IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 28

Court of Appeal / Civil Appeal No 4 of 2024

Between

Lo Kok Jong

… *Appellant*

And

Eng Beng

… *Respondent*

In the matter of District Court Suit No 1467 of 2020

Between

Eng Beng

… *Plaintiff*

And

Lo Kok Jong

… *Defendant*

GROUNDS OF DECISION

[Damages — Measure of damages — Personal injuries]
[Damages — Rules in awarding — Rule against double recovery]
[Damages — Special damages — Medical expenses]

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Lo Kok Jong
v
Eng Beng

[2024] SGCA 28

Court of Appeal — Civil Appeal No 4 of 2024
Sundaresh Menon CJ, Tay Yong Kwang JCA, Steven Chong JCA
27 June 2024

8 August 2024

Steven Chong JCA (delivering the grounds of decision of the court):

Introduction

1 A claim arising from a road accident would typically comprise general damages for pain and suffering and special damages for medical and other expenses. In Singapore, various subsidies and grants are made available by the government to its citizens to defray some medical expenses. However, such subsidies and grants are payable, subject to certain criteria, upon the incurrence of the medical expenses and *not* only in the context of injuries occasioned by accidents.

2 Quite often, in suits brought by victims of road accidents against the tortfeasors, the claims would include such subsidies and grants which were not paid for by the victims. Given that damages in tort claims are compensatory in nature, on its face, such claims would offend the rule against double recovery.

While the law has developed exceptions to that rule, it appears from some decisions that there is a general tendency to analogise the government payouts with the exceptions to the rule against double recovery in the court's intuitive quest to ensure that the tortfeasor does not benefit from such payouts. In our view, such efforts may obfuscate the true factors that should properly guide the exercise in ascertaining the intention behind the subsidies and grants.

3 We heard and allowed this appeal on 27 June 2024. It was clear to us that the judge of the General Division of the High Court below (the "Judge"), in holding that the government subsidies and grants totalling $39,515.08 (the "Subsidies and Grants") should not be deducted from the claim, failed to apply his mind to the relevant test as regards the applicability of the exceptions, *ie*, whether the respondent was intended to enjoy the Subsidies and Grants over and above what she might recover against the appellant. In the absence of such intention, the default rule against double recovery should apply.

4 In our Grounds of Decision, we take the opportunity to explain the test and objective indicia which should guide the court in its determination as to whether the disputed payouts fall within the exceptions to the rule against double recovery.

Facts

5 On 9 January 2020, the respondent was crossing a road when she was hit by a vehicle driven by the appellant. The respondent sustained personal injuries as a result, including a closed trimalleolar fracture of her right ankle.

6 The respondent filed a negligence suit against the appellant, seeking general and special damages. By consent, interlocutory judgment was entered

in the respondent's favour at 85% against the appellant with damages to be assessed.

Procedural background

Proceedings in the State Courts

7 The Deputy Registrar (the "DR") awarded damages totalling $36,348.64, comprising (a) general damages for pain and suffering caused to the respondent; and (b) special damages for medical and transport expenses paid by the respondent in cash or through Medisave/MediShield. However, the DR declined to award the sum of $39,515.08 (the "Disputed Sum") claimed by the respondent in special damages for the medical expenses which were paid for by the Subsidies and Grants. The Subsidies and Grants comprised:

(a) generic government subsidies of $19,211.57 (the "Generic Government Subsidies");

(b) Pioneer Generation subsidies of $148.88 (the "PG Subsidies"); and

(c) government grants for Community Hospital Services and medical drugs (the "Community Grants") of $20,155.16.

8 The DR held that the Subsidies and Grants did not fall under either of the established exceptions to the rule against double recovery: (a) the insurance exception (the "Insurance Exception") and (b) the benevolence exception (the "Benevolence Exception"). First, unlike insurance payouts, government subsidies could hardly be considered the "fruits" of a citizen's "thrift and foresight", which was the underlying rationale for the Insurance Exception. Second, the DR considered that the key criterion for falling within the Benevolence Exception was that the moneys were "intended for [the plaintiff's]

enjoyment, and not provided in relief of any liability in others fully to compensate him". In the absence of clear parliamentary indication that the Subsidies and Grants were intended as such, there was no material to suggest that Parliament intended to depart from the general rule against double recovery. Hence, the DR declined to award the Disputed Sum. On appeal, the District Judge (the "DJ") affirmed the DR's decision.

Decision below

9 The respondent appealed to the General Division of the High Court. The Judge allowed the appeal, finding that the Subsidies and Grants fell within the Benevolence Exception as they were meant to assist the respondent with her medical bills in view of her financial needs, and were not designed to relieve any potential tortfeasor from his liability to fully compensate the victim for the injuries arising from any tortious wrong. The Judge therefore found that there was nothing wrong with the respondent effectively being allowed to "encash" the Subsidies and Grants. Nevertheless, in light of the respondent's willingness to return the Subsidies and Grants to the relevant authority, the Judge directed the respondent to return the Disputed Sum to the Ministry of Health (the "MOH") (the "Repayment Order") for the MOH to take any action it deemed fit, including whether to allow the respondent to retain the Subsidies and Grants. The Judge noted that the Repayment Order would address concerns that the respondent would enjoy double recovery if the Disputed Sum were to be paid directly to her.

The parties' cases

10 The appellant appealed to the Appellate Division of the High Court. On this court's motion, the appeal was transferred to this court since it involved a

novel point of law of significance to personal injury cases and the wider insurance industry in Singapore.

11 The appellant submitted that in the absence of clear parliamentary intent that the Subsidies and Grants were meant to be enjoyed by the respondent over and above the damages payable by the appellant, the rule against double recovery should apply. The appellant also submitted that the Judge erred in making the Repayment Order as it contradicted his finding that the Subsidies and Grants were exempt from the rule against double recovery. In any event, the MOH did not have the power to receive repayment of the Subsidies and Grants.

12 The respondent submitted that the Subsidies and Grants were specifically intended to benefit her and not to lessen a tortfeasor's liability towards a victim. Therefore, the Subsidies and Grants (and government subsidies in general) were exempt from the rule against double recovery. The respondent argued that the Repayment Order sufficiently addressed concerns over double recovery and noted that the MOH was agreeable to the respondent repaying the Subsidies and Grants via a donation to the Rare Diseases Fund.

Issues to be determined

13 There were two issues before this court: (a) whether the Subsidies and Grants should be exempt from the rule against double recovery; and (b) whether the court should order repayment of the Subsidies and Grants to the MOH.

Our decision

The exceptions to the rule against double recovery

14 Damages are generally *compensatory* in nature. Whether in contract or tort law, an award of damages generally goes toward compensating a plaintiff for the *actual loss* he or she has suffered, and no further: see *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club*") at [1]. The logic underpinning this principle is self-evident – the aim of an award of damages is to place the plaintiff in the same position, as far as it is possible, as if the breach of contract or tort had not occurred: see *ACES System Development Pte Ltd v Yenty Lily (trading as Access International Services)* [2013] 4 SLR 1317 at [14].

15 There are, of course, other types of damages, such as punitive or restitutionary damages (the latter has yet to be decisively recognised in Singapore): see *ACB v Thomson Medical Pte Ltd and others* [2017] 1 SLR 918 ("*ACB*") at [153]–[206] and *Turf Club* at [250]–[255]. However, as the underlying rationale for these types of damages is different to that for compensatory damages, it is unsurprising that punitive or restitutionary damages may be available only in very limited circumstances: *ACB* at [176] and *Turf Club* at [254]. Importantly, these types of damages were *not* claimed in the present case.

16 One consequence of the general compensatory principle in damages is that any gain received by the plaintiff, which he or she would not have but for the injury, will *prima facie* be taken into account in calculating the damages to be awarded. In other words, such gains – commonly referred to as "collateral benefits" – will be *deductible* from the damages payable by the tortfeasor. This

is one facet of the rule against double recovery, which stems from the principle that a plaintiff should be compensated only for his or her actual loss.

17 However, common sense comes in to ameliorate the rigid operation of the rule against double recovery in respect of certain collateral benefits. First, where a plaintiff receives an insurance payout for which he or she has paid the premiums, the law has long regarded such payouts *not* to be deductible from the damages payable: *Bradburn v Great Western Railway Co* [1874–80] All ER Rep 195 ("*Bradburn*"). This is known as the "Insurance Exception" to the rule against double recovery. Second, where a plaintiff receives money from the benevolence of third parties prompted by sympathy for his or her misfortune, as in the case of a beneficiary from a disaster fund, the money received is similarly not deductible from the damages payable: *Redpath v Belfast and County Down Railway* [1947] NI 167 ("*Redpath*"). This is known as the "Benevolence Exception". For both these cases, there appears to be a clear rationale as to why the rule against double recovery should not operate – it would defeat the point of insurance payouts and benevolent donations if they were not provided over and above damages payable by a tortfeasor. Both the Insurance Exception and the Benevolence Exception are well-established in Singapore, although the list of exceptions remains open: see *The "MARA"* [2000] 3 SLR(R) 31 at [28]–[29].

