there decreased as he aged, it would be "unduly onerous" for him to have to downgrade to a K2 prosthesis from a K3 prosthesis, and adapt to the restricted range of activities permitted by the former. In view of this and the evidence before me, I find that it is reasonable for Ms Kuppusamy's future replacement prostheses to be the MPCP.

Cost of future replacement prosthetics to be awarded

175 Both Prosthetic Experts factored in six replacements of Ms Kuppusamy's prosthetic limb into their calculations of the costs of future replacements. Mr Prasad estimated that the FME incurred in replacing the MPCP would amount to RM1,745,470 (S$528,930.30).[210] He then applied a rate of inflation of 10% *per* annum to estimate that the replacements of the MPCP would amount to a total sum of RM2,127,309.41 (S$644,639.22).[211] Ms Gurusamy estimates that the cost of six replacements of the MCP is RM1,145,500 (S$347,121.21),[212] including a 10% increase in the price of prosthetic components.[213]

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208 Transcript (9 May 2023) at p 66, line 17 to p 67 line 18.

209 Transcript (9 May 2023) at p 68, lines 15–22.

210 Prasad's AEIC at p 40; Plaintiff's Closing Submissions at para 30.

211 Transcript (9 May 2023) at p 85, lines 11–15.

212 Kalaivani A/P Vedaiyan Gurusamy's Supplemental Affidavit of Evidence-in-Chief dated 25 April 2023 ("Gurusamy's Supplemental Affidavit") at p 10; Transcript (9 May 2023) at p 119, lines 5–15.

213 Gurusamy's Supplemental Affidavit at pp 8–10.

176 In their Closing Submissions, the Parties highlight that the estimates of both Prosthetic Experts are wrong.[214] This is because the Prosthetic Experts' calculations were based on a period beginning when Ms Kuppusamy was 48 years' old despite her only obtaining her existing MPCP at the age of 53.[215] Given this delay, and the fact that the expenses incurred by her existing MPCP has been claimed under the "Medical Expenses" head of claim, two sets of prosthetic legs, inclusive of any ancillary costs, should be removed from the computations.[216] In other words, Ms Kuppusamy would only require four replacement prosthetics (inclusive of serviceable parts) in the future.[217]

177 Ms Kuppusamy hence submits for damages in the sum of S$352,620.20 [(RM1,745,470 / 6) x 4] / 3.3) for four future replacements of the MPCP.[218] This figure is based on Mr Prasad's estimated total cost of future MPCP replacements *excluding* the 10% *per* annum inflation on the price of prosthetic components.[219] On the other hand, Huationg submits in its Closing Submissions that the cost of four replacement MPCPs should be RM1,145,464.70 (S$347,110.52).[220] This figure was derived by: (a) multiplying the unit price of each item set out in Mr Prasad's quotation by the number of changes needed for

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214 Plaintiff's Closing Submissions at para 30; 1st Defendant's Closing Submissions at paras 5.3, 5.3.1, and 5.3.2.

215 Plaintiff's Closing Submissions at para 30; 1st Defendant's Closing Submissions at para 5.3.1.

216 Plaintiff's Closing Submissions at para 30; 1st Defendant's Closing Submissions at para 5.3.2.

217 Plaintiff's Closing Submissions at para 30; 1st Defendant's Closing Submissions at para 5.3.2.

218 Plaintiff's Closing Submissions at para 30; Plaintiff's Reply Submissions at para 26.

219 Plaintiff's Closing Submissions at para 30.

220 1st Defendant's Closing Submissions at para 5.3.2.

each item over the course of 26 years; and, (b) including the 10% increase in the price of prosthetic components alleged by the Prosthetic Experts.

178 Notwithstanding its submission as set out above, in its Closing and Reply Submissions, Huationg also submits that the alleged 10% inflation in the price of prosthetics is unsupported by any evidence beyond Mr Prasad's testimony.[221] Hence, Huationg submits in its Reply Submissions that the cost of four replacements of the MPCP amounts to RM1,163,646.66 (S$352,620.20),[222] as submitted by Ms Kuppusamy. Regardless, Huationg's position is that Ms Kuppusamy has not shown that it was reasonable to incur the cost of the MPCP. Consequently, Huationg submits that the quantum of damages should be based on the cost of the MCP. Further, it submits that the award of damages should only contemplate the costs of four replacements of the MCP prosthetic, *simpliciter* (*ie*, excluding, amongst other things, serviceable items),[223] at a total sum of RM494,360 (S$149,806.06).[224]

179 In light of these submissions, two further sub-issues arise:

(a) whether the damages to be awarded for the cost of four future replacement MPCPs should account for a 10% increase in the price of prosthetic components; and

(b) whether the damages to be awarded should be the cost of four replacement MPCPs or of four replacements of the MCP prosthetic, *simpliciter*.

