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

[2024] SGHC 150

Suit No 153 of 2021

Between

Lim Chun Yong (Lin Junxiong) (suing through his deputy and litigation representative Janet Fung Wui Mang)

… *Plaintiff*

And

(1) Jeffrey Yap @ Yap Kean Hui
(2) Liew Loy Sang
(3) Low Woon Hong
(4) Mohd Jafri bin Abdul Hamid
(5) Syarikat Continent Lorry Transport Sdn Bhd
(6) AmGeneral Insurance Berhad (Formerly Known As Kurnia Insurans (Malaysia) Berhad)

… *Defendants*

JUDGMENT

[Tort — Motor accidents]
[Tort — Negligence]
[Damages — Assessment]
[Damages — Measure of damages — Personal injuries cases]

[Damages — Computation]
[Civil Procedure — Experts]

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Lim Chun Yong (alias Lin Junxiong) (suing through his deputy and litigation representative Fung Wui Mang Janet) v Yap Jeffrey (alias Yap Kean Hui) and others

[2024] SGHC 150

General Division of the High Court — Suit No 153 of 2021
Wong Li Kok, Alex JC
3, 5, 6, 10–12, 17–19 October, 2, 3 November 2023, 2 February 2024

10 June 2024 Judgment reserved.

Wong Li Kok, Alex JC:

Introduction

1 This suit arises from a chain collision involving three motor vehicles in Malaysia that left the accident victim – one Mr Lim Chun Yong (Lin Junxiong) ("Mr Lim") – with severe injuries, including permanent brain injuries. Mr Lim, who is 44 years old as of the date of this judgment,[1] now resides in a nursing home. He is suing through his wife and deputy, Ms Janet Fung Wui Mang ("Ms Fung"). The other parties are the three drivers of the motor vehicles involved in the accident, the employer of one of those drivers, and the owner of one of those motor vehicles. The insurer of the vehicle driven by the first defendant was

[1] Affidavit of evidence-in-chief ("AEIC") of Dr Ang Lye Poh Aaron dated 23 June 2023 ("ALPA-2023 06 23") at p 5.

given leave to be added as an intervener in the suit, and later, the said insurer was added as the sixth defendant.[2]

2 The trial before me was not bifurcated. This judgment first addresses liability, before turning to quantum.

Liability

Background

3 On 12 February 2018, at approximately 12.15pm, there was a chain collision in the vicinity of KM 7.6 North South Highway (heading towards Kempas Toll Plaza, in the direction of Kuala Lumpur, Malaysia), involving three vehicles.[3]

4 The foremost vehicle in the chain was a prime mover towing a trailer carrying an empty 40-footer shipping container (the "semi-trailer").[4] The semi-trailer bore the vehicle registration number JSG 8995. The semi-trailer was driven by Mr Mohd Jafri bin Abdul Hamid, who is the fourth defendant. At the time when the accident occurred, he was driving the semi-trailer in the course of his employment with the fifth defendant, Syarikat Continent Lorry Transport Sdn Bhd, which is the owner of the semi-trailer.[5]

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[2] HC/ORC 6567/2021 pursuant to HC/SUM 5007/2021.

[3] AEIC of Ms Janet Fung Wui Mang dated 22 August 2023 ("JFWM-2023 08 22") at para 4 and p 40; AEIC of Mr Low Woon Hong dated 13 August 2023 ("LWH-2023 08 13") at para 4.

[4] AEIC of Mr Mohd Jafri bin Abdul Hamid dated 10 August 2023 ("MJBAH-2023 08 10") at para 1; AEIC of Mr Charles Henry Aust dated 18 August 2023 ("CHA-2023 08 18") at p 16 (Report dated 24 July 2023), para 8.2.

[5] MJBAH-2023 08 10 at para 1; Fourth and fifth defendants' defence to the sixth defendant's statement of claim (Amendment No 1) dated 20 November 2023 ("4D and 5D Defence to 6D-2023 11 20") at para 9.

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5 The second vehicle (*ie,* the middle vehicle) in the chain was a Toyota Innova car bearing vehicle registration number JNP 8890 (the "Toyota").[6] The Toyota was driven by the first defendant, Mr Jeffrey Yap @ Yap Kean Hui, and it is owned by the second defendant, Mr Liew Loy Sang.[7] The plaintiff has pleaded that the first defendant was driving the Toyota as the servant or agent of the second defendant at the time when the accident occurred.[8] There is no denial of this averment as neither the first nor the second defendants entered an appearance in the present suit. The sixth defendant, AmGeneral Insurance Berhad, was the insurer of the Toyota at all material times.[9] At the time of the collision, Mr Lim was the front seat passenger in the Toyota.[10] Ms Fung was in the rear seat of the Toyota, behind Mr Lim.[11] Their two children, aged 1 year old and 4 years old at the time when the accident occurred, were next to her in the same row of seats in the Toyota.[12] Ms Fung had gotten the first defendant's contact from her friend and she had hired him to drive her family to Senai Airport for a flight to her hometown in Sabah, Malaysia.[13]

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6 JFWM-2023 08 22 at para 4; CHA-2023 08 18 at pp 15–16 (Report dated 24 July 2023), para 8.1.

7 JFWM-2023 08 22 at para 4(ii).

8 Statement of Claim (Amendment No 1) dated 12 August 2022 ("SOC-2022 08 12") at para 2.

9 Sixth defendant's defence to the fourth and fifth defendants' statement of claim (Amendment no 1) dated 3 November 2023 ("6D Defence to 4D and 5D-2023 11 03") at para 2(c).

10 JFWM-2023 08 22 at para 5.

11 Notes of Evidence ("NEs") dated 3 October 2023 at p 5, lines 7–14.

12 NEs dated 3 October 2023 at p 5, line 15 to p 6, line 12.

13 NEs dated 3 October 2023 at p 4, lines 14–26; p 15, lines 18–23.

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6 The rearmost vehicle in the chain was a BMW X3 car bearing vehicle registration number WXK1808 (the "BMW").[14] At all material times, the BMW was owned and driven by the third defendant, Mr Low Woon Hong.

7 Collision reconstruction experts were appointed to provide expert evidence in this suit. Dr Shane Richardson ("Dr Richardson") was appointed by the fourth and fifth defendants.[15] Mr Charles Henry Aust ("Mr Aust") was appointed by the sixth defendant.[16] Other than preparing their own respective expert reports and supplementary reports, the two experts conducted a caucus in person on 6 October 2023 in Singapore, and produced a Joint Expert Report dated 6 October 2023 setting out areas of agreement and disagreement in their reconstruction of the accident.[17]

8 The two experts agreed that the accident took place on a stretch of highway that was 270m before the Kempas Toll Plaza, with a road width of 8.3m.[18] There were no lane markings on the roadway at the point of collision, as the lane markings separating the roadway into two lanes had ended some distance before the point of collision.[19] The experts agree that shortly after the accident, the semi-trailer was generally located at the centre of the roadway.[20] The experts differ as to whether or not the semi-trailer had been moved a small

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14 LWH-2023 08 13 at para 2; CHA-2023 08 18 at p 17 (Report dated 24 July 2023), para 8.3.