The search for a rule of general application

18 Outside of the Insurance Exception and the Benevolence Exception, there are many borderline situations for which it is not as self-evident whether a payment received by the plaintiff, which he or she would not have had but for the tort, should be deductible from the damages payable. A few examples include disability or unemployment benefits paid out by the plaintiff's employer

or the government (see *Parry v Cleaver* [1970] AC 1 ("*Parry*") and *National Insurance Co of New Zealand Ltd v Espagne* [1961] Qd R 277 ("*Espagne*")); payouts from insurance plans taken out and paid for by the plaintiff's employer (*Hussain v New Taplow Paper Mills* [1988] AC 514 ("*Hussain (HL)*") and *Gaca v Pirelli* [2004] 1 WLR 2683 ("*Gaca*")); and indeed, medical subsidies provided by the government (*Hodgson v Trapp* [1989] AC 807 ("*Hodgson*")).

19 In these situations, a common analytical approach is to attempt to analogise the particular payment before the court to those under the Insurance Exception and the Benevolence Exception. For example, in *Parry*, the House of Lords held that following an accident in which the plaintiff policeman was severely injured, a disablement police pension which he had compulsorily contributed to during the course of his employment was not deductible from the damages payable by the tortfeasor. Lords Reid and Pearce reasoned that a contributory pension was *akin* to a form of insurance, and therefore fell within the Insurance Exception to the rule against double recovery: *Parry* at 16 and 37–38. However, while the outcome in *Parry* was undoubtedly correct based on the equities of that case, reasoning by analogy only takes one so far. As Lord Wilberforce observed in his own speech in *Parry* (at 41–42):

> I regret that I cannot agree that it is easy to reason from one type of benefit to another. One cannot argue from non-deductibility of gifts to non-deductibility of the proceeds of insurance, nor from the non-deductibility of insurance to the non-deductibility of pensions. Accident insurances are not gifts or like gifts, they are essentially wagers: pensions, if insurance at all, are not insurance in the same sense as accident insurance, and mere use of the common word is not enough to produce a common principle.

In his view, however, it was also "impossible to devise a principle so general as to be capable of covering the great variety of benefits from one source or another

which may come to an injured man after, or because, he has met with an accident": *Parry* at 41.

20 Indeed, a rule of general application remains elusive. Lord Bridge observed in *Hussain (HL)* that "many eminent common law judges … have been baffled by the problem of how to articulate a single guiding rule to distinguish receipts by a plaintiff which are to be taken into account in mitigation of damage from those which are not": *Hussain (HL)* at 528. Similarly, Dixon CJ, sitting in the High Court of Australia, lamented in *Espagne* that while "[t]here is no lack of judicial authority upon [this] very difficult subject … the plain fact is that no legal rule exists, that can be applied to every case … it appears to be futile to look in the present state of the law for a rule of general application": *Espagne* ([8] *supra*) at 284–286.

21 The inability to articulate a rule of general application is not for a lack of trying. Judicial attempts have been made to identify the reasons why certain collateral benefits should be exempt from the rule against double recovery. The first type of reasoning which often surfaces is that of causation – the argument that the relevant payment was caused *not* by the tort, but by some other factor, typically the plaintiff's employment, payment of insurance premiums, or the benevolence of other parties. For example, in *Bradburn* itself, recognised as the earliest articulation of the Insurance Exception, Pigott B reasoned that moneys received by the plaintiff under his accident insurance policy were not deductible from the damages payable by the tortfeasor because the plaintiff "does not receive that sum of money because of the accident, but *because he had made a contract providing for the contingency*; an accident must occur to entitle him to it, but it is not the accident, but his contract, which is the *cause* of his receiving it" [emphasis added]: *Bradburn* at 197. Similarly, in *Noor Azlin bte Abdul Rahman and another v Changi General* Hospital *Pte Ltd and others*

[2021] SGHC 10 ("*Azlin (HC)*"), the court held that "insurance payouts would have been received by [the plaintiff] not merely due to [the tortfeasor's] negligence, but primarily because [the plaintiff] would have presumably duly paid her insurance premiums": *Azlin (HC)* at [212]. Lastly, in *Payne v Railway Executive* [1952] 1 KB 26 ("*Payne*"), Cohen LJ found that the disability pension received by the plaintiff (stemming from his service in the Royal Navy) following an accident was not deductible from the damages payable by the tortfeasor. He reasoned that the accident in that case was not the "*causa causans* [*ie*, the fundamental cause] of the receipt by the first plaintiff of the disability pension, but the *causa sine qua non* [*ie*, merely a factual cause]. The *causa causans* was his service in the Royal Navy": *Payne* at 36.

22 Reasoning based on causation has also been relied on in respect of the Benevolence Exception. In *Redpath* ([17] *supra*), Andrews CJ held that sums received by the victim of a railway accident from public donations were not deductible from the damages payable, explaining that "[i]n the present case the *causa causans* of the fund was *not* the accident, but the bounty or charitable motives of the subscribers" [emphasis added]: *Redpath* at 172.

23 The second type of reasoning often relied on is that "collateral" matters, "*res inter alios acta*" (*ie*, matters between other parties), or matters which are too "remote" should not be considered in the assessment of damages. The common thread of reasoning which runs through these various labels is that the relevant payment was *separate and distinct* from the tortious act and the relationship between the plaintiff and the tortfeasor in such a manner that it should not be taken into account.

24 For example, in *Parry*, Lord Pearson attempted to explain various cases on the ground that the relevant payment was "too remote" from the accident. In

his view, the court in *Bradburn* ([17] *supra*) was "saying, in effect, though the phrases were not used, that the item of insurance money was too remote and collateral to be properly deductible from the damages payable for the plaintiff's injuries ...": *Parry* at 49–50. Similarly, in relation to the Benevolence Exception, Azmi J held in *Lim Kiat Boon & ors v Lim Seu Kong & anor* [1980] 2 MLJ 39 that "the proposition that there should be no reduction where the money is given gratuitously or advanced by a sympathetic employer is based on the principle that the generosity of others is *res inter alios acta* and not something from which the wrongdoer should reap the benefit".

25 The third type of reasoning which emerges is based on an intuitive sense of injustice if the tortfeasor were to pay a reduced amount in damages on account of the collateral benefit. This is best reflected in *Gaca* ([18] *supra*), where the court stated (citing *Parry* ([18] *supra*) at 14 and *Redpath* at 170) that "the rationale for the [Benevolence Exception] … is that "it would be revolting to the ordinary man's sense of justice, and therefore contrary to public policy … or "startling" … that the victim should have his damages reduced so that he would gain nothing from the benevolence of third parties": *Gaca* at [30]. In a similar vein, the Judge in the present case observed that it would be unfair and unreasonable for the appellant's liability to the respondent to be reduced on account of the Subsidies and Grants: *Eng Beng v Lo Kok Jong* [2023] SGHC 63 (the "Judgment") at [97].

26 In our view, these three types of reasoning are not helpful in assisting the court's analysis. In respect of causation, both the source of the collateral benefit (whether the plaintiff's payment of premiums or the benevolence of others) and the tort itself are necessary causes of the plaintiff receiving the collateral benefit. Designating one event as the *causa causans*, or main cause, over the other says nothing about the reasons for attributing causal responsibility

to that event, and can often mask decisions based on policy considerations or an intuitive sense of justice: see *Espagne* ([8] *supra*) at 285 and 306 and *IBM Canada Ltd v Waterman* [2013] 3 SCR 985 ("*IBM Canada*") at [31]. As Lord Pearce observed in *Parry*, "[s]trict causation seems to provide no satisfactory line of demarcation": *Parry* at 34.

27 Reasoning based on the "collateral", "*inter alios acta*" or "remote" nature of a payment is also not illuminating. These terms are vague and do not provide a practical test for whether a specific payment should be exempt from the rule against double recovery: see *Espagne* at 284–285, 301 and 311, *IBM Canada* at [26], and *Parry* at 13. The term "*res inter alios acta*" has also been rejected because there are situations in which the tortfeasor may rightfully enjoy the benefit of a contract made between the plaintiff and a third party – for example, where the plaintiff has found alternative employment after an accident, the pay he or she receives under the employment contract is to be taken into account in the assessment of damages for loss of earnings: *Parry* at 48.