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221 1st Defendant's Closing Submissions at para 5.16; 1st Defendant's Reply Submissions at para 6.4.

222 1st Defendant's Reply Submissions at para 6.7.

223 See *eg*, Gurusamy's Supplemental Affidavit at p 11.

224 Minute Sheet of 17 July 2023 hearing at p 2.

(1) Whether the damages should account for a 10% increase in the price of prosthetic components

180 As stated above, Mr Prasad's estimate of the total cost of future replacements was adjusted to account for a 10% *per* annum increase in the price of prosthetic components. In providing her estimation of the cost of future replacements of the MCP, Ms Gurusamy had initially applied a 5% rate of inflation to account for increases in the price of prosthetic components.[225] However, she later stated that her initial projection was outdated and agreed that based on the latest trends, the price of prosthetic components was increasing at a rate of 10% *per* year. Consequently, she adjusted her estimation of the cost of six future replacements to RM1,145,500 (S$347,121.21).[226]

181 Huationg submits that there is no documentary evidence to support the Prosthetic Experts' claim of such price inflation.[227] In particular, the alleged rate of inflation of 10% is significantly higher than the core rate of inflation of 3.3%, and the rate of inflation of 0.7% in the health sector, as reported by the DOSM.[228] Huationg submits that the claims of its own expert, Ms Gurusamy, are bare assertions.[229]

182 I agree with Huationg that neither Ms Gurusamy nor Mr Prasad provided any documentary evidence to support the 10% *per* annum increase in the price of prosthetic components. This is despite the fact that this was something that could have been done. Mr Prasad said in court that he had an

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225 Agreed Core Bundle at p 179.

226 Gurusamy's Supplemental Affidavit at p 10.

227 1st Defendant's Closing Submissions at para 5.16.

228 1st Defendant's Reply Submissions at para 6.4.

229 1st Defendant's Closing Submissions at para 5.16.

email that said that from 1 January 2023, the cost of every prosthetic component had increased by 10%. However, this email was not adduced. Moreover, even on Mr Prasad's oral testimony, the vendor for the MPCP had only said that there would be a 10% price increase from 1 January 2023, and not that there would be an increase of 10% per annum. Ms Gurusamy stated that her preparedness to accept the 10% increase in price as reported by the prosthetic manufacturer was based on having done more research into the latest trends on increases in the price of prosthetic components.[230] However, she did not adduce any documentary evidence of such research or from the manufacturer to substantiate her claim of a 10% per annum increase in prosthetic component prices. Assessing the evidence in the round, I find that the claim for inflation of 10% per annum to the price of prosthetic components has not been made out.

(2) Whether the damages should comprise of the cost of just replacement prosthetics, *simpliciter*

183 Huationg submits that the award should be RM494,360 (S$149,806.06) for four replacement MCP prosthetics, *simpliciter*, only.

184 Ms Kuppusamy highlights that Huationg's submission deviated substantially from the recommendation and estimation of its own prosthetic expert, Ms Gurusamy.[231] Regardless, Huationg attempts to justify its submission by claiming that Mr Prasad would have been amenable to recommending Ms Kuppusamy the more commonly used, and cheaper, prosthetic limb if Ms Kuppusamy had expressed concerns over the cost of the MPCP's.[232]

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230 Gurusamy's Supplemental Affidavit at pp 8–9.

231 Plaintiff's Reply Submissions at para 27.

232 1st Defendant's Reply Submissions at paras 6.6 and 6.8.

185 However, critically, neither of the Prosthetic Experts testified that in so far as future replacements are concerned, only the MPCP prosthetic, *simpliciter*, would suffice. On the contrary, the estimates provided by the Prosthetic Experts suggest that the prosthetic limbs, *simpliciter*, *and* other ancillary services and/or components, such as serviceable items, will be required by Ms Kuppusamy in the future. In any event, Huationg's submission misconstrues Mr Prasad's evidence. Mr Prasad testified that if he was asked for a recommendation within a given budget, he would have looked into the price of alternatives and recommended something within the given budget.[233] But Mr Prasad also testified to the limitations of the alternative prosthetics, whether from Ottobock or those more commonly used. His recommendation for Ms Kuppusamy, albeit without considering the question of her financial means, was the MPCP. Thus, Mr Prasad's willingness to recommend a cheaper alternative prosthetic, when budgetary concerns are raised, cannot be taken to mean that his position is that cheaper alternative prosthetics are suitable replacements for Ms Kuppusamy.