15 AEIC of Dr Shane Richardson dated 15 August 2023 ("SR-2023 08 15") at para 2.

16 CHA-2023 08 18 at para 3.

17 Letter from solicitors for the sixth defendant dated 6 October 2023 ("6D Letter-2023 10 06") at paras 5–6.

18 Joint Expert Report dated 6 October 2023 ("JEP-2023 10 06") at S/Ns 1, 2 and 7.

19 JEP-2023 10 06 at S/N 2.

20 JEP-2023 10 06 at S/N 3.

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distance forward during the emergency recovery efforts.[21] The experts agree that the rest position of the Toyota was such that the rear right tyre of the Toyota was on the right fog line of the roadway, with the left front corner of the Toyota engaged with the rear right corner of the semi-trailer's trailer.[22] The BMW came to rest straddling the right fog line, with the right wheels of the BMW slightly over the fog line.[23]

9 As a result of the collision, Mr Lim was seriously injured. He had been wedged between his seat and the rear right of the semi-trailer.[24] Rescuers from the emergency services freed Mr Lim using equipment. He was conveyed by ambulance to Hospital Sultanah Aminah in Malaysia.[25] Mr Lim was medically evacuated to Singapore for further treatment on 13 February 2018 and was admitted into the Surgical Intensive Care Unit in Singapore General Hospital on 15 February 2018.[26] Mr Lim's injuries will be elaborated upon later, when the issue of quantification of damages is canvassed.

Parties' cases

Plaintiff's case

10 The plaintiff submits that the first defendant (with the second defendant vicariously) should be found 50% responsible for the accident,[27] the third

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[21] JEP-2023 10 06 at S/N 4.

[22] JEP-2023 10 06 at S/N 5.

[23] JEP-2023 10 06 at S/N 6.

[24] JFWM-2023 08 22 at para 9.

[25] JFWM-2023 08 22 at paras 12 and 15.

[26] JFWM-2023 08 22 at para 18.

[27] Plaintiff's closing submissions on liability dated 15 January 2024 ("PCS (Liability)") at paras 27 and 33.

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defendant 20% responsible,[28] and the fourth defendant (with the fifth defendant vicariously) 30% responsible.[29]

11 The plaintiff submits that all the defendants, save for the sixth defendant, were liable to some extent for the accident as their acts or omissions caused and contributed to the accident and thus Mr Lim's injuries.[30]

12 In relation to the fourth defendant, the plaintiff's case is that the fourth defendant knew that he was supposed to keep to the left lane as he was operating a heavy vehicle, but the fourth defendant decided to travel in the centre of the road, thus creating a dangerous situation.[31] On the plaintiff's case, the fourth defendant's negligence resulted in the first defendant taking evasive action, which precipitated his overreaction and the consequent collision.[32]

13 In relation to the third defendant, the plaintiff's case is that the third defendant had been driving too fast, beyond the speed limit, and had failed to keep a safe following distance.[33] The plaintiff submits that the crash between the BMW and the Toyota pushed the Toyota forward and contributed to Mr Lim's injuries.[34]

14 In relation to the first defendant, the plaintiff submits that he had been driving recklessly beyond the speed limit around the time when the collision

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[28] PCS (Liability) at paras 21 and 33.

[29] PCS (Liability) at paras 27 and 33.

[30] PCS (Liability) at para 8.

[31] PCS (Liability) at para 10.

[32] PCS (Liability) at para 10.

[33] PCS (Liability) at para 11.

[34] PCS (Liability) at para 11.

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between the Toyota and the semi-trailer occurred.[35] The plaintiff submits that the first defendant likely failed to keep a proper lookout, and had overreacted by swerving too far right and then too far left, thus colliding with the semi-trailer.[36]

15 As between the various primary tortfeasors, the plaintiff submits that the bulk of the responsibility for the accident should lie with the first defendant and the fourth defendant since their collision created a sudden obstruction which forced the third defendant to take evasive action.[37]

16 The plaintiff submits that he is entitled to judgment against the first to fifth defendants on a joint and several basis as they have contemporaneously committed a tort against the plaintiff and caused indivisible damage.[38] The plaintiff further pleaded that the first defendant drove the Toyota as servant/agent of the second defendant, who is thereby vicariously liable for the negligence of the first defendant.[39] The plaintiff also pleaded that the fourth defendant drove the semi-trailer as servant/agent of the fifth defendant, who is thereby vicariously liable for the negligence of the fourth defendant.[40]

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35 PCS (Liability) at paras 12 and 13.

36 PCS (Liability) at para 12.

37 PCS (Liability) at para 19.

38 PCS (Liability) at para 34.

39 Plaintiff's Statement of Claim (Amendment No 1) at para 2.

40 Plaintiff's Statement of Claim (Amendment No 1) at para 4.

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Sixth defendant's case

17 The sixth defendant's primary case is that the first defendant should be found completely not liable for the accident.[41] In the alternative, the sixth defendant submits that the first defendant (with no mention of the vicarious liability or lack thereof of the second defendant) should be found 10% responsible for the accident,[42] with the third defendant 10% responsible,[43] and the fourth defendant (and the fifth defendant vicariously) 80% responsible.[44]

18 The sixth defendant contends that there is no cogent evidence that the first defendant was speeding at the time of the collision.[45] The sixth defendant also denies that the first defendant was driving impatiently and recklessly in a manner that caused or contributed to the accident.[46] On the sixth defendant's case, the first defendant had already slowed down from his original speed of between 100km/h and 110km/h by the time the collision between the Toyota and the semi-trailer had occurred.[47] The sixth defendant also denies that the first defendant overreacted to the movement of the semi-trailer, and instead did what any reasonably competent and diligent motorist would have done instinctively to avoid a more calamitous accident.[48] The sixth defendant argues that the agony of the moment defence is still available to the first defendant despite his failure

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41 6th defendant's closing submissions on liability dated 12 January 2024 ("6DCS (Liability)") at para 129.

42 6DCS (Liability) at paras 114, 128 and 131.

43 6DCS (Liability) at paras 126–127.

44 6DCS (Liability) at para 128.

45 6th defendant's reply submissions on liability dated 30 January 2024 ("6DRS (Liability)") at para 25.

46 6DRS (Liability) at para 29.

47 6DRS (Liability) at para 42.

48 6DRS (Liability) at paras 50–73.

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to appear for the trial.[49] The sixth defendant also submits that there is no reasonable basis for adverse inferences to be drawn against the first defendant merely because he did not attend the trial.[50]

19 According to the sixth defendant, the third defendant was negligent in that his BMW collided into the rear of the Toyota, propelling the Toyota forward to collide into the rear of the semi-trailer.[51] As such, the third defendant should bear some contribution for the plaintiff's claim, which contribution the sixth defendant quantifies at 10%.[52]

20 The sixth defendant argues that the fourth defendant was negligent by veering right,[53] and encroaching into the path of the Toyota, putting the first defendant in a situation of imminent danger.[54] In that situation, the first defendant was forced, in the agony of the moment, to react and take emergency evasive action in response to the fourth defendant's encroachment by veering to the right and then left, which led to the collision.[55] The first defendant thus had no reasonable time or opportunity to calibrate a proper response to avoid the collision.[56] The sixth defendant takes the position that the accident was caused solely by the negligence of the fourth defendant,[57] and thus sole liability for the

49 6DRS (Liability) at paras 75–81.

50 6DRS (Liability) at para 82.

51 6DCS (Liability) at paras 17(a) and 124.

52 6DCS (Liability) at paras 126–127.

53 6DCS (Liability) at para 69.

54 6DCS (Liability) at para 17(b).