28 Finally, relying on an intuitive sense of injustice is plainly flawed, particularly where not all share the same intuitions: *Espagne* at 285. Arguments based on an intuitive sense of injustice often invoke punitive reasoning – the idea that the tortfeasor does not deserve to enjoy a reduction in the damages payable and should in some sense be punished by being made to pay an unadjusted sum. However, such arguments are at odds with the main and *sole* concern of compensatory damages, which is to compensate the plaintiff for the actual loss suffered. In this context, notions based on the punitive or deterrent value of making the tortfeasor pay more damages are irrelevant.

The test of objective intended purpose

29 A more principled test of general application for the deductibility of collateral benefits may be found in the decision of the High Court of Australia in *Espagne*. In that case, after considering the flaws in the various modes of reasoning discussed above, Windeyer J observed as follows (*Espagne* at 311):

> What finally emerges? Phrases such as *causa causans*, collateral matter and so forth being discarded, how are we to ascertain what is remote? Is there a governing principle in all these cases? So far as any rules can be extracted, I think they may be stated, generally speaking, as follows: In assessing damages for personal injuries, benefits that a plaintiff has received or is to receive from any source other than the defendant are not to be regarded as mitigating his loss, if: (a) they were received or are to be received by him as a result of a contract he had made before the loss occurred and *by the express or implied terms of that contract they were to be provided notwithstanding any rights of action he might have*; or (b) they were given or promised to him by way of bounty, *to the intent that he should enjoy them in addition to and not in diminution of any claim for damages*. The first description covers accident insurances and also many forms of pensions and similar benefits provided by employers … The second description covers a variety of public charitable aid and some forms of relief given by the State as well as the produce of private benevolence. In both cases the decisive consideration is, not whether the benefit was received in consequence of, or as a result of the injury, but *what was its character*: and that is determined, in the one case by what under his contract the plaintiff had paid for, and in the other by the intent of the person conferring the benefit. *The test is by purpose rather than cause*.
>
> [emphasis added]

30 In our view, the focus of Windeyer J's test on the *intended purpose* of the payment – in the case of a contractual payment, the intent as expressed by the express or implied terms of the contract, and in the case of payments "by way of bounty", the intent of the person conferring the benefit – is the correct approach.

31 Similarly, in his judgment in *Espagne*, Dixon CJ recognised (at 286) that the "distinguishing characteristic" of payments which should be exempt from the rule against double recovery is that they are *intended* for the plaintiff's enjoyment independently of any right of redress against others:

> The reasoning begins with a distinction which I think is clear enough in general conception. There are certain special services, aids, benefits, subventions and the like which in most communities are available to injured people. Simple examples are hospital and pharmaceutical benefits which lighten the monetary burden of illness. If the injured plaintiff has availed himself of these, he cannot establish or calculate his damages on the footing that he did not do so. On the other hand there may be advantages which accrue to the injured plaintiff, whether as a result of legislation or of contract or of benevolence, which have *an additional characteristic*. It may be true that they are conferred because he is *intended to enjoy them* in the events which have happened. Yet they have *this distinguishing characteristic*, namely, they are *conferred on him not only independently of the existence in him of a right of redress against others, but so that they may be enjoyed by him although he may enforce that right*; they are the product of a disposition in his favour intended for his enjoyment, and not provided in relief of any liability in others fully to compensate him. This is readily seen in the case of benevolence … [and] in a contract of accident insurance …
>
> [emphasis added]

32 In the present case, the DR, DJ and the Judge all relied heavily on these passages from *Espagne*, recognising that the *intention* behind the Subsidies and Grants is key. We agree that the intended purpose of a payment is the appropriate criterion for ascertaining whether it should be exempt from the rule against double recovery. This criterion explains both the Insurance Exception and the Benevolence Exception. In the case of the Insurance Exception, it is obvious from the plaintiff's taking out of and payment for the insurance plan that any subsequent payout is intended to be enjoyed *over and above* any damages payable by a tortfeasor. In the case of the Benevolence Exception, it is equally clear from the charitable intent of the donors that the donated funds are

intended to be enjoyed over and above any damages payable. In a sense, a payment intended to be enjoyed by the plaintiff over and above the damages payable is *not* a doubly-recovered sum – it forms a separate pool of funds, accruing to the plaintiff, which is unrelated to and distinct from that which the tortfeasor must pay to cover the plaintiff's loss. That is why such payments are exempt from the rule against double recovery.

33 Given the importance of the test of intention, we consider it appropriate to closely examine how the exercise in ascertaining intention should be conducted.

34 First, the proper question is whether the plaintiff was intended to enjoy the relevant payment over and above the damages payable. In the absence of such intention, *the default rule against double recovery should be reverted to*, and the payment would be deductible from the damages payable: *Manser v Spry* [1994] HCA 50 at [10]. This is despite the fact that the tortfeasor may benefit from the payment by enjoying a reduction in the damages payable. The corollary of this is that the question of intent is *not* concerned with whether it was intended that *the tortfeasor should benefit* from the payment. It would almost never be the case that a *positive* intention for the tortfeasor to benefit will be found. Thus, if the focus were to be on finding such positive intention, then nearly *every* such payment would be exempt from the rule against double recovery. However, that would contradict the fundamental and axiomatic rule that damages for negligence are intended to be *purely compensatory* from the perspective of the plaintiff: see *Hodgson* ([18] *supra*) at 819. Indeed, as we have emphasised above, focusing on whether the tortfeasor should profit from a collateral benefit strays into punitive or deterrent reasoning, which is irrelevant in the context of compensatory damages.

35 Second, the intention of the provider of the payment must be assessed in an *objective* manner. This avoids the difficulty associated with ascertaining the precise state of mind of the provider, since typically "the intent [is] never even thought out by the donor, certainly not expressed": see *Zheng v Cai* [2009] HCA 52 at [20].

36 Thus, the question of intent may be phrased as follows: whether the intended purpose of the payment, objectively judged, was to provide the plaintiff with a sum to be enjoyed over and above the damages payable. This applies equally to explain the Insurance Exception and the Benevolence Exception, as well as to the question of whether a new exception should be found in any particular case.

37 To aid the application of this test, we turn to examine several key indicia which shed light on the objective intended purpose of a payment.

Indicia of the objective intended purpose

Contribution

38 First, whether the plaintiff contributed to the relevant payment is an important factor. This is the basis for the Insurance Exception, under which "[the plaintiff] has paid for the accident insurance with his own moneys, and the fruits of this thrift and foresight should in fairness enure to his and not to the defendant's advantage": *Minichit Bunhom v Jazali bin Kastari and another* [2018] 1 SLR 1037 ("*Minichit Bunhom*") at [83]. This is also the factor underlying the extension of the Insurance Exception to include pensions or insurance policies taken out by an employer but which the plaintiff-employee contributed to: see *Parry* ([18] *supra*) at 16 *per* Lord Reid and *Hussain (HL)* ([18] *supra*) at 532. In essence, the fact that the plaintiff contributed to the

relevant payment shows that the intended purpose of the payment, objectively judged, was to provide him or her with a sum over and above the damages payable.

39 Ascertaining whether a plaintiff contributed to the payment is not a straightforward exercise. In England, the proceeds of insurance policies will only be held not deductible if the plaintiff *directly* paid for or contributed to the premiums: *Gaca* ([18] *supra*) at [56]. By contrast, it has been held in Australia that a payout from an insurance policy paid for *entirely* by the plaintiff's employer remains not deductible from the damages payable (since the employee indirectly pays for the benefit by working for the employer): see Trindade, Cane and Lunney, *The Law of Torts in Australia* (Oxford University Press, 4th Ed, 2006) at p 734, citing *Richard v Mills* (2003 27 WAR 200). Nevertheless, this is a disagreement over fact rather than principle: the courts in both jurisdictions agree that a plaintiff's contribution indicates non-deductibility, but disagree over when such contribution may be found.