186 Following from the above, I will allow Ms Kuppusamy's claim of S$352,620.20, being the cost of four replacement MPCPs, *excluding* the 10% inflation *per* annum in the price of the prosthetic components.

Total replacement of Ms Kuppusamy's right knee

187 Ms Kuppusamy also claims S$42,500 for a total replacement of her right knee.[234] She relies on the evidence of Dr Muthukaruppan and Dr Bose that her right knee would be subject to increased loading,[235] and submits that she would require a total knee replacement at least once in her lifetime. As Ms Kuppusamy

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233 Transcript (9 May 2023) at p 98, lines 12–20.

234 Plaintiff's Closing Submissions at para 32.

235 Transcript (10 May 2023) at p 83, lines 20–25.

is not a Singapore citizen, she does not qualify for subsidised medical care and hence the applicable cost of a total replacement of her right knee would be that of a private patient.[236] Dr Muthukaruppan's report sets out the cost of a total knee replacement for a patient who is not entitled to subsidised healthcare, as between S$40,000 to S$45,000.[237] Ms Kuppusamy submits for damages in a sum at the median point of this range.[238]

188 Huationg submits that the claim for total knee replacement of the right knee should be disallowed.[239] Although there was degeneration in Ms Kuppusamy's right knee, there was symmetrical degeneration in her left knee as well. Dr Muthukaruppan conceded that he could think of no reason to explain the symmetry in degenerative changes in the knees except for Ms Kuppusamy's age.[240] He agreed that there is an inverse correlation between a properly fitted prosthetic and the increased loading in her right knee,[241] and admitted that he could not quantify the probability that Ms Kuppusamy will need a total replacement of her right knee based on this correlation.[242] Dr Bose opined that the probability of osteoarthritis arising from an amputation is 16%

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236 Plaintiff's Closing Submissions at para 32.

237 Agreed Core Bundle at p 190.

238 Plaintiff's Closing Submissions at para 32.

239 1st Defendant's Closing Submissions at para 5.18.

240 1st Defendant's Closing Submissions at para 5.22; Transcript (10 May 2023) at p 102, lines 15–25, and p 103, lines 1–2.

241 Transcript (10 May 2023) at p 98, lines 12–17.

242 1st Defendant's Closing Submissions at para 5.24. [Note: The references to the Transcript (10 May 2023) contained therein do not support Huationg's submission that Dr Muthukaruppan could not quantify the probability that Ms Kuppusamy would require a total replacement of her right knee.]

for amputees compared to 11.7% for non-amputees, *ie,* an increase of only 4.3%.[243]

189 I find that Ms Kuppusamy has not shown on a balance of probabilities that there is a need for the knee replacement as a result of the Accident. First, both experts agreed that the arthritic changes observed in both knees are likely age-related. Second, on Dr Bose's unchallenged evidence, the probability of osteoarthritis arising in an amputee is only 4.3% higher in comparison with non-amputees. Third, Ms Kuppusamy's own expert, Dr Muthukaruppan, accepted that, at best, there was a 50% chance that a knee replacement would be needed due to load bearing. Notwithstanding, Dr Muthukaruppan also accepted that overloading on the right knee can be corrected by proper use of a good prosthetic leg that is fitted well. With this, aggravation of the osteoarthritic condition of Ms Kuppusamy's knees could be delayed.[244]

190 For completeness, I also observe that Ms Kuppusamy has also not shown why the total knee replacement would have to take place in Singapore, such that the cost of such replacement would amount to S$42,500. She is a Malaysian citizen and, consequently, she would be charged much higher rates for a replacement of her right knee. Further, she has not provided submissions or evidence on the cost of such replacement in Malaysia.

191 I therefore reject Ms Kuppusamy's claim for right knee replacement.

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243 Bundle of Affidavits of Evidence-in-Chief filed on 2 May 2023 at p 276.