55 6DCS (Liability) at paras 18, 41, 93, 103, 105–110.

56 6DCS (Liability) at para 96.

57 6DCS (Liability) at para 92.

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accident must rest on the fourth defendant primarily,[58] and the fifth defendant vicariously.[59] In the alternative, if the court finds the first defendant to be negligent, the sixth defendant submits that the first defendant's liability for the accident should be no more than 10%.[60]

21 Finally, the sixth defendant argues that the burden is on the plaintiff to prove his claim for negligence against each of the defendants, and the *res ipsa loquitur* doctrine cannot be applied.[61]

Third defendant's case

22 The third defendant submits that the first defendant and the fourth defendant should collectively be found 90% responsible for the accident,[62] and the third defendant 10% responsible.[63]

23 The third defendant submits that the fourth defendant was negligent in that: (a) he decided to pull out into the right lane of the highway and subsequently travel down the centre of the road, creating a hazardous situation for other road users;[64] (b) he failed to pay proper attention to the right side of the semi-trailer as he travelled down the centre of the highway;[65] and (c) he exacerbated the dangerous situation through his careless control of the semi-

58 6DCS (Liability) at para 40.

59 6DCS (Liability) at para 98.

60 6DCS (Liability) at para 114.

61 6DCS (Liability) at para 21.

62 3rd defendant's closing submissions on liability dated 12 January 2024 ("3DCS (Liability)") at para 56.

63 3DCS (Liability) at para 56.

64 3DCS (Liability) at para 9.

65 3DCS (Liability) at para 14.

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trailer which allowed the semi-trailer to inadvertently veer right and cause the first defendant to swerve.[66]

24 As for the first defendant, the third defendant submits that the first defendant overreacted when there was no actual encroachment into the Toyota's path by the semi-trailer, such that the overreaction cannot be considered to have been done in the agony of the moment. In reality, the first defendant had simply displayed poor control and management of the Toyota.[67] Moreover, the third defendant submits that the agony of the moment defence cannot apply to the first defendant as he was responsible for placing himself in a dangerous situation and created the conditions for overreaction by travelling at an excessive speed and driving recklessly.[68]

25 The third defendant does not dispute that he had failed to bring his BMW to a stop in time and had collided into the rear of the Toyota.[69] His position is that his BMW had collided with the rear of the Toyota *after* the Toyota had collided with the semi-trailer.[70] He concedes that he was negligent in failing to keep a sufficient following distance from the Toyota.[71]

26 In relation to the apportionment of liability as between the defendant tortfeasors, the third defendant submits that the more severe first collision between the semi-trailer and the Toyota contributed more to Mr Lim's injuries

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[66] 3DCS (Liability) at paras 20–21.

[67] 3DCS (Liability) at paras 27–29.

[68] 3DCS (Liability) at para 30.

[69] 3DCS (Liability) at para 31.

[70] 3DCS (Liability) at paras 31 and 40.

[71] 3DCS (Liability) at para 32.

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than the subsequent minor collision between the BMW and the Toyota.[72] Moreover, the third defendant submits that the first collision involving the semi-trailer and the Toyota is the predominant reason for the overall accident as it created a situation where the Toyota came to an unexpected and virtually immediate stop on the right lane where the BMW was travelling.[73] This prior collision between the semi-trailer and the Toyota (and thus the first and fourth defendants' negligence) had greater causative potency than the second collision between the Toyota and the BMW (which resulted from the third defendant's negligence).[74] The third defendant also submits that the first and fourth defendants were more blameworthy than the third defendant.[75] In this regard, the third defendant emphasises the destructive disparity between the much larger semi-trailer as compared to the Toyota and the BMW.[76] The third defendant also submits that the first defendant is more blameworthy than the third defendant as the first defendant had allegedly attempted to overtake the semi-trailer without ensuring that there was sufficient safety margin between the Toyota and the semi-trailer and/or without taking into account any possibility of lateral movement on the part of the semi-trailer.[77] The third defendant argues that his failure to keep a sufficient following distance was due to his reasonable expectation that vehicles would start slowing down in anticipation of the upcoming tollbooth, and that he had reacted well to the

72 3DCS (Liability) at paras 46–47.

73 3DCS (Liability) at para 49.

74 3DCS (Liability) at paras 49 and 50.

75 3DCS (Liability) at para 51.

76 3DCS (Liability) at para 53.

77 3DCS (Liability) at para 54.

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collision between the semi-trailer and the Toyota by managing to slow his vehicle to 10km/h at the point of impact between his BMW and the Toyota.[78]

Fourth and fifth defendants' case

27 The fourth and fifth defendants submit that the first defendant (and the second defendant vicariously) should be found 55% responsible for the accident, the third defendant 30% responsible, and the fourth defendant (and the fifth defendant vicariously) 15% responsible.[79]

28 The fourth and fifth defendants submit that the first defendant was likely driving at around 90km/h to 100km/h immediately prior to the collision between the Toyota and the semi-trailer, which was above the speed limit of 60km/h.[80] They submit that the first defendant had reacted to the rightwards movement of the semi-trailer by swerving excessively to the right before making a sharp turn to the left and into the right rear corner of the semi-trailer.[81] Relatedly, the fourth and fifth defendants submit that this reaction on the part of the first defendant can be attributed to the high speed at which he was travelling at the material time, which afforded him insufficient space and time to react to the perceived exigency.[82] The fourth and fifth defendants add that the first defendant could have avoided the collision by maintaining a straight line of travel without deviation as there was ample space for the Toyota to drive past the semi-trailer.[83]

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78 3DCS (Liability) at para 55.

79 4th and 5th defendants' closing submissions on liability dated 12 January 2024 ("4D5DCS (Liability)") at para 125.

80 4D5DCS (Liability) at paras 54 and 86(a).

81 4D5DCS (Liability) at paras 79 and 109.

82 4D5DCS (Liability) at paras 79 and 99.

83 4D5DCS (Liability) at para 86(e).

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They argue that the first defendant does not qualify for the agony of the moment defence because the semi-trailer did not swerve or encroach into the path of the Toyota. Thus, there was no emergency for the first defendant to react to and the overreaction of the first defendant was done without due care and consideration expected of a reasonable and prudent road user.[84] Moreover, the first defendant cannot avail himself of the defence because he was the one who placed himself in such a dangerous position by driving at an excessive speed.[85] The fourth and fifth defendants submit that with the first defendant's unexcused absence from the proceedings, the court should draw adverse inferences against him.[86]

29 The fourth and fifth defendants submit that the semi-trailer was travelling at an extremely low speed of about 10km/h immediately prior to the impact between the semi-trailer and the Toyota.[87] They also submit that the semi-trailer was leaning to the right but did not swerve right or encroach into the path of travel of the Toyota.[88] However, they concede that the facts do merit a finding of negligence on the part of the fourth defendant in that he failed to exercise due care and skill in the management and control of the semi-trailer at the time of the collision between the Toyota and the semi-trailer.[89] They concede that the fourth defendant ought to have known that heavy vehicles are more difficult to control, require a quick reaction time, that chances of a collision are higher in heavy traffic, and that heavy vehicles are potentially more

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[84] 4D5DCS (Liability) at para 107.

[85] 4D5DCS (Liability) at para 108.

[86] 4D5DCS (Liability) at paras 56, 95 and 104; 4th and 5th defendants' reply submissions on liability dated 30 January 2024 ("4D5DRS (Liability)") at para 25.