Indemnity for loss

40 The second factor is whether the payment is in the nature of an indemnity for, or is targeted directly at, the type of loss for which damages were sought. The principle underlying this factor is simple – if the payment is targeted at the type of loss for which damages were sought, then it is more difficult to say that it is intended to be given to the plaintiff above and beyond the damages payable, since it appears to be a *substitute* for the damages. For example, in *Sylvester v British Columbia* [1997] 2 SCR 315 ("*Sylvester*"), the plaintiff was unable to work and was receiving disability payments under his employment contract when he was wrongfully dismissed. The Supreme Court of Canada found that under the contract, the disability benefits were intended to be a

substitute for the plaintiff's regular salary, and therefore they were deductible from the damages payable by the employer: *Sylvester* at 321. The same court observed in its decision in *IBM Canada* ([26] *supra*) that this was because the payment in *Sylvester* "was intended to be an indemnity for the loss of the regular salary, precisely the sort of loss that resulted from the defendant's breach of the employment contract": *IBM Canada* at [30].

41 Similarly, in *Hussain (HL)* ([18] *supra*), the House of Lords found that wage benefits paid under an employment plan after the plaintiff suffered injury were "a partial substitute for earnings and [were] the very antithesis of a pension": *Hussain (HL)* at 530. The court thus ruled that the benefits were deductible from the damages claimed for loss of earnings: see *Hussain (HL)* at 528–532. The same position has been taken in Australia, where in *Redding v Lee* [1983] HCA 16 ("*Redding*"), Mason and Dawson JJ observed that "the central question … is whether the unemployment benefits can be said to be a substitute or partial substitute for wages, justifying the same treatment as wages in terms of assessment of damages": *Redding* at [43]. On the facts in *Redding*, this question was answered in the affirmative and the benefit was held to be deductible: *Redding* at [46].

42 Conversely, if the payment is *not* targeted at the type of loss covered by the damages, then it is easier to say that it *is* intended to be a sum given to the plaintiff over and above the damages payable. In *IBM Canada* itself, the plaintiff was a member of his employer's pension plan, under which the employer contributed a percentage of the plaintiff's salary to the plan on his behalf and the plan in turn guaranteed specific benefits upon retirement. After wrongfully dismissing the plaintiff (the notice period given was too short), the employer argued that the plaintiff's pension benefits should be deducted from the salary and benefits otherwise payable during what should have been the

correct notice period. The Supreme Court of Canada disagreed, finding that the pension benefits were *not* intended to be an indemnity for wage loss, and therefore could not be seen as compensating the plaintiff for the pecuniary loss he was claiming: *IBM Canada* at [4] and [62].

43 Similarly, in *Parry*, it will be recalled that the House of Lords held that the plaintiff policeman's disability pension was not deductible from the damages payable by the tortfeasor. Lord Pearce observed that the pension was "*not intended necessarily as any substitute for the capacity to earn* … a man may earn in a civilian employment when his service ends (whether prematurely or not) and thus enjoy both his pension and his civilian wages" [emphasis added]: *Parry* at 38. Thus, he held that the disability pension was not to be considered in assessing damages for loss of earnings, observing that "[the plaintiff's] pension is thus *a personal benefit additional to anything that he may be able to earn by way of wages*" [emphasis added]: *Parry* at 38.

Source of the payment

44 The third factor is the source of the payment. There are three possibilities: (a) the tortfeasor; (b) the government; or (c) some other third party. Where the tortfeasor is the source of the payment, that would be a *prima facie* indication that there is *no* intention for the plaintiff to enjoy the sum over and above the damages payable. Thus, in *Hussain v New Taplow Paper Mills Ltd* [1987] 1 WLR 336 ("*Hussain (CA)*"), Lloyd LJ observed that where "an employee is injured in the course of his employment, and his employers make him an immediate *ex gratia* payment … [there is] no reason why such a payment should not be taken into account in reduction of any damages for which the employer may ultimately be held liable": *Hussain (CA)* at 350. This proposition has more recently been upheld in *Gaca* ([18] *supra*) at [30]–[31].

45 Where some other third party is the source of the payment, that would ordinarily indicate that the intended purpose of the payment was for the plaintiff to enjoy it over and above the damages payable. As the DR observed (*Eng Beng v Lo Kok Jong* [2022] SGDC 130 ("*Lo Kok Jong (DR)*") at [36]):

> For private benevolence … it is *possible to infer that the sums were intended purely for the sufferer's rather than the wrongdoer's benefit*. Why else would that gift have been made? The fact that the benefit was advanced at all therefore gives *credible basis to infer that the donor intended for the victim to benefit* from the benevolence independently of any damages from others compensating him.
>
> [emphasis added; emphasis in original removed]

46 However, where the source of the payment is the government, the same inference is not necessarily drawn. We agree with the following observation made by the DR (*Lo Kok Jong (DR)* at [37]):

> … governmental benevolence is *quite different* [from private benevolence] … it is unsurprising to find governments providing benefits for their citizens … unremarkable to see governments setting up funds for the weak and vulnerable in the wider community … [and] commonplace to see governments implement national policies to subsidise the cost of important things like education and healthcare. The mere fact and existence of such benefits *should not ordinarily raise the same inference that they were intended to be enjoyed over and above any claims that a plaintiff-victim would have against his tortfeasor*.
>
> [emphasis added; emphasis in original removed]

47 Similar sentiments were expressed by Lord Bridge in *Hodgson* ([18] *supra*), where he stated (at 822, citing himself in *Westwood v Secretary of State for Employment* [1985] AC 20 at 43):

> I *do not see any analogy at all* between the generosity of private subscribers to a fund for the victims of some disaster, who also have claims for damages against a tortfeasor, and the state providing subventions for the needy out of funds which, in one way or another, have been subscribed compulsorily by various

> classes of citizens. *The concept of public benevolence by the state is one I find difficult to comprehend.*
>
> [emphasis added]

48 In other words, unlike private benevolence, for which the donor's intention to enrich the plaintiff above and beyond the damages payable may be easily discerned, it is difficult to find such intent underlying ordinary funds disbursed by the government to large segments of the citizenry (usually the weak and vulnerable). Thus, Dixon CJ drew a distinction in *Espagne* ([8] *supra*) between "ordinary charity dispensed by government" (including "certain special services, aids, benefits, subventions and the like which in most communities are available to injured people"), and those which have an "additional characteristic", namely that "they are the product of a disposition in his favour intended for his enjoyment, and not provided in relief of any liability in others fully to compensate him": *Espagne* at 286.

49 Thus, where the source of payment is the government, this would generally indicate that there is no intention for the payment to be enjoyed on top of the damages payable. Nevertheless, other factors or clear parliamentary intention may tip the scales in the other direction. For example, on the facts in *Espagne*, the government pension for permanently blind persons granted to the plaintiff following a serious accident was observed to have been specifically targeted at the plaintiff after consideration of his personal circumstances and granted as a sum for his enjoyment rather than an indemnity for loss. Thus, the court held that it was not deductible from the damages payable: see *Espagne* at 287 and 312. Likewise, Lord Bridge observed in *Hodgson* (at 822) that it is "always open to Parliament to provide expressly that particular statutory benefits shall be disregarded" – he cited s 2 of the Law Reform (Personal

Injuries) Act 1948 (UK) (which lists specific statutory benefits as not deductible) as an example.

Group of persons to whom payment is made available

50 The fourth and final factor is the group of persons to whom the relevant payment is made available. This factor explains the distinction between private benevolence and government payments just discussed. In the case of private benevolence, the payment is often being made specifically to a group of tort victims, thus indicating that the payment is intended to be a "bounty" to be enjoyed by that group on top of the damages payable. In contrast, "ordinary" government payments typically target large segments of the public and are not limited to tort victims. There is therefore no corresponding indication that such payments are intended to be "bounties" to be enjoyed by a particular group of tort victims.

51 The more directed the payment and the more the plaintiff's individual circumstances are assessed before disbursement, the stronger the indication that the payment is intended to be enjoyed on top of the damages payable. Thus, in *Espagne*, the fact that the pension was only granted "after a consideration of the position or situation in which the applicant stands" played an important part in Dixon CJ's decision that it was not deductible: *Espagne* at 287. Conversely, the further the group of potential recipients extends beyond tort victims to the general public, the weaker the indication that the payment is intended to be enjoyed on top of damages payable by a tortfeasor. This is the case for the "ordinary" government benefits referred to in *Espagne*.

52 We should make it clear that the above indicia are not necessarily exhaustive but they are the ones that have been shown in the case law to assist in the inquiry of the objective intended purpose.

Summarising the applicable test

53 Having examined the indicia above, we turn to summarise the overall applicable test for whether a collateral benefit should be exempt from the rule against double recovery.