244 Transcript (10 May 2023) at p 71, line 18 to p 72 line 10.

Analgesics

192 Ms Kuppusamy claims damages in the sum of RM2,400 (S$727.27) for FMEs on analgesics at RM100 per month for two years.[245] Dr Kumar had made provisions for analgesics on a permanent basis at RM200 per month for as long as her symptoms remains but commented in his clarification report that the RM100 and two-year period quoted by Dr Singh is reasonable.[246]

193 Huationg submits that there is no evidence that Ms Kuppusamy is consuming analgesics at present and hence damages should not be awarded for this FME.[247] However, the analgesics for which Ms Kuppusamy claims damages for are FMEs, rather than current medical expenses. Furthermore, the experts of both parties have made provisions for such an expense. I will therefore allow Ms Kuppusamy's claim for analgesics at S$727.27.

Physiotherapy

194 Finally, Ms Kuppusamy claims damages of S$727.27 for FMEs on 30 sessions of physiotherapy at RM80 per session. Dr Singh has provided for these sessions. Huationg agrees that this award is reasonable. I will allow Ms Kuppusamy's claim for physiotherapy at S$727.27.

195 In totality, I will hence award damages for FMEs in the sum of S$354,074.74 according to the following breakdown:

Future Medical Expenses	**Quantum**
Four replacements of MPCP	S$352,620.20

245 Plaintiff's Closing Submissions at para 33.

246 Plaintiff's Closing Submissions at para 33.

247 1st Defendant's Closing Submissions at para 5.28; 1st Defendant's Reply Submissions at para 6.11.

Analgesics	S$727.27
Physiotherapy	S$727.27
Total	**S$354,074.74**

Transport expenses

196 Ms Kuppusamy claims damages totalling S$2,013.93 for TEs incurred to attend medical appointments in Singapore and Malaysia:[248]

Transport Expenses		**Quantum**
TEs incurred for traveling to Singapore		S$120.00
TEs incurred traveling within Malaysia	37 trips for medical treatments, including physiotherapy	S$333.33(RM1,100.00)
	Other trips for medical appointments	S$1,557.57
Total		**S$2,010.90**

197 Huationg submits that the total damages to be awarded for TEs should be limited to RM2,600 (S$787.88).

TEs incurred for traveling to Singapore

198 Ms Kuppusamy claims damages in the sum of S$120 for the TEs incurred in Singapore.[249] Huationg submits that no award of damages should be granted as there is no evidence that Ms Kuppusamy has *actually* incurred any TEs to seek medical treatment in Singapore.

248 Plaintiff's Reply Submissions at paras 38–40.

249 Plaintiff's Closing Submissions at paras 37 and 38; Plaintiff's Reply Submissions at para 38.

199 Ms Kuppusamy's claim thus raises three sub-issues:

(a) the number of trips she made to Singapore for medical treatment;

(b) whether she incurred TEs for these trips; and

(c) the appropriate quantum for the TEs for each trip.

The number of trips Ms Kuppusamy made to Singapore for medical treatment

200 Ms Kuppusamy claims damages for TEs incurred from six trips to Singapore from Johor Bahru for medical treatment.[250] Huationg submits that there were only five trips as Ms Kuppusamy had attended one appointment at TTSH and four appointments at NUH.[251]

201 The evidence adduced by Ms Kuppusamy included invoices for one visit to TTSH and five visits to NUH.[252] Accordingly, she would have attended six medical treatment sessions in Singapore, not five. Transport would have to be undertaken to attend these six sessions.

Whether Ms Kuppusamy incurred TEs for transport undertaken to Singapore

202 Huationg submits that there is no evidence that Ms Kuppusamy had *actually* incurred any TEs to seek medical treatment in Singapore.[253] Relying on her oral evidence, Huationg claims that Ms Kuppusamy had been ferried to

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250 Plaintiff's Closing Submissions at para 38.

251 1st Defendant's Closing Submissions at paras 8.17 and 8.20 referencing Agreed Core Bundle at pp 68–75.

252 Agreed Core Bundle at pp 68–75. Note: There is one invoice showing Ms Kuppusamy receiving treatment at TTSH on 11 October 2017, and five invoices showing Ms Kuppusamy being admitted and/or receiving treatment at NUH on 23 September 2017; 19 October 2017; 26 October 2017; 23 November 2017; and 1 February 2018.