[87] 4D5DCS (Liability) at para 59.

[88] 4D5DCS (Liability) at paras 66, 72 and 120; 4D5DRS (Liability) at paras 13–17.

[89] 4D5DCS (Liability) at para 115; 4D5DRS (Liability) at para 45.

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destructive.[90] They further concede that in allowing the semi-trailer to move closer to the Toyota on the right and failing to steer the semi-trailer in a straight manner, the fourth defendant had fallen short of the standard of care expect of him.[91] Nonetheless, the fourth and fifth defendants submit that the fourth defendant's negligence remains a smaller contributing factor to the accident as compared to the first and third defendants' negligence.[92] They argue that it was reasonable for the fourth defendant to avoid traffic in the highly congested left lane by moving into the adjacent lane and travelling for a distance in this lane prior to the collision between the Toyota and the semi-trailer,[93] albeit the fourth defendant should be required to exercise even greater care and control over the movement of his semi-trailer.[94] The fourth and fifth defendants argue that the presence of the semi-trailer in the middle of the highway at the time of the collision between the Toyota and the semi-trailer did not create a dangerous situation for other road users – the semi-trailer was moving slowly, visibility was not impaired, and other road users were keenly aware of the presence of the semi-trailer in the middle of the highway.[95] The fourth and fifth defendants also point out that the Malaysian traffic police had investigated the accident and fined both the first and third defendants, but there was no offence levelled against the fourth defendant in relation to the accident.[96]

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90 4D5DCS (Liability) at para 116.

91 4D5DCS (Liability) at para 119; 4D5DRS (Liability) at para 55.

92 4D5DCS (Liability) at para 115.

93 4D5DCS (Liability) at para 118; 4D5DRS (Liability) at paras 20–22.

94 4D5DCS (Liability) at para 118.

95 4D5DRS (Liability) at paras 52–53.

96 4D5DRS (Liability) at para 26.

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30 The fourth and fifth defendants argue that the BMW was travelling at a speed of about 80km/h to 90km/h immediately prior to the impact between the BMW and the Toyota.[97] They submit that the third defendant had followed too closely behind the Toyota,[98] which was the primary cause of the collision between the Toyota and the BMW.[99] They argue that the excessive speed at which the third defendant was travelling also impeded his ability to react to the collision between the semi-trailer and the Toyota.[100]

31 The fourth and fifth defendants' case is that there was, firstly, a prior collision between the semi-trailer and the Toyota, and then, secondly, a later collision between the Toyota and the BMW.[101] They argue that the prior collision between the semi-trailer and the Toyota had contributed more to the extent and severity of Mr Lim's injuries as compared to the collision between the Toyota and the BMW.[102] The collision between the Toyota and the BMW merely aggravated the extent of Mr Lim's injuries.[103] Thus, the fourth and fifth defendants submit that a 70 : 30 attribution of liability as between the Toyota / semi-trailer collision and the Toyota / BMW collision respectively accurately reflects the proper apportionment of liability.[104] In relation to the Toyota / semi-trailer collision, the fourth and fifth defendants submit that the first defendant's negligence was the predominant cause of the serious injuries suffered by Mr

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97 4D5DCS (Liability) at para 61.

98 4D5DRS (Liability) at para 38.

99 4D5DCS (Liability) at paras 83 and 113.

100 4D5DCS (Liability) at paras 86(h) and 112; 4D5DRS (Liability) at para 35.

101 4D5DCS (Liability) at para 80.

102 4D5DCS (Liability) at para 122.

103 4D5DCS (Liability) at para 123.

104 4D5DCS (Liability) at para 126.

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Lim, whereas the fourth defendant's negligence was momentary and is a smaller and insignificant contributing factor.[105] Moreover, the fourth and fifth defendants submit that the fourth defendant's actions, while negligent, were neither intentional nor deliberate,[106] whereas the first defendant took a calculated decision to speed and carried out inexplicable and inexcusable manoeuvres.[107] As for the third defendant, the fourth and fifth defendants submit that his actions singlehandedly caused the Toyota / BMW collision.[108]

Issues to be determined

32 I will first consider the key factual disputes concerning liability for the accident, before turning to examine the legal principles on imposition of liability (if any) on the defendants and the apportionment of said liability.

33 The key factual disputes are as follows:

(a) Where was the semi-trailer travelling on the two-lane highway around the time the collision between the Toyota and the semi-trailer occurred?

(b) Was the semi-trailer stationary or moving at the time the Toyota collided with its rear and, if it was moving, how quickly?

(c) Did the semi-trailer move to its right and encroach into the path of the Toyota?

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105 4D5DCS (Liability) at para 127.

106 4D5DRS (Liability) at para 58.

107 4D5DRS (Liability) at para 59.

108 4D5DCS (Liability) at para 128.

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(d) Was the Toyota being driven recklessly and/or at an excessive speed around the time of its collision with the rear of the semi-trailer?

(e) What were the movements of the Toyota around the time of its collision with the semi-trailer?

(f) Was the BMW being driven with an insufficient following distance and/or at an excessive speed around the time of its collision with the rear of the Toyota?

(g) What was the temporal sequence of the collisions between the semi-trailer, the Toyota and the BMW?

(h) To what extent did the various impacts cause or contribute to the injuries on Mr Lim?

34 The key legal issues are as follows:

(a) Is negligence established as against the various defendant tortfeasors (*ie,* excluding the sixth defendant)?

(i) Is the doctrine of *res ipsa loquitur* applicable?

(ii) Is the agony of the moment defence applicable?

(b) Are any of the defendants vicariously liable for the acts and omissions of the primary tortfeasors?

(c) To what extent is each defendant liable to contribute to the damages to be awarded for the accident?

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Analysis of the Facts

35 I turn first to the facts.

Position of semi-trailer on two-lane highway

36 In my judgment, around the time of the collision between the Toyota and the semi-trailer, and as the highway approached the Kempas Toll Plaza, the semi-trailer had been travelling in the middle of the highway for a considerable distance by the time the collision between the Toyota and the semi-trailer occurred.

37 The fourth defendant (who was the driver of the semi-trailer) testified that about one kilometre away from the Kempas Toll Plaza, he moved the semi-trailer out of the left lane towards the right lane because the left lane was congested.[109] As the highway approached the Kempas Toll Plaza, the width of the highway opened up and the fourth defendant ended up straddling the centre of the highway and travelling in that position for some time up till and including the time of the collision between the Toyota and the semi-trailer.[110] This is corroborated by Ms Fung, who testified that prior to the collision between the Toyota and the semi-trailer, she saw that the highway could accommodate three lanes of traffic and the semi-trailer was in the centre lane.[111] As I will elaborate on later when I turn to the issue of whether the semi-trailer encroached into the path of the Toyota, the fourth defendant's account is further corroborated by the third defendant (who was the driver of the BMW).

[109] NEs dated 6 October 2023 at p 13, lines 23–31; NEs dated 6 October 2023 at p 23, lines 1–10.

[110] NEs dated 6 October 2023 at p 14, lines 1–13.

[111] NEs dated 3 October 2023 at p 36, lines 1–24.