54 An important preliminary stage is to determine whether the rule against double recovery is even engaged. Before there is any question of deduction, the receipt of the benefit must constitute some form of *excess* recovery for the plaintiff's loss: *IBM Canada* ([26] *supra*) at [23]. There is no question of excess recovery if the plaintiff's rights are subrogated to the party supplying the benefit and the latter attempts to recover the value of the benefit – in this situation, there is no risk of overcompensation: *IBM Canada* at [24]. Equally, where the plaintiff is under a contractual obligation to repay the party supplying the benefit out of the damages recovered, the rule against double recovery is *not* engaged by the plaintiff's recovery of the full sum in damages: *Minichit Bunhom* ([38] *supra*) at [49] and [85].

55 If this preliminary threshold is overcome – *ie*, recovery of full damages from the tortfeasor does constitute excess recovery – we *then* examine the question of whether an exception to the rule against double recovery should apply. As set out above, the main inquiry is whether the intended purpose of the payment, objectively judged, was to provide the plaintiff with a sum over and above the damages payable. The following points are pertinent in this inquiry:

(a) For payments made pursuant to a contract, the focus should first be on interpreting the contract to ascertain if the contractual intention was for the payment to be provided over and above the damages payable. Thus, in cases such as *Sylvester*, *Hussain (HL)* ([18] *supra* at 525–527) and *Graham v Baker* [1961] HCA 48 (at [8]), the courts focused on the characterisation of the payment under the relevant employment contract.

(b) For payments made pursuant to legislation, the focus should first be on interpreting the relevant legislation to ascertain if parliamentary intent was for the payment to be provided over and above the damages payable. For this reason, in cases such as *Redding* ([41] *supra* at [10]–[12]) and *Espagne* (at 287), the courts focused on the relevant statutory scheme under which the payment was made.

(c) For all other payments, available evidence on the intention of the benefactors and/or the general circumstances in which the payment was made may be examined.

56 In summary, the following indicia would be helpful in ascertaining the objective intended purpose of the payment:

(a) Whether the plaintiff contributed to the payment – if so, that would generally indicate that the payment was intended to be enjoyed on top of the damages payable.

(b) Whether the payment was in the nature of an indemnity for the type of loss for which damages were sought – if so, that would indicate that there was no intention for the payment to be enjoyed on top of the damages payable.

(c) The source of the payment – if it was the tortfeasor, that would ordinarily indicate that there was no intention for the payment to be enjoyed on top of the damages payable. If it was the government, that would in many cases indicate the same. If it was some other third party, that would typically indicate the opposite – *ie*, that the payment was intended to be enjoyed on top of the damages payable.

(d) The group of persons to whom the payment was made available – the more the plaintiff's personal circumstances were considered, and the more the group of recipients was limited to tort victims, the stronger the indication that the payment was intended to be enjoyed on top of the damages payable.

57 If, after consideration of these indicia, there is an absence of any clear indication that the intended purpose of the payment was for the plaintiff to enjoy it on top of the damages payable, then the default rule against double recovery should apply, such that the payment is deductible from the damages payable.

58 We should caution that the application of the indicia should not be conducted in a mathematical or formulaic manner. Rather, the indicia should be considered holistically, in a manner which informs an overall judgment as to the intended purpose of the payment. In this regard, the weight to be accorded to each factor is heavily fact-centric. For instance, the fact that a payment is meant to be an indemnity for the loss suffered takes on less significance where the plaintiff contributed to it – such is the case for insurance payouts where the plaintiff paid the premiums.

59 For completeness, we observe that the test of objective intended purpose and the accompanying indicia serve to *rationalise*, not replace, the Insurance

Exception and the Benevolence Exception. These exceptions are well-established in case law and provide helpful guidance. Nevertheless, as discussed above, reasoning primarily based on analogy to the existing exceptions may obfuscate the true factors that should guide the exercise in ascertaining intention. For example, despite the judicial tendency to analogise pensions or wage benefits to insurance payouts, the former group of payments *do not* in fact trigger the same considerations as insurance payouts. Whether a payment was in nature an indemnity for the type of loss suffered is an important consideration where courts are assessing the deductibility of pensions or wage benefits, but not so for insurance payouts, where the focus is largely on the contributory/non-contributory nature of the payment. In the context of the Benevolence Exception, government payouts are quite different in nature from private benevolence. Attempting to directly analogise the former to the latter may be an exercise in comparing apples to oranges. The test of objective intended purpose and the accompanying indicia serve to spell out the precise factors why a payment may truly be similar to the Insurance Exception and the Benevolence Exception, and if not, why certain payments should nevertheless be exempt from the rule against double recovery.

The relevance of public policy considerations

60 Public policy considerations often feature in cases addressing exceptions to the rule against double recovery, stemming from Lord Reid's observation in *Parry* ([18] *supra* at 13) that "[t]he common law has treated this matter as one depending on justice, reasonableness and public policy". In the present case, the DJ and the Judge also considered public policy factors at length in their respective judgments.

61 There are several common types of public policy reasoning relied on in the cases. The first and most common is that it would be unfair for the tortfeasor to benefit from the payment: see, for example, *Parry* at 14 and the Judgment at [97]. However, as discussed above, relying on the notion of unfairness is unhelpful; further, it does not accord with the compensatory aim of damages in tort to uphold an increase in damages payable on a punitive or deterrent basis. It bears emphasis that allowing the plaintiff to recover more than his or her actual loss also constitutes a form of "unfairness". In our view, any applicable notion of "justice" or "fairness" in this area of law is sufficiently accommodated for under the test of the intended purpose of the payment – the true "fair" outcome is one in which such purpose is given effect to.

62 The second type of public policy reasoning commonly relied on is that of incentives. For example, in upholding the Benevolence Exception, Andrews CJ observed in *Redpath* ([17] *supra* at 170) that if benevolent payments were held to be deductible from damages payable, "the inevitable consequence in the case of future disasters of a similar character would be that the springs of private charity would be found to be largely if not entirely dried up". In the context of the Insurance Exception, courts have explained that deducting benefits which plaintiffs have provided for themselves might discourage people from acting prudently in obtaining insurance protection: see *IBM Canada* ([26] *supra*) at [73].

63 However, the evidential basis for the strength of such incentives is unclear. Deducting insurance benefits may not discourage people from buying insurance, since the coverage is not limited to situations where there is legal recourse against a defendant: see *IBM Canada* at [74]. Neither is it certain that public benevolence for tort victims would disappear if such moneys were to be deductible from a tortfeasor's damages.

64 In any event, reasoning based on such incentives appears unnecessary. The test of objective intended purpose suffices to explain the non-deductibility of these types of payments. In the case of public benevolence, the payment is given for the plaintiff's enjoyment on top of the damages payable, out of sympathy for the plaintiff's plight. In the case of insurance benefits, the plaintiff's contribution shows clear intent that he or she is to enjoy the payment on top of the damages payable. Further considerations of providing incentives for purportedly "desirable" behaviour are extraneous and unnecessary.

65 Finally, in the context of government payments, the underlying public policy for such payments often forms a key part of the court's decision on whether they should be exempt from the rule against double recovery. This consideration is in fact accommodated for under the test of objective intended purpose, since interpreting the relevant legislation is a crucial component of the test. However, the court should be limited to enforcing public policy that is ascertainable from the exercise in statutory interpretation rather than embarking on its own policy evaluation. To the extent that no clear public policy or parliamentary intent is ascertainable, the default rule against double recovery should apply.

66 Thus, the common public policy considerations contemplated in the authorities appear either irrelevant or sufficiently accommodated for under the test of objective intended purpose. Hence, we caution against placing excessive weight on public policy considerations in deciding whether a payment should be exempt from the rule against double recovery.

Application to the facts

Precedent – the position at common law

67 As a matter of precedent, government subsidies and grants going towards a plaintiff's medical expenses have been held to be deductible from the damages payable by a tortfeasor.

68 There are two types of such government subsidies and grants in the UK: (a) monetary social security benefits for medical expenses ("Medical Social Security Benefits"); and (b) free medical treatment provided by the National Health Service (the "NHS").

69 In respect of Medical Social Security Benefits, there is presently legislation in place under the Social Security (Recovery of Benefits) Act 1997 (c 27) (UK) (the "SSRBA") which provides that the damages to be paid to the plaintiff for medical expenses are to be reduced by deducting the amount of the specified Medical Social Security Benefits paid or likely to be paid in the period following the injury: see *McGregor on Damages* (Sweet & Maxwell, 21st Ed, 2021) ("*McGregor on Damages*") at para 40-243. The specified benefits are listed out in Schedule 2 of the SSRBA and include, *inter alia*, attendance allowance (for payment of personal care) and the care component of the disability living allowance.