253 1st Defendant's Reply Submissions at para 8.2

Singapore for medical treatment by her neighbours.[254] Huationg cites *Siew Pick Chiang v Hyundai Engineering and Construction Co Ltd and another* [2016] SGHC 266 ("*Siew Pick Chiang*") and submits that the High Court held that no damages, conservative or otherwise, should be granted in the absence of evidence of transport expenses on the possibility that the plaintiff there may have been fetched by her mother in a car to the destinations.[255]

203 I note that Huationg did not accurately portray Ms Kuppusamy's oral evidence. Her evidence was that "my neighbours are the ones who brought me, they did not keep any receipts. … we had paid the money to come to Singapore."[256] Thus, her evidence was not that her neighbours ferried her to Singapore for free. Instead, her evidence was that she paid her neighbours for transport to Singapore, but she did not have receipts to prove that she so paid. Despite the lack of receipts, I find no reason to reject her evidence or claim that she paid her neighbours for transport to Singapore. That Ms Kuppusamy incurred TEs distinguishes this case from *Siew Pick Chiang*, where the court found that there was a possibility that the plaintiff there had been ferried by her mother or siblings to the destinations. In any event, despite such possibility, the court in *Siew Pick Chiang* nevertheless awarded the plaintiff there some amount for TE, at S$300 per month, totalling S$6,600. Accordingly, contrary to Huationg's submission, *Siew Pick Chiang* does not stand for the proposition that where there is a possibility that TEs were not *actually* incurred by a claimant, no damages for TEs should be awarded at all.

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254 1st Defendant's Reply Submissions at para 8.2 referencing Transcript (9 May 2023) at p 30, line 13 to p 31, line 1.

255 1st Defendant's Reply Submissions at para 8.2.

256 Transcript (9 May 2023) at p 30, line 24 to p 31, line 5.

204 In light of the above, I find that Ms Kuppusamy did incur TEs for transport to Singapore for medical treatments on six occasions.

Appropriate quantum of TEs for each trip undertaken to Singapore

205 Ms Kuppusamy's claim of S$120 is based on six trips to Singapore at a rate of S$20 per round trip.[257] She relies on *Tan Hun Boon v Rui Feng Travel Pte Ltd and another* [2018] 3 SLR 244 ("*Tan Hun Boon*"). Pang Khang Chau JC (as he then was) held in *Tan Hun Boon* at [146] that he was prepared to make a reasonable estimate in order to arrive at an award for pre-trial transport expenses despite the lack of receipts and lack of evidence concerning the mode of transport adopted by the plaintiff. Notwithstanding, Pang JC cautioned that any such estimate should be a conservative one. The rationale of this approach is "to avoid putting plaintiffs who fail to produce receipts in a better position than plaintiffs who conscientiously retain receipts and adduce them in evidence" (at [146]). Referencing the award he had granted for FTEs of approximately S$30 per trip, Pang JC (as he then was) adopted a conservative approach and found that S$20 per trip was a reasonable figure for pre-trial TEs (at [147]).[258] Relying on this finding, Ms Kuppusamy claims S$20 per trip for TEs incurred for traveling to Singapore. Ms Kuppusamy also highlights that while receiving treatment at NUH, she was residing in Johor Bahru and needed to cross the border into Singapore to receive medical treatment.[259] Consequently, she submits that S$20 per round trip is a reasonable rate.[260]

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257 Plaintiff's Closing Submissions at para 37.

258 Plaintiff's Closing Submissions at para 37.

259 Plaintiff's Closing Submissions at para 38.

260 Plaintiff's Reply Submissions at para 38.

206 Huationg similarly submits that if the court were inclined to grant an award of damages under this sub-head, the cost of each trip should be S$20 per trip.[261]

207 Applying the approach in *Tan Hun Boon*, I am prepared to make a reasonable estimate of the cost of Ms Kuppusamy's trips to Singapore, despite her lack of receipts. Considering that the court had granted S$20 per trip in *Tan Hun Boon* for trips within Singapore, the fact that Ms Kuppusamy claims the same amount despite the round trips being to and from Johor Bahru to Singapore, and Huationg's position on the cost of each trip, I will allow her claim for TEs incurred for six medical appointments in Singapore at S$20 per round trip, for a total of S$120.

TEs incurred in Malaysia for 37 trips to medical appointments

208 Ms Kuppusamy claims damages of RM1,100 (S$333.33) for TEs incurred by 37 trips for medical treatment in Malaysia.[262] She submits that she paid her cousin, who was also her neighbour, RM30 per trip.[263] Huationg submits that no damages should be awarded.

209 There is evidence, in the form of invoices, that Ms Kuppusamy did attend 37 medical sessions in Malaysia.[264] Transport would have been needed for these sessions. While Ms Kuppusamy could not produce receipts, I find no reason to reject her evidence that she paid her cousin for these trips. Notwithstanding, following *Tan Hun Boon*, I will take a conservative approach,

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261 1st Defendant's Closing Submissions at para 8.20.