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Whether semi-trailer was moving and its speed

38 I find that the semi-trailer was moving at a slow speed of 5km/h to 10km/h around the time the collision between the Toyota and the semi-trailer occurred. This is agreed between the two experts who testified in a hot-tubbing setting.[112]

Whether semi-trailer encroached into Toyota's path

39 I find that around the time of the collision between the Toyota and the semi-trailer, the semi-trailer was travelling generally straight at a relatively slow speed of 5km/h to 10km/h, but there was a rightwards movement of the semi-trailer just prior to the collision. This rightwards movement was not substantial or dramatic enough to cut into the path of travel of the Toyota, but the movement was sufficiently visible to cause a reaction on the part of the Toyota driver.

40 In this regard, I find the testimony of the third defendant particularly helpful. The third defendant had been driving behind the semi-trailer and the Toyota, which makes his vantage point ideal for the purposes of ascertaining the relative positions of the semi-trailer and the Toyota. The third defendant took pains to explain repeatedly that the semi-trailer moved closer to the Toyota, but it did not cut into the Toyota's path.[113] The third defendant convincingly clarified that whereas his affidavit had stated that the semi-trailer "veered" towards the right,[114] that was because he had been speaking to his lawyer in Mandarin and there might have been issues with translation when the affidavit

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[112] JEP-2023 10 06 at S/N 9, read with NEs dated 10 October 2023 at p 102, line 30 to p 103, line 18.

[113] NEs dated 5 October 2023 at p 46, lines 15–21; NEs dated 5 October 2023 at p 49, lines 10–15; NEs dated 5 October 2023 at p 60, lines 1–4.

[114] LWH-2023 08 13 at para 4(g).

was produced in English.[115] The third defendant took pains to emphasise that his actual account is *not* that the semi-trailer veered right,[116] and instead, the semi-trailer was "leaning closer" to the Toyota,[117] such that the semi-trailer would have been on the lane markings if there had been lane markings at the point where the collision between the Toyota and the semi-trailer occurred, though the semi-trailer's tyres had not yet crossed over to the lane in which the Toyota was traveling.[118]

41 I also note that the third defendant's account is largely consistent with the account given by the other witnesses. The fourth defendant testified that he did not encroach into the path of the Toyota.[119] However, he conceded that he was not sure if his semi-trailer had moved rightwards.[120] As for Ms Fung, she was asked whether the semi-trailer had cut into the path of the Toyota, and her initial response was that semi-trailer had moved from the centre towards the Toyota.[121] However, she later took the position that the semi-trailer swerved to the right.[122] Set against this, however, is her evidence in her affidavit of evidence-in-chief ("AEIC") that she was a rear seat passenger in the Toyota who "would not have been paying much attention to the traffic movements of other vehicles around us and was probably more focused on [her] children" and who "may not precisely recall everything that happened in the moments prior

115 NEs dated 5 October 2023 at p 31, line 8 to p 32, line 7.

116 NEs dated 5 October 2023 at p 31, lines 19–30.

117 NEs dated 5 October 2023 at p 83, line 20.

118 NEs dated 5 October 2023 at p 84, lines 3–6.

119 NEs dated 6 October 2023 at p 32, lines 1–7.

120 NEs dated 6 October 2023 at p 14, line 27 to p 15, line 10.

121 NEs dated 3 October 2023 at p 11, line 11.

122 NEs dated 3 October 2023 at p 16, line 7.

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to the collision".[123] This should be contrasted with the third defendant's evidence that he could see the positions of the semi-trailer and the Toyota "very clearly"[124] and that he could remember the events of the collision between the Toyota and the semi-trailer "very clearly".[125]

42 I find that around the time of the collision between the Toyota and the semi-trailer, there was a rightwards movement of the semi-trailer, but no encroachment into the path of travel of the Toyota.

Excessive speed or reckless driving of Toyota around the time of collision

43 I find that there is insufficient evidence for me to conclude that the first defendant was driving recklessly or was speeding at the time of the collision between the Toyota and the semi-trailer.

44 I note that Ms Fung gave evidence that the first defendant had been driving at speeds in excess of 100km/h prior to the collision between the Toyota and the semi-trailer, which she could discern because she saw the speedometer of the Toyota.[126] This is not indicative of speeding, in and of itself, because there is evidence that further up the highway (*ie,* further away from the Kempas Toll Plaza), the speed limit is 110km/h.[127] Ms Fung's evidence, however, is that about the time of the collision between the Toyota and the semi-trailer, while she did not see the speedometer of the Toyota, her estimation is that the Toyota

123 JFWM-2023 08 22 at para 6.

124 NEs dated 5 October 2023 at p 83, lines 30–31.

125 NEs dated 5 October 2023 at p 20, lines 9–10.

126 NEs dated 3 October 2023 at p 14, lines 8–11.

127 CHA-2023 08 18 at p 21 (Report dated 24 July 2023), para 11.1; NEs dated 5 October 2023 at p 42, line 4.

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was travelling at about the same speed as when she saw the speedometer earlier.[128] There is evidence,[129] and it is undisputed,[130] that the speed limit at the accident location is 60km/h.

45 The key issue for my determination, therefore, is whether there is sufficient evidence to suggest that the first defendant, at the point of the collision between the Toyota and the semi-trailer, was traveling in excess of 60km/h. Given Ms Fung's caveats as to her memory and her observations of traffic as noted above at [41], I cannot fully rely on her perception that the first defendant was travelling at 100km/h or above at the time of the collision between the Toyota and the semi-trailer. In any case, Ms Fung did not manage to look at the speedometer at that point in time, and her view that the Toyota was travelling at 100km/h or above would be based on her untrained and unaided estimation. In this regard, I find that the third defendant's evidence throws further doubt on the veracity of Ms Fung's perception. The third defendant was directly asked whether he would agree with Ms Fung's testimony that the Toyota was travelling at a speed of 100km/h or more.[131] The third defendant's evidence is that he does not think that the Toyota was likely to reach a speed of 100km/h because everyone slows down near the toll.[132] Moreover, it is also his evidence that there were many cars on the highway that day, so even if one wanted to drive at 90km/h or 100km/h, it would not be possible.[133]

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128 NEs dated 3 October 2023 at p 37, lines 7–30.

129 CHA-2023 08 18 at p 21 (Report dated 24 July 2023), para 11.1.

130 NEs dated 5 October 2023 at p 40, line 24 to p 43, line 10.

131 NEs dated 5 October 2023 at p 41, lines 17–20.

132 NEs dated 5 October 2023 at p 41, lines 22–28.

133 NEs dated 5 October 2023 at p 65, lines 18–29.

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46 The expert evidence in this regard does not conclusively resolve the question because the experts' opinions focused on the change in velocity of the Toyota at the point of collision.[134] Whilst testifying in court, both experts acknowledged that it is possible for the speed of the Toyota to be 100km/h or above near the time of impact, with emergency braking right before impact to bring the speed of the Toyota down at the point of impact between the Toyota and the semi-trailer.[135] Crucially, however, neither of the experts took the view that the Toyota must have been, or was likely to have been, travelling at above 60km/h.[136] In fact, Mr Aust opined that the speed of the Toyota was between 40km/h and 60km/h at the point of collision.[137] While it is possible that this might have been the *final* speed of the Toyota, *post*-emergency braking (with the implication that the Toyota was speeding just prior to emergency braking), the experts were directly asked if there is any objective evidence that the Toyota performed emergency braking,[138] and they did not identify any such objective evidence.[139]

47 At this juncture, it is appropriate for me to say a few words about adverse inferences because of the conspicuous absence of the first defendant from the present proceedings. I have to consider whether to draw any adverse inferences against him, and, if yes, what kinds of inferences to draw.