70 Notably, under the SSRBA, while the sum of Medical Social Security Benefits paid to the plaintiff will be deducted from the damages payable by a tortfeasor, the tortfeasor is obliged to *pay to the Secretary of State* an amount equal to the sum of the Medical Social Security Benefits paid to the plaintiff: see *McGregor on Damages* at para 40-166. As such, there is a statutory recoupment scheme in place. A government agency, the Compensation

Recovery Unit ("CRU"), administers the recovery scheme: see *Tort Law and the Legislature: Common Law, Statute and the Dynamics of Legal Change* (TT Arvind & Jenny Steele gen eds) (Bloomsbury Publishing, 2012) ("*Tort Law and the Legislature*") at 286.

71 Notwithstanding the present statutory scheme in place in the UK, the common law position *prior* to statutory intervention provides valuable guidance. Similar to that under the SSRBA, the common law position was that Medical Social Security Benefits were deductible from the damages payable. In *Hodgson* ([18] *supra*), the House of Lords was faced with the question of whether statutory allowances for the plaintiff's medical expenses were deductible from the damages payable by the tortfeasor. The court held that these allowances (and statutory benefits payable as of right to tort victims in general) were deductible, with Lord Bridge observing that he could not see "any analogy at all" between payments which fell under the Benevolence Exception and such statutory benefits: *Hodgson* at 822–823. In doing so, the court expressly overruled previous decisions in which English courts had held government payments for medical expenses to be not deductible: see *Hodgson* at 823. This decision was largely based on two reasons: (a) the statutory benefits were targeted directly at the medical expenses for which damages were claimed; and (b) no discernible intent could be found underlying these statutory benefits – hence, the default rule against double recovery applied: *Hodgson* at 822–823.

72 As for the second type of government subsidies and grants for medical expenses in the UK – free medical treatment provided by the NHS – courts also do not award plaintiffs damages in respect of such treatment: see *McGregor on Damages* at para 40-250, citing *West v Shephard* [1964] AC 326 at 357–358; *Mitchell v Mulholland (No. 2)* [1972] 1 QB 65 at 88; and *Housecroft v Burnett* [1986] 1 All ER 332 at 342j. The UK Law Commission observed as settled law

that (see *Damages for Personal Injury: Medical, Nursing and Other Expenses (1996) Consultation Paper No 144* at para 2.2):

> … if the plaintiff does not incur [medical] expenses, because he or she makes use of the NHS or services provided free of charge by a local authority, the plaintiff cannot recover what would have been paid if he or she had had private treatment or care.

73 Similar to Medical Social Security Benefits, there is presently a statutory recoupment scheme in place for medical expenses incurred by the NHS in caring for tort victims. Specifically, s 150 of the Health and Social Care (Community Health and Standards) Act 2003 (c 43) (UK) (the "HSCA") stipulates that the tortfeasor is obliged to pay to the Secretary of State the relevant charges incurred by the NHS in treating the victim (as calculated by the CRU). The Secretary of State is then obliged to pay the sum received to the NHS institutions which incurred the expenses: s 162 of the HSCA.

74 We observe that the nature of the Subsidies and Grants appears to fall midway between that of Medical Social Security Benefits and free healthcare under the NHS. However, it is not pertinent exactly which category the Subsidies and Grants fall under – the position at common law is that both categories are not exempt from the rule against double recovery.

Principle – applying the exceptions and the test of objective intended purpose

75 In our view, the voice of the authorities accords with principle. In this regard, it was undisputed that the Subsidies and Grants did not fall under the Insurance Exception. The factor of contribution towards the relevant payment (the signature characteristic under the Insurance Exception) was absent here.

76 As for the Benevolence Exception, much of the parties' submissions focused on whether the Subsidies and Grants possessed the "additional

characteristic" referred to by Dixon CJ in *Espagne* ([8] *supra*) at 286 – *ie*, whether they were the product of a disposition in the respondent's favour intended for her enjoyment, or whether they were part of "certain special services, aids, benefits, subventions and the like which in most communities are available to injured people" and which are deductible. The test of objective intended purpose which we have set out is in essence a modification of the "additional characteristic" test articulated by Dixon CJ. Hence, the questions of whether the Subsidies and Grants fall within the Benevolence Exception and whether a new exception should be found may be addressed simultaneously by applying the test of objective intended purpose.

77 As observed above, the first port of call for statutory payments should be parliamentary intention. However, it was undisputed in the present case that there was *no* clear expression of legislative intent in relation to whether the Subsidies and Grants were to be deductible from the damages payable. Therefore, the objective intended purpose of the Subsidies and Grants had to be inferred from the general information on their nature which was before the court.

78 The Subsidies and Grants comprise three categories: (a) the Generic Government Subsidies; (b) the PG Subsidies; and (c) the Community Grants. The Generic Government Subsidies apply automatically to *all* Singapore citizens and permanent residents seeking treatment at public healthcare institutions, with the percentage of medical expenses subsidised pegged to the monthly per capita household income of the patient (*ie*, a higher percentage subsidised for patients with lower household income). The Community Grants are also offered to *all* Singapore citizens and permanent residents who require intermediate and long-term care services, with the amount of subsidy also pegged to the monthly per capita household income of the patient.

79 The PG Subsidies are provided for under the Pioneer Generation and Merdeka Generation Funds Act 2014 (2020 Rev Ed) (the "Pioneer Act"). Section 12 of the Pioneer Act sets out the definition of a "Pioneer", which is based on age and the date on which an individual's Singapore citizenship was obtained. Under s 16(1)(*f*) of the Pioneer Act, financial assistance is provided in the form of a subsidy of the cost of any health service provided to a "Pioneer" by any prescribed healthcare provider, which includes "Specialist Outpatient Clinics" at public hospitals: see reg 5 of the Pioneer Generation and Merdeka Generation Funds (Pioneer Generation and Merdeka Generation Benefits) Regulations 2015.

80 Based on this information, the indicia may be applied as follows:

(a) Contribution – the respondent did not contribute to the Subsidies and Grants. Thus, this factor indicated that there was no intention for the respondent to enjoy the Subsidies and Grants on top of the damages payable.

(b) Indemnity for loss – the Subsidies and Grants were targeted specifically at the medical expenses incurred by the respondent, which was exactly the loss for which she claimed the Disputed Sum in damages. Thus, this factor indicated that the payments were a *substitute* for the damages claimed, and there was therefore no intention for the respondent to enjoy the Subsidies and Grants on top of the damages payable.

(c) Source of the payment and the group of persons to whom the payment was made available – the Subsidies and Grants were provided by the government and made available to *all* citizens in general (for the PG Subsidies, *all* "Pioneers"). Accordingly, the granting of the

> Subsidies and Grants (a) did not involve a close assessment of the respondent's personal circumstances (in the manner that the payment of the blindness pension in *Espagne* ([8] *supra*) entailed); and (b) extended to a group of persons far beyond only tort victims. This strongly indicated that there was no intention for the respondent to enjoy the Subsidies and Grants on top of the damages payable. In this regard, we respectfully disagreed with the Judge's finding that the tailoring of the Subsidies and Grants (on the basis of citizenship status, means and PG eligibility) indicated that they were intended to be not deductible: the Judgment at [80]–[81]. The important aspect of "tailoring", which would indicate non-deductibility, is whether the payment was "tailored" specifically to either the *individual* or to *tort victims*, since that may indicate that the payment was meant to be enjoyed on top of any damages payable. No such element was present in respect of the Subsidies and Grants. In fact, the opposite was true – the Subsidies and Grants were available to the general public.

81 Thus, all four indicia indicated that there was no intention for the Subsidies and Grants to be enjoyed by the respondent on top of the damages payable. However, simply totalling up the indicia is not useful. What matters is how they inform a holistic assessment of the objective intended purpose behind the Subsidies and Grants. Considered collectively, the indicia showed that none of the types of reasoning relied on by courts in finding an "additional characteristic" applied to the Subsidies and Grants – there was no self-contribution to the moneys (like in *Bradburn* ([17] *supra*)); no characterisation of the payment as an additional sum unrelated to the damages (like in *Parry* ([18] *supra*) and *IBM Canada* ([26] *supra*)); and no close examination of the respondent's personal circumstances that could conceivably have considered

her plight and accordingly awarded her a sum for her enjoyment (like in *Espagne*). Rather, the Subsidies and Grants were benefits made available by the government to the general public to cover any medical expenses they might incur. This strongly indicated that the Subsidies and Grants belonged to the group of "special services, aids, benefits, subventions and the like which in most communities are available to injured people", and which are deductible from a tortfeasor's damages: *Espagne* at 286. Nothing indicated that the Subsidies and Grants were intended to be a separate "bounty"; a prize distinct from the respondent's medical expenses and given to her for her enjoyment. Thus, the default rule against double recovery applied such that the Subsidies and Grants were deductible from the damages payable. It is irrelevant that the tortfeasor may benefit from this; that is an incidental consequence of the rule against double recovery.