262 Plaintiff's Closing Submissions at para 39; Plaintiff's Reply Submissions at para 39.

263 Plaintiff's Reply Submissions at para 39.

264 Agreed Core Bundle at pp 76–143.

bearing in mind that Ms Kuppusamy has not produced any receipt to support the quantum claimed. I will hence allow her claims for 37 trips for medical treatment in Malaysia, at RM15 per trip, for a total of RM555 (S$168.18).

TEs incurred in Malaysia for other medical appointments

210 Finally, Ms Kuppusamy claims damages for TEs incurred by attending other medical appointments in Malaysia during the following dates/time periods:[265] (a) 3 September 2021; (b) 23 February 2022; (c) 11 June 2022; (d) 12–14 October 2022; and (e) 21–22 February 2023. Ms Kuppusamy's initial submissions for the last two periods listed included claims for hotel room charges. However, Ms Kuppusamy informed the court at the last hearing that she will not be proceeding with these claims.[266] I will hence present Ms Kuppusamy's submissions below, excluding the relevant sums for hotel room charges.

3 September 2021

211 Ms Kuppusamy claims damages of RM750 (S$227.27) for TEs incurred in relation to her consultation with Mr Prasad on 3 September 2021.[267] Huationg accepts that there is evidence that Ms Kuppusamy had consulted Mr Prasad on 3 September 2021, but submits that an award of damages should be of a conservative estimation given her lack of evidence as to the TEs she had actually incurred.[268]

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265 Plaintiff's Reply Submissions at para 40 referencing Plaintiff's Closing Submissions at para 40.

266 Minute Sheet for 17 July 2023 hearing at p 4.

267 Plaintiff's Closing Submissions at para 40.

268 1st Defendant's Reply Submissions at para 8.4.

212 It is undisputed that Ms Kuppusamy was traveling from Johor Bahru to Kuala Lumpur for her sessions with Mr Prasad and would necessarily incur TEs for these sessions.[269] The figure of RM750 she claims is the same as that claimed for TEs incurred for another medical appointment in Kuala Lumpur on 23 February 2022, for which she has adduced a receipt. However, Ms Kuppusamy also claims TEs amounting to S$100 (RM330) for another medical appointment in Kuala Lumpur on 11 June 2022,[270] which Huationg agreed was reasonable.[271] In the absence of receipts to support her claim, and hence adopting a conservative approach, I grant an award of damages of S$100 for TEs incurred for the medical appointment on 3 September 2021.

23 February 2022

213 Ms Kuppusamy also claims damages of RM750 (S$227.27) for TEs incurred in relation to her medical appointment on 23 February 2022.[272] In support of her claim, Ms Kuppusamy references an email from her solicitors to Huationg's solicitors, and the invoice attached therein, claiming damages for a "wasted trip to KL for med-re".[273] Huationg submits that the 23 February 2022 appointment was with Ms Gurusamy, but there is no evidence that Ms Kuppusamy had seen Ms Gurusamy on that date.[274] In support of this

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269 1st Defendant's Closing Submissions at para 8.25 referencing Transcript (9 May 2023) at p 34, lines 10–16.

270 Plaintiff's Closing Submissions at para 40; Agreed Core Bundle at pp 57–58.

271 1st Defendant's Closing Submissions at para 8.38.

272 Plaintiff's Reply Submissions at para 40 referencing Plaintiff's Closing Submissions at para 40; Agreed Core Bundle at pp 55–56.

273 Plaintiff's Closing Submissions at para 40 referencing Agreed Core Bundle at pp 55–56.

274 1st Defendant's Reply Submissions at para 8.5 referencing Plaintiff's AEIC at para 18.

submission, Huationg relies on Ms Kuppusamy's AEIC which states that she had taken a trip to see Ms Gurusamy.[275]

214 Although there is indeed no evidence that Ms Kuppusamy had seen Ms Gurusamy on 23 February 2022, this is an insufficient basis for disallowing her claim. Huationg's submission ignores the part of Ms Kuppusamy's AEIC where she states, in the same paragraph, that she had taken a trip to see Dr Singh on 23 February 2022 and that this was a "wasted trip".[276] Moreover, the invoice is evidence of TEs amounting to RM750 being incurred for a medical appointment in KL on 23 February 2022.