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134 JEP-2023 10 06 at S/N 10.

135 NEs dated 10 October 2023 at p 126, line 23 to p 127, line 6.

136 JEP-2023 10 06 at S/N 10.

137 JEP-2023 10 06 at S/N 10.

138 NEs dated 10 October 2023 at p 57, lines 25–27.

139 NEs dated 10 October 2023 at p 58, line 11 to p 59, line 1.

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48 The law on adverse inferences was authoritatively set out by the Court of Appeal in *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 ("*Tribune Investment*") and *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 ("*Sudha Natrajan*").

49 The Court of Appeal in *Tribune Investment* stated at [50]:

> … The regime for drawing adverse inferences is derived from s 116(*g*) of the Evidence Act (Cap 97). Whether or not in each case an adverse inference should be drawn depends on all the evidence adduced and the circumstances of the case. There is no fixed and immutable rule of law for drawing such inference. Where, as was the case here, the trial judge is of the view that the plaintiffs themselves had not made out their claim to the requisite standard, then no drawing of an adverse inference against the defendants is necessary. The drawing of an adverse inference, at least in civil cases, should not be used as a mechanism to shore up glaring deficiencies in the opposite party's case, which on its own is unable to meet up to the requisite burden of proof. Rather, the procedure exists in order to render the case of the party against whom the inference is drawn weaker and thus less credible of belief.

50 The Court of Appeal in *Sudha Natrajan* stated at [20]:

> The drawing of an adverse inference must therefore in the final analysis depend on the circumstances of each case, and it is not the position that in every situation in which a party fails to call a witness or give evidence, an adverse inference must be drawn against that party: see Ratanlal Ranchhoddas & Dhirajlal Keshavlal Thakore, *Ratanlal & Dhirajlal's The Law of Evidence* (Wadhwa and Company Nagpur, 22nd Ed, 2006) at 1238. With specific regard to absent witnesses, broad principles governing the drawing of an adverse inference were set out in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 ("*Wisniewski*") and these principles were later endorsed by this court in *Thio Keng Poon v Thio Syn Pyn* [2010] 3 SLR 143 at [43]. They may be summarised as follows:
>
> > (a) In certain circumstances the court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in the matter before it.

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> (b) If the court is willing to draw such inferences, these may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> (c) There must, however, have been some evidence, even if weak, which was adduced by the party seeking to draw the inference, on the issue in question, before the court would be entitled to draw the desired inference: in other words, there must be a case to answer on that issue which is then strengthened by the drawing of the inference.
>
> (d) If the reason for the witness's absence or silence can be explained to the satisfaction of the court, then no adverse inference may be drawn. If, on the other hand, a reasonable and credible explanation is given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or annulled.

51 As the Court of Appeal stated in *Tribune Investments* at [50], where "the trial judge is of the view that the plaintiffs themselves had not made out their claim to the requisite standard, then no drawing of an adverse inference against the defendants is necessary". Similarly, the Court of Appeal in *Sudha Natrajan* at [20(c)] stated that "[t]here must, however, have been some evidence, even if weak, which was adduced by the party seeking to draw the inference, on the issue in question, before the court would be entitled to draw the desired inference".

52 In my judgment, the evidence provided by the third defendant and by the collision reconstruction experts cast doubt on Ms Fung's evidence that the first defendant was speeding. There is little room for adverse inferences to operate here because I have not found any *specific* gaps in the evidence, which, if bridged by a *specific* inference, would have changed my view of whether the first defendant was speeding. To use another analogy, there is no spark lying dormant in the evidence that, if kindled with an adverse inference, could erupt

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into a full-fledged basis for a finding of wrongdoing. It would not be principled for me to explain away the evidence of the third defendant and the evidence of the collision reconstruction experts, and favour Ms Fung's uncertain testimony, just because the first defendant is not present to give his version of events.

53 I also note that Ms Fung has given evidence that *before* the collision between the Toyota and the semi-trailer, the first defendant was driving recklessly, impatiently, and was weaving between lanes.[140] The third defendant disagreed with Mr Fung's characterisation of the first defendant's driving as reckless.[141] The third defendant further clarified that he was not making any allegation that the first defendant had failed to maintain proper lane discipline; instead, the third defendant's evidence on the stand is that the first defendant did not change lanes, and at the time of the collision between the Toyota and the semi-trailer, the first defendant was merely taking evasive action.[142] Ultimately, the factual inquiry I have to undertake concerns the actions of the first defendant around the time of the collision between the Toyota and the semi-trailer. The first defendant may have driven recklessly some time before the collision, but if those reckless acts did not cause or contribute to the accident, then those acts would not be legally relevant acts for the purpose of the plaintiff's tort claim.

54 I am unable to conclude that the first defendant was speeding or driving recklessly around the time of the collision between the Toyota and the semi-trailer.

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140 NEs dated 3 October 2023 at p 15, line 11 to p 16, line 5.

141 NEs dated 5 October 2023 at p 43, lines 26–32.

142 NEs dated 5 October 2023 at p 80, line 24 to p 81, line 4.

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Movements of Toyota around the time of collision

55 In my judgment, the Toyota had excessively swerved right, and then left, to impact into the rear of the semi-trailer.

56 The third defendant testified that he could remember "very clearly" and "can say for certain" that he saw the Toyota swerve right, with the Toyota almost hitting into the centre divider of the highway,[143] and then turn back to the left to collide with the semi-trailer.[144] In the third defendant's view, the first defendant's manoeuvre was an overreaction,[145] and if the first defendant had not overreacted and gone straight instead, there would not be a collision between the semi-trailer and the Toyota.[146] The third defendant further ventures the opinions that "the Toyota driver might have been inexperienced, therefore, leading to him unable to control the vehicle properly",[147] that "if he had better control of his vehicle, he might have just made slight adjustments instead of taking a drastic turn towards the right side",[148] and that while "everyone … would also have taken the same evasive action to avoid collision", the "magnitude of this action" may differ.[149] Mr Fung's evidence provides some corroboration in that it is her evidence that the Toyota suddenly swerved right.[150] Both experts agree that if the first defendant had simply steered to the right,

143 NEs dated 5 October 2023 at p 57, lines 26–28.

144 NEs dated 5 October 2023 at p 20, lines 9–16.

145 NEs dated 5 October 2023 at p 32, lines 2–7; NEs dated 5 October 2023 at p 83, lines 7–16.

146 NEs dated 5 October 2023 at p 84, lines 7–12.

147 NEs dated 5 October 2023 at p 79, lines 24–25.

148 NEs dated 5 October 2023 at p 80, lines 10–11.

149 NEs dated 5 October 2023 at p 81, lines 16–19.

150 JFWM-2023 08 22 at paras 8.

without steering back to the left, he could have gone past the semi-trailer successfully without the risk of collision.[151]

57 A key question that I have to determine is the *magnitude* of the first defendant's swerves and whether those manoeuvres were reasonable responses to the rightwards movement of the semi-trailer. This factual finding will have implications on my legal analysis of whether the first defendant was *negligent*. In this regard, I must emphasise that it is for the *court*, and not for the third defendant, to pass judgment on the reasonableness of the first defendant's manoeuvres. However, the *opinion* of the third defendant, as a lay witness, is nonetheless relevant in helping the court reach a considered decision.