Addressing Azlin (HC)

82 Much of the discussion in the parties' submissions and the decisions below was on the extent to which the Subsidies and Grants might be analogised to the government subsidies received by the plaintiff in *Azlin (HC)* ([21] *supra*) (the "*Azlin* Subsidies"). In *Azlin (HC)*, the court was faced with issues relating to damages following the finding that the defendant hospital was negligent in its failure to diagnose the plaintiff with lung cancer at an earlier stage. The plaintiff claimed, *inter alia*, for medical expenses which were paid for by three sources of government financial assistance (the "*Azlin* Subsidies") – the Medication Assistance Fund Plus ("MAF Plus"), National Cancer Centre Medifund ("NCC Medifund") and the MOH's Medication Assistance Fund ("MAF"). The court held that the *Azlin* Subsidies were *not* deductible from the damages payable by the negligent hospital, analogising them to the insurance payouts received by the plaintiff (*Azlin (HC)* at [212]–[214]):

> 212 … [The] insurance payouts would have been received by Ms Azlin not merely due to [the hospital's] negligence, but primarily because Ms Azlin would have presumably duly paid her insurance premiums to the insurer. There is thus no "double recovery" because, as clearly explained by Windeyer J in *Espagne*, the benefit from the insurance contract – the insurance payout – accrues to Ms Azlin as a result of a distinct contractual relationship between the insurer and Ms Azlin.
>
> 213 *The same reasoning applies to government subsidies*. Subsidies are provided by the government to its citizens or residents due to the government's relationship with its people. Such subsidies are awarded for a multitude of public policy reasons, such as the betterment of public health or access to affordable healthcare for citizens who qualify for assistance.
>
> 214 The Court of Appeal in *The "MARA"* at [32] endorsed Windeyer J's dicta in Espagne that *relief given by the state should also be an exception to the rule against double recovery*. Therefore, the fact that Ms Azlin's medical expenses were paid by her insurance or government subsidies *does not* prevent her from claiming for compensation for these medical expenses from the tortfeasor.
>
> [emphasis added]

These findings were not contested on appeal: see *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2022] 1 SLR 689 ("*Azlin (CA)*") at [5].

83 The respondent submitted that this passage in *Azlin (HC)* stood for the proposition that *all* government subsidies were not deductible from damages payable, regardless of their nature, type and the relevant application process. We disagree. There are multiple forms of government subsidies available to the general public – it would not make sense for there to be a general rule that all are exempt from the rule against double recovery. The appropriate test centres on the objective intended purpose of a payment, which is a highly fact-centric exercise. In the context of government subsidies, this would naturally involve an inquiry into the *specifics* of the particular subsidy at hand, such as the

relevant legislative framework under which it was paid out, the parliamentary intent behind it, and the group of persons to whom it was made available.

84 In fact, the very passage from *Espagne* referred to in *Azlin (HC)* (at [211] and [214]), states only that "*some* forms of relief given by the State" [emphasis added] may be exempt from the rule against double recovery: *Espagne* at 311. Dixon CJ even alluded to the fact that government subsidies would ordinarily be subject to the rule against double recovery, stating that "[t]here are certain special services, aids, benefits, subventions and the like which in most communities are available to injured people … [i]f the injured plaintiff has availed himself of these, he cannot establish or calculate his damages on the footing that he did not do so": *Espagne* at 286. There is, therefore, no blanket exemption of government subsidies from the rule against double recovery – the ultimate test is still whether the relevant benefits had the "additional characteristic" of being intended for the plaintiff's enjoyment: *Espagne* at 286.

85 The appellant attempted to distinguish the *Azlin* Subsidies from the Subsidies and Grants in the present case by arguing that the former were specific in nature and only granted following a tedious case-by-case assessment of the plaintiff's individual circumstances. The respondent disputed this, arguing that the MOH website did not state that a plaintiff is required to submit documents before subsidies are given under the MAF and MAF Plus (document submission is only applicable to the NCC MediFund application process). The respondent also contended that there was no evidence that the *Azlin* Subsidies required a case-by-case assessment by a medical social worker before being disbursed.

86 It was not necessary for the purposes of the present appeal to delve into a deep examination of the application process for the *Azlin* Subsidies. In any event, little information was provided in *Azlin (HC)* on this point. It suffices for

us to say that to the extent that the *Azlin* Subsidies were not targeted and were simply general subsidies which did not require consideration of the plaintiff's personal circumstances, then the decision that they were exempt from the rule against double recovery should not be followed. However, as far as the present case was concerned, it was clear that the Subsidies and Grants were *not* targeted and were general subsidies available to *all* Singaporeans and Permanent Residents (for the PG Subsidies, *all* "Pioneers"). Thus, no intention for the Subsidies and Grants to be enjoyed by the respondent over and above the damages payable could be inferred.

The Repayment Order

87 The respondent first raised the proposal to repay the Subsidies and Grants to the government in her closing submissions before the DR. This proposal was first raised as an *alternative* submission, in the event the court found that the Subsidies and Grants were not exempt from the rule against double recovery. The respondent's primary submission before the DR (and indeed the DJ and the Judge) was that she should enjoy the Subsidies and Grants over and above the damages payable by the appellant.

88 It appeared that the Judge ultimately accepted both the respondent's primary and alternative submissions in a composite manner by making the Repayment Order. Under the Repayment Order, the respondent was to return the Disputed Sum to the MOH for it to decide what to do with the moneys, including whether to allow the respondent to retain them. Having addressed why the Subsidies and Grants were not exempt from the rule against double recovery (and hence the respondent could not retain them), we turn to address the second issue raised by the Repayment Order, which was whether the court should nevertheless order repayment of the Subsidies and Grants to the MOH.

89 Repayment of the Subsidies and Grants to the MOH did *not* engage the rule against double recovery. Where there is a condition for the plaintiff to repay the allegedly doubly-recovered sums to the provider of the payment/benefit, the rule against double recovery is not engaged, since the plaintiff does not recover more than his or her actual loss. Thus, the real issue here did not concern the rule against double recovery, and was simply whether the court had the power (and if so, whether the court should exercise this power) to order the proposed repayment.

90 Indeed, it was clear to us that the repayment proposal was raised precisely as a way to *circumvent* the rule against double recovery. That was why it first arose as an *alternative* submission in the respondent's case. As the DR observed, there was initially no mention at the hearing before him of any intention to return the Subsidies and Grants to the government: *Lo Kok Jong (DR)* ([45] *supra*) at [1]. The proposal was only raised later in the respondent's closing submissions before the DR, presumably in response to the difficulties with double recovery which counsel for the appellant as well as the DR noted at the hearing.

91 However, at the oral hearing for this appeal, Ms VM Vidthiya, counsel for the respondent adopted the position that a repayment order was her primary and *only* prayer. When it was pointed out to Ms Vidthiya that this would amount to conceding that the respondent was not entitled to enjoy the Subsidies and Grants on top of the damages payable, she accepted as much.

92 This concession was in line with our view that the Subsidies and Grants were not exempt from the rule against double recovery. However, it also meant that the respondent's case rested wholly on an attempt to invite this court to devise what was essentially an *ad hoc* solution, adrift of any statutory or legal

framework, to prevent the appellant from benefiting from the Subsidies and Grants.

93 The respondent argued that there was precedent for making such an order. The respondent referred to the case of *Minichit Bunhom* ([38] *supra*), in which this court allowed the victim-employee to recover from the third-party tortfeasor damages for medical expenses which had already been paid for by the employer. These sums were then to be transferred to the employer on the basis of an agreement between the victim-employee and the employer (the "Non-Recourse Loan Agreement"), under which the victim-employee was to claim the sums from the tortfeasor and repay the employer.

94 However, the clear distinction between *Minichit Bunhom* and the present case was the existence of the Non-Recourse Loan Agreement in the former. There was a contractual mechanism for repayment in place. Therefore, in ordering the tortfeasor to pay damages for the victim's medical expenses, the court was simply recognising the contractual liability owed by the victim-employee, which meant that the rule against double recovery would *not* be engaged by the order.