215 Moreover, I note that Huationg had earlier submitted in its Closing Submissions that this claim for TEs should be allowed.[277] There, Huationg took the position that Ms Kuppusamy's claim of RM750 for TEs incurred for her appointment with Dr Singh on 23 February 2023 was supported by documentary evidence,[278] referencing the same documents relied upon by her.[279] Further, Huationg's position that no damages should be awarded was only raised in its Reply Submissions. As such, its claim that the trip on 23 February 2022 was to see Ms Gurusamy was not clarified with Ms Kuppusamy, who did not have the opportunity to respond during the hearing or in her written submissions. Nor did Huationg put to her during cross-examination that she did not actually incur TEs on this day.

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275 Plaintiff's AEIC at para 18.b.iv.

276 Plaintiff's AEIC at para 18.b.v.

277 1st Defendant's Closing Submissions at para 8.36.

278 1st Defendant's Closing Submissions at para 8.36.

279 Agreed Core Bundle at p 56.

216 In view of the above, I allow Ms Kuppusamy's claim of RM750 (S$227.27) for TEs incurred to attend her medical appointment(s) in Kuala Lumpur on 23 February 2023.

11 June 2022

217 Ms Kuppusamy claims damages of S$100 for TEs incurred to attend the medical re-examination with Dr Singh on 11 June 2022.[280] Ms Kuppusamy agreed that this claim is reasonable.[281] As such, I will allow this claim for S$100.

12 to 14 October 2022

218 Ms Kuppusamy claims damages for TEs amounting to RM1,500 for her trip to and from Kuala Lumpur to attend her appointment with Mr Prasad.[282] Huationg agrees that Ms Kuppusamy is entitled to these damages. I will allow Ms Kuppusamy's claim for TEs in the amount of RM1,500 (S$454.55).

21 to 22 February 2023

219 Finally, Ms Kuppusamy claims damages of RM1,400 for TEs incurred in relation to her medical appointments on 21 and 22 February 2023.[283] Huationg agrees with this submission.[284] I will hence allow Ms Kuppusamy's claim for RM1,400 (S$424.24).

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280 Plaintiff's Closing Submissions at para 40, referencing Agreed Core Bundle at p 57.

281 1st Defendant's Closing Submissions at para 8.38; 1st Defendant's Reply Submissions at para 8.7.

282 Plaintiff's Closing Submissions at para 40; Agreed Core Bundle at p 62.

283 Plaintiff's Closing Submissions at para 40, referencing Agreed Core Bundle at pp 64–67.

284 1st Defendant's Reply Submissions at para 8.9.

220 In light of the above, I will allow damages amounting to S$1,306.06 for TEs incurred for travel within Malaysia for other appointments:

Time Period	**Travel Expenses**
3 September 2021	S$100
23 February 2022	RM750 (S$227.27)
11 June 2022	S$100
12 to 14 October 2022	RM1,500 (S$454.55)
21 to 22 February 2023	RM1,400 (S$424.24)
Total quantum of TEs incurred within Malaysia for other medical appointments (S$)	**S$1,306.06**

221 In summary, for Ms Kuppusamy's claim for TEs, I grant an award of S$1,594.24 according to the following breakdown:

Transport Expenses		**Quantum**
TEs incurred for traveling to Singapore		S$120.00
TEs incurred traveling within Malaysia	37 trips for medical treatments, including physiotherapy	RM555 (S$168.18)
	Other trips for medical appointments	S$1,306.06
Total Quantum of TEs Awarded		**S$1,594.24**

Future Transport Expenses

222 Ms Kuppusamy claims damages for FTEs of S$1,181.82.[285] This is comprised of two components:

[285] Plaintiff's Reply Submissions at para 31.

(a) four round trips from Johor Bahru to Kuala Lumpur for future replacements of the MPCP at RM750 per round trip, totalling RM3,000 (S$909.09). [286] This quantum is based on the cost of trips that Ms Kuppusamyhas made, as evidenced by invoices;[287] and

(b) the cost of 30 round trips for her 30 physiotherapy sessions at RM30 per round trip, totalling RM900 (S$272.73).[288]

223 Huationg cites *Tan Hun Boon* at [146] and [147] for the proposition that a reasonable amount for transport expenses is S$20 per round trip.[289] As Ms Kuppusamy has to attend a total of 35 sessions, comprising of five prosthetic replacement sessions and 30 physiotherapy sessions, the damages for FTEs to be award should be S$700.[290] Before assessing the Parties' submissions, I pause to note that the Parties have agreed that Ms Kuppusamy will have to attend four prosthetic replacement sessions,[291] as opposed to five as submitted by Huationg, totalling 34 trips. Accordingly, on Huationg's submission, at S$20 per round trip, the award for FTEs should be S$680.