58 In this regard, s 32B(3) of the Evidence Act 1893 (2020 Rev Ed) ("Evidence Act") is relevant. Section 32B(3) of the Evidence Act provides that "[w]here a person is called as a witness in any proceedings, a statement of opinion by him or her on a relevant matter on which he or she is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him or her, is admissible as evidence of what he or she perceived". As stated in Jeffrey Pinsler, *Evidence and the Litigation Process* (LexisNexis, 7th Ed, 2020) ("*Pinsler on Evidence*") at para 8.088, "the rationale of s 32B(3) is that a witness who is unable to effectively communicate relevant facts without including his inferences based on those facts should be permitted to state those inferences in the interest of clear and accurate testimony".

59 The opinion provided by the third defendant is therefore admissible as it conveys relevant facts personally perceived by him. Based on the third defendant's visual observation of the initial collision, the first defendant's

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[151] NEs dated 10 October 2023 at p 65, line 14 to p 66, line 7.

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manoeuvres were excessive; had these excessive manoeuvres not been undertaken, the accident would not have occurred. Moreover, the excessiveness of the first defendant's manoeuvres was of such magnitude as to lead the third defendant to form the inference or opinion that the first defendant might have been inexperienced, leading to him being unable to control the Toyota properly. I bear in mind, additionally, that the semi-trailer was travelling slowly at 5km/h to 10km/h around the time the collision between the Toyota and the semi-trailer occurred (see [38] above) and there was no encroachment of the semi-trailer into the path of the Toyota (see [42] above). A dramatic rightward and then leftward swerve is unwarranted in response to a slow-moving heavy vehicle that has not encroached onto one's path of travel. All these facts, taken together, lead me to my judgment that the first defendant's manoeuvres were in excess of what a reasonable careful driver with reasonably good control of his vehicle and reasonable judgment would have done.

60 I am fortified in my conclusion by the absence of the first defendant. This is where, under the rule stated in *Sudha Natrajan* at [20(c)], an adverse inference can be usefully drawn. There is evidence to demonstrate the unreasonably excessive manoeuvres of the first defendant, and this conclusion is strengthened by the absence of the first defendant, who should have entered an appearance and provided his account of his manoeuvres. The court is thus irresistibly led to the conclusion that the first defendant's manoeuvres were unreasonably excessive.

Speed, following distance and manoeuvres of BMW

61 No clear evidence was elicited from the third defendant concerning his speed around the time of the collision between the BMW and the Toyota. In fact, as noted above at [45], the third defendant took the position that everyone

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on the road was likely to slow down near the toll and it was not possible to drive at 90km/h or 100km/h around the time and location of the accident as there were many cars. The experts were also unable to provide an estimation of the BMW's speed, and their evidence focused on the change in velocity of the BMW in the collision.[152] I am hence unable to conclude the third defendant was speeding.

62 However, the third defendant, whilst on the stand, conceded that he was following the Toyota too closely, with a distance of less than two car lengths, such that he was unable to complete braking in time to avoid colliding into the Toyota.[153] In the third defendant's closing submissions, he rightly conceded that there was insufficient following distance between the Toyota and the BMW and he was negligent for failing to keep a sufficient following distance.[154] I so find.

63 Both experts are agreed that if the Toyota had passed the semi-trailer safely, the position of the BMW on the highway was such that it was far enough to the right of the highway to pass the semi-trailer successfully.[155]

Sequence of collisions

64 In my judgment, the collision between the Toyota and the semi-trailer happened first, followed shortly by the collision between the BMW and the Toyota.

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152 JEP-2023 10 06 at S/N 13.

153 NEs dated 5 October 2023 at p 44, line 30 to p 45, line 10.

154 3DCS (Liability) at para 32.

155 NEs dated 10 October 2023 at p 66, lines 19–28.

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65 The third defendant's evidence is that the Toyota collided into the semi-trailer and both vehicles came to an abrupt stop.[156] He saw this and tried to apply his emergency brakes to avoid colliding into the Toyota but failed,[157] resulting in the second collision. Both experts agree that there were two separate collisions, but they were unable to say which collision happened first.[158] Ms Fung testified that she felt two impacts but was not sure which one came first.[159]

66 I have no reason to doubt the third defendant's uncontradicted account, and he had the best vantage point out of all the witnesses who were at the accident scene. The first defendant is not present to provide an alternative view of the accident. I thus conclude that the collision between the semi-trailer and the Toyota happened first, followed shortly by the collision between the Toyota and the BMW.

Extent of cause / contribution of the collisions to Mr Lim's injuries

67 Both experts agree that the injuries on Mr Lim are primarily caused by the intrusion into the occupant space of the Toyota caused by the collision between the Toyota and the semi-trailer, but the injuries could have been exacerbated by the impact of the BMW colliding into the rear of the Toyota.[160]

68 Both experts are also able to offer an opinion on the contribution of the two collisions to the injuries sustained by Mr Lim. They agree that from the intrusion perspective, the semi-trailer/Toyota collision had a 66.6% to 90%

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156 LWH-2023 08 13 at para 4(g).

157 LWH-2023 08 13 at para 4(h).

158 NEs dated 10 October 2023 at p 143, line 16 to p 144, line 26.

159 NEs dated 3 October 2023 at p 9, lines 27–29.

160 NEs dated 10 October 2023 at p 66, line 29 to p 67, line 8.

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contribution to Mr Lim's injuries, and the Toyota/BMW collision had a 10% to 33.3% contribution.[161]

The law

69 The law on duties of care owed by road users to others is trite. The contributors to *Halsbury's Laws of Singapore - Tort* vol 18 (LexisNexis Singapore, 2023) (*Halsbury's on Tort*) at para 240.255 state the following:

> When two persons on the road are so moving in relation to one another as to involve risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle.
>
> …
>
> The duty is to use such care as is reasonable, and where a driver is faced with a sudden emergency he can only be expected to do that which an ordinary reasonable man would do. The duty is owed only to such persons as are within the area of potential danger and to whom the defendant could reasonably foresee the risk of injury if he or his employee failed to exercise care. The defendant may be held responsible where by failure to take care he collides with animals or goods negligently left on the road, or with persons who may be unlawful trespassers towards the owner of the soil of the road.
>
> …
>
> [footnotes omitted]

70 In relation to the defence of "agony of the moment", the Court of Appeal in *Thorben Langvad Linneberg v Leong Mei Kuen* [2013] 1 SLR 207 ("*Thorben*"), after a survey of the authorities, held that a defendant was not negligent if his actions were "actions which a reasonably prudent man in his position would take", and "all that was necessary was that the [defendant's]

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[161] NEs dated 10 October 2023 at p 67, line 9 to p 68, line 15.

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conduct should not have been unreasonable, taking the exigencies of the particular situation into account" (*Thorben* at [103]).

71 As for the doctrine of *res ipsa loquitur*, this is a rule of evidence that enables a plaintiff to establish a *prima facie* case of negligence in the event that there is insufficient direct evidence to establish the cause of the accident in a situation where the accident would not have occurred in the ordinary course of things had proper care been exercised. As the Court of Appeal held in *Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd* [2018] 1 SLR 76 at [39], the three requirements for the application of *res ipsa loquitur* are:

(a) The defendant must have been in control of the situation or thing which resulted in the accident.

(b) The accident would not have happened, in the ordinary course of things, if proper care had been taken.

(c) The cause of the accident must be unknown.