95 The court in *Minichit Bunhom* did go on to say that even in the absence of a Non-Recourse Loan Agreement, "the court in granting the victim-foreign employee's claim for medical expenses against the tortfeasor would, and should as a matter of course, require an undertaking or make a direction that the victim-foreign employee was to return the recovered medical expenses to the employer": *Minichit Bunhom* at [85(a)]. We make three points in this regard. First, this observation was made *obiter* since on the facts, there was a Non-Recourse Loan Agreement in place. Second, in the context of the applicable legislation in *Minichit Bunhom* (*ie*, the Employment of Foreign Manpower Act

(Cap 91A, 2009 Rev Ed) (the "EFMA"), which obliged the employer to bear the victim-employee's cost of medical treatment arising from the accident), the court there found that the EFMA was designed to modify only the relationship between an employer and his foreign employee, and not that between a tortfeasor and the victim: *Minichit Bunhom* at [41]–[42]. Hence, the *dictum* that an order for repayment to the employer should ordinarily be given was a consequence of the court's interpretation of parliamentary intent specifically in relation to the EFMA. Third, in the general context of an employer's contractual agreement to pay the medical expenses of its employees, it is arguable that there is an *implied term* that the employer does not intend to make such payment on top of any damages that may be obtained from a third-party tortfeasor. Both these statutory and contractual analyses were inapplicable in the present case.

96 Thus, unlike in *Minichit Bunhom*, there was no legal basis for making a repayment order here. In fact, such an order would have involved the court taking steps beyond its judicial remit. The UK experience shows that setting up a mechanism for the recoupment of government benefits from tortfeasors is a complex undertaking. Academics have described the drawn-out political process, involving much debate over various policy considerations, leading up to the enactment of the Social Security Act 1989 (the "SSA") (the predecessor to the SSRBA) and the setting up of the CRU in the UK (*Tort Law and the Legislature* at 292–293):

> The Pearson Commission's view that the duplication of social security and tort payments should be brought to an end was accepted in principle by the Government in a White Paper in 1981. But before endorsing the Commission's proposal that benefits should be fully offset against damages, the Government wished to consider again whether it might also be possible for the state to recover those benefits. A recovery scheme would have the advantage, when compared to offsetting, of not reducing the liability of negligent defendants. In addition, for work injuries it was thought that the sums recovered might

> finance improved state provision for all injured workers whether or not they could claim in tort. Against this there continued to be concern that the state's intervention in tort claims would require an increase in staff numbers out of proportion to the benefit recovered. In addition it was thought difficult to set up an effective system to deal with cases settled out of court – the way in which almost all cases are determined in practice. Because of these fears the Government concluded that, on balance, recovery was still impractical. It therefore proposed to adopt the Pearson proposals for the offsetting of benefit, and to abandon the idea of state recoupment.
>
> However, further public comment was invited and this produced some responses suggesting that the recovery option should not be abandoned without more investigation. … By this time the political climate had also changed. The corporate welfarist philosophy of previous Labour Governments had given way to the monetary economics of Thatcherite conservatism to which state subsidies to employers and duplicated help for welfare recipients were anathema. The possibility of ending these subsidies – or at least recovering the public expenditure involved – was bound to receive enthusiastic political support.
>
> In spite of the increasingly favourable political climate the promised legislation did not materialise. As a result, in 1986 the National Audit Office criticised the Department of Health and Social Security for its failure to investigate the feasibility of a cost-effective recovery scheme. It called for detailed research and for the necessary calculations to be made … the commissioned report found that such a scheme was feasible.
>
> When the proposals for reform became known, these too met with widespread criticism. It is difficult to exaggerate the extent of this opposition. Only the National Audit Office and the Public Accounts Committee supported the proposals. Strong opposition came from the Law Society, the Association of British Insurers, and even certain judges who made public their view that the changes might make settlements harder to achieve. Both sides of industry – the Confederation of British Industry and the Trades Union Congress (TUC) – expressed their concern about the proposed scheme. The Industrial Injuries Advisory Council (IIAC) had previously been in favour of the Pearson Commission's proposal for offsetting benefits from damages. However, it was very critical of the new suggestions and was dismayed to note that any savings to be made were not to be earmarked for improvement to the industrial scheme. An editorial in Legal Action simply described the proposals as 'fiscal opportunism riding on the back of inadequate analysis'. However, such criticism made little difference to a Government

> who, at that time, were prepared to introduce legislation in the teeth of opposition from establishment groups. …
>
> It was thus very much as a result of the prevailing political philosophy that the recovery scheme was first set up by the Social Security Act 1989.

97 All this to say that the issue of instituting a recoupment mechanism is a legislative and executive matter which clearly lies outside the province of the courts. Further, as a matter of practicality, the logistical problems associated with the court ordering repayment to the MOH or the government have already become apparent. In the present case, in an exchange where it seemed unsure as to how the Disputed Sum should be handled, the MOH eventually confirmed that it wished for the respondent to make a personal donation of the Subsidies and Grants to the Rare Disease Fund. This struck us as an unsatisfactory and *ad hoc* solution which did not address the concern of returning the moneys to the correct institution or department which had incurred the expense of treatment. In fact, it was not even certain if the Subsidies and Grants did in fact come out of the MOH's funds – there was simply no evidence before this court on the true source of the Subsidies and Grants.

98 We also note the recent case of *Leong Yock Mui v Lek Long Peow* [2023] SGDC 307 ("*Leong Yock Mui*"), in which the DR attempted to address the difficulties generated by the Repayment Order for subsequent cases. The DR's solution was to direct the tortfeasor in that case to pay the claimed subsidy sums to the plaintiff's solicitors, for them to hold until a suitable government body was identified to receive those sums: *Leong Yock Mui* at [34]. The DR noted that a "suitable" government body meant the precise government body that disbursed the sums, and which was "legally empowered" to receive repayment. This would involve obtaining the government body's input on whether it was indeed empowered as such: *Leong Yock Mui* at [34]. In the event

that multiple government bodies were involved, the DR directed that a proposal ought to be made as to how the government subsidy was to be distributed: *Leong Yock Mui* at [34].

99 This solution, while creative, requires the court to act as an administrative body co-ordinating the exchange of information and the distribution of the relevant sums across government bodies. In our judgment, it is wholly inappropriate for the court to play this role. *Leong Yock Mui* serves as a further example of the impracticality of the court ordering repayment of the Subsidies and Grants.

100 Ultimately, in our view, it was both unprincipled and impractical for the court to institute a recoupment mechanism on its own accord. Accordingly, we rejected the respondent's proposal that the Subsidies and Grants be repaid to the MOH.

Conclusion

101 For the aforementioned reasons, we allowed the appeal. It was clear to us that the respondent's case was largely based on the intuitive attraction of the idea that the tortfeasor should not benefit from the Subsidies and Grants, which were paid for by the government, and therefore stemmed from taxpayers' moneys. In a way, the respondent's chief complaint was that the ordinary taxpayer should not be made to bear the appellant's liability.

102 But that would be looking at this case through the wrong lens. In the context of damages for motor accidents, the law is hardly ever concerned with a moralistic view of the *wrong* committed by the tortfeasor. Accidents, while unfortunate, are an inherent risk of the use of roads and highways by motorists. As far as a driver's moment of inattention or indiscretion strays beyond that of

tortious negligence into criminal negligence or rashness, the appropriate punishment to be meted out is a concern for criminal law. As far as civil claims go, however, punishment is *not* the focus. The main concern is simply to compensate the plaintiff for the loss suffered.

103 It is increasingly recognised that the losses suffered by victims of motor accidents are a general social burden. Insurance operates precisely to spread these losses among the subscribers to insurance as a whole. Given the ubiquity of insurance in modern society, these losses are effectively borne by society at large. In a way, medical subsidies and grants provided by the government work in the same manner, but for a larger type of general social burden. They work to spread the financial costs generated by medical problems – of which injuries suffered by motor accident victims are a subset – among taxpayers and hence society at large.

104 In the present case, as for almost all motor accident cases, the appellant's vehicle was covered by insurance and he had subrogated his rights to the insurance company. The court was essentially asked to choose between two very similar options – either having subscribers to insurance or having taxpayers bear the respondent's medical expenses. In the modern context, the membership of these two groups overlap to such an extent that the difference is practically negligible. Any notion of the "fairness" of making the tortfeasor instead of the government bear the victim's losses is illusory – either way, society as a whole bears the loss. We should add that it is, in any event, a false comparison because taxpayers bear this loss for everyone; and there is nothing to suggest that the legislation contemplated that they would not bear it if there is an accident and another potential payer. If the government is of the view that society should bear these expenses via the mechanism of insurance premiums rather than taxes, then it is up to the legislature to devise a statutory mechanism for recoupment.

Ultimately, true fairness in the present case lay in respecting the fundamental compensatory aim of damages as well as the court's role in this policy-laden area of law.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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