Transport to Kuala Lumpur for replacements of prosthetic limb

224 I note that it is undisputed that Ms Kuppusamy will require four replacements of her prosthetic (see [176] above), and that her prosthetist,

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286 Plaintiff's Reply Submissions at para 31.

287 Agreed Core Bundle at p 56.

288 Plaintiff's Reply Submissions at para 31.

289 1st Defendant's Reply Submissions at para 6.12 referencing 1st Defendant's Closing Submissions at para 6.1.

290 1st Defendant's Reply Submissions at para 6.12 referencing 1st Defendant's Closing Submissions at para 6.1.

291 Plaintiff's Closing Submissions at para 30; 1st Defendant's Closing Submissions at para 5.3.2.

Mr Prasad, is based on Kuala Lumpur while she resides in Johor Bahru. The evidence adduced by Ms Kuppusamy shows the cost of a round trip to Kuala Lumpur to range between RM700[292] (S$212.12) to RM750 (S$227.27).[293] The rate submitted by Huationg of S$20 per round trip is clearly insufficient, on the evidence, to cover the cost of Ms Kuppusamy's round trips. As explained at [212] above, Ms Kuppusamy has also adduced evidence of incurring S$100 for each round trip from Johor Bahru to Kuala Lumpur. I will hence award S$100 for each of these round trips. Accordingly, I award Ms Kuppusamy damages totalling S$400 for FTEs incurred from four prosthetic replacement sessions.

Transport within Johor Bahru for physiotherapy

225 In light of my grant of an award for the cost of Ms Kuppusamy's 30 physiotherapy sessions, she will incur FTEs for transport within Johor Bahru to attend these sessions.[294] Huationg submits that the award of FTEs should be based on S$20 per round trip. On the other hand, Ms Kuppusamy's submission is only for RM30 (S$9.09) per round trip.

226 The court in *Kenneth Quek (HC)* granted an award of S$1,000 for FTEs incurred from at least two visits to the hospital per year for a period of 18 years (at [75]). This works out to, on average, S$27.78 per round trip. In *Tan Hun Boon*, the court at [147] also found that S$20 was reasonable per round trip to the hospital. Notwithstanding, these awards were made in the context of plaintiffs who were traveling within Singapore for their medical appointments. As Ms Kuppusamy's TEs would be incurred in Malaysia, as opposed to Singapore, and in light of her submissions, I will adopt the figure she claimed

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292 Agreed Core Bundle at pp 64–65.

293 Agreed Core Bundle at p 56.

294 1st Defendant's Closing Submissions at para 6.1.

and hence award RM900 (S$272.73) for FTEs incurred from 30 physiotherapy sessions.

227 In summary, I grant Ms Kuppusamy damages for FTEs of a total of S$1,151.52 pursuant to the following breakdown:

Future Transport Expenses	**No. of Sessions**	**Rate (S$)**	**Total (S$)**
Replacement of prosthetic	4	100	400
Physiotherapy	30	9.09	272.73
Total	**S$672.73**		

Conclusion

228 In summary, I find that Huationg is liable to Ms Kuppusamy for an award of damages amounting to S$838,224.52, pursuant to the following:

Head of Claims	**Award (S$)**
General Damages	
Pain, suffering, and loss of amenities	S$76,500.00
Loss of earning capacity	S$7,500.00
Future medical expenses	S$354,074.74
Future transport expenses	S$672.73
Special Damages	
Medical expenses	S$114,285.63
Transport expenses	S$1,594.24
Pre-trial loss of earnings	S$124,366.04
Loss of future earnings	S$159,231.14
Total	**S$838,224.52**

229 The Parties informed me that they have come to an agreement on the issue of interest payable on the damages awarded to Ms Kuppusamy. If the Parties are unable to come to an agreement on the issue of costs, they are to file

and exchange written submissions on costs, within ten days from the date of this judgment.

Kwek Mean Luck
Judge of the High Court

Ramasamy s/o Karuppan Chettiar and Mark Ho En Tian (Central Chambers Law Corporation) for the plaintiff;
Gokulamurali s/o Haridas, Wong Hui Min and Cassandra Kang (Tito Isaac & Co LLP) for the first defendant.