As the court held in *BNJ (suing by her lawful father and litigation representative, B) v SMRT Trains Ltd and another* [2014] 2 SLR 7 ("*BNJ* ") at [139]–[140], the *res ipsa loquitur* doctrine operates to fill an evidential gap, and where there is evidence of how the accident occurred, there is no evidential gap to speak of and the doctrine has no relevance.

72 In the event that I find more than one of the defendants liable for negligence, the issue of apportionment of liability and contribution as between the defendants would arise. As noted by the Court of Appeal in *TV Media Pte Ltd v De Cruz Andrea Heidi and another appeal* [2004] 3 SLR(R) 543 at [155]–[156] (citing *Dingle v Associated Newspapers Ltd* [1961] 2 QB 162 at 188–189

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and *Wong Jin Fah v L & M Prestressing Pte Ltd* [2001] 3 SLR(R) 1 at [92]), where injury has been done to the plaintiff and the injury is indivisible, any tortfeasor whose act has been a proximate cause of the injury must compensate for the whole of it. In regard to contribution, the guidance provided in *Cheng William v Allister Lim & Thrumurgan and another and another appeal* [2015] 3 SLR 201 ("*Cheng William*") is instructive. As the Court of Appeal held at [45] of *Cheng William*, in "determining each party's contribution, both causative responsibility and blameworthiness have to be considered". The Court of Appeal explained at [46] that the "term 'blameworthiness' is broad and it gives the court the flexibility to take into account a wide range of conduct to arrive at a just and equitable result in a myriad of situations".

73 The law on vicarious liability is also well-established. As the Court of Appeal explained in *Ng Huat Seng and another v Munib Mohammad Madni and another* [2017] 2 SLR 1074 at [42] and [44], the court applies a two-stage test to ascertain if vicarious liability ought to be imposed on a defendant for the negligence of a primary tortfeasor. Both limbs of the test must be satisfied:

(a) Firstly, the relationship between the primary tortfeasor and defendant must be a relationship of sufficient closeness such as would make it fair, just and reasonable to impose liability on the defendant for the tortious acts of the primary tortfeasor.

(b) Secondly, there must be sufficient connection between the relationship between the defendant and the primary tortfeasor on the one hand, and the commission of the tort on the other. A question to ask is whether the relationship created or significantly enhanced the risk of the tort being committed.

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Decision

74 In my judgment, the first defendant, third defendant and fourth defendants are liable under the tort of negligence as primary tortfeasors. The second defendant and the fifth defendants are vicariously liable for the negligence of the first and fourth defendants respectively. In respect of contribution, I apportion liability in the following manner: (a) the first and second defendants 30%; (b) the third defendant 20%; and (c) the fourth and fifth defendants 50%.

75 As a preliminary point, I note that my findings below are made based on the evidence presented before me. There is no room for the doctrine of *res ipsa loquitur* to operate because there is ample evidence of how the accident occurred: *BNJ* at [139]–[140].

Liability of the primary tortfeasors (first, third and fourth defendants)

76 There is no dispute that the first, third and fourth defendants owe a duty of care to other road users.

77 I find, with reference to the facts that I have found at [55]–[60] above, that the first defendant was negligent as he had made unreasonably excessive manoeuvres in response to the rightwards movement of the semi-trailer, where the semi-trailer was moving slowly and did not encroach into the path of the Toyota. I hold that the first defendant is unable to avail himself of the "agony of the moment" defence because his actions are not "actions which a reasonably prudent man in his position would take" (*Thorben* at [103]). To put it in another way, his actions were unreasonable, even after taking the exigencies of the particular situation into account.

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78 I find, with reference to the facts that I have found at [61]–[62] above, that the third defendant is negligent for failing to keep a sufficient following distance behind the Toyota.

79 I find with reference to the facts that I have found at [36]–[42] above, that the fourth defendant was negligent in driving his semi-trailer in an unreasonably hazardous manner. As the fourth defendant rightly concedes in submissions, the fourth defendant knew that there are road signs along the highway to remind drivers of heavy vehicles to keep to the left lane.[162] Yet, he made the conscious decision to pull out of the left lane of traffic to avoid congestion. The fourth defendant also rightly concedes that he had allowed his trailer to move rightwards (though without encroachment into the path of travel of the Toyota), which fell short of the standard of care expected of him particularly bearing in mind his earlier decision to move into the right lane of traffic.[163] On a crowded highway with no lane markings at that point, it was incumbent on the fourth defendant, as a driver of a heavy vehicle, to exercise reasonably good and prudent control of his vehicle and drive straight.

Vicarious liability of second and fifth defendants

80 The fifth defendant admits that it is the employer of the fourth defendant and that it is the owner of the semi-trailer, that the fourth defendant was driving the semi-trailer in the course of employment, and that the fifth defendant is vicariously liable for the fourth defendant's actions/omissions.[164] I so find.

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162 4D5DCS (Liability) at para 117.

163 4D5DCS (Liability) at para 119.

164 4D5D Defence to 6D Statement of Claim (Amendment no 1) re-dated on 3 November 2023 at para 9.

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81 In relation to the second defendant, the plaintiff pleaded that the first defendant drove the Toyota as servant/agent of the second defendant, such that the second defendant is vicariously liable for the negligence of the first defendant.[165] There is no denial of this pleading from the second defendant because he did not enter an appearance. Ms Fung's evidence (see [5] above) indicates that the Toyota was a hired vehicle, and the first defendant was the hired driver. She also gave unrebutted evidence that the second defendant was the owner of the Toyota.[166] She testified that she paid the trip fare to the owner of the Toyota and not the first defendant.[167] She also testified that her relationship with the first and second defendants was a business relationship in which she was the hirer of the Toyota on the day of the accident.[168] This is an area where the adverse inference can be usefully deployed – there is evidence to support an inference that the first defendant drove the Toyota as servant/agent of the second defendant, and the second defendant's unexcused absence from the present proceedings means that he gave no rebuttal to Ms Fung's evidence where an explanation ought to be given in the light of the evidence. I thus find it more likely than not that the first defendant drove the Toyota as servant/agent of the second defendant and the second defendant is vicariously liable for the first defendant's negligence.

Apportionment

82 I first consider causative potency.

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165 Plaintiff's Statement of Claim (Amendment No 1) re-dated 12 August 2022 at para 2.

166 JFWM-2023 08 22 at para 4(ii).

167 NEs dated 12 October 2023 at p 2, line 32 to p 3, line 5.

168 NEs dated 12 October 2023 at p 3, lines 19–21.

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83 As noted above at [67], the experts are agreed that the injuries on Mr Lim are primarily caused by the semi-trailer / Toyota collision due to the intrusion caused by that collision. As noted above at [68], the experts agree that from the intrusion perspective, the semi-trailer / Toyota collision had a 66.6% to 90% contribution to Mr Lim's injuries, and the Toyota / BMW collision had a 10% to 33.3% contribution. I further note the experts' view (see [63]) that if the Toyota had passed the semi-trailer safely, the position of the BMW on the highway was such that it was far enough to the right of the highway to pass the semi-trailer successfully.[169] Therefore, I conclude that the negligence of the first and fourth defendants had greater causative potency in relation to Mr Lim's injuries.

84 I turn to blameworthiness.

85 From the evidence, both the third and fourth defendants were flouting safe driving principles. As noted above at [79], the fourth defendant knew that there were road signs reminding drivers of heavy vehicles such as himself to keep left, but he consciously failed to abide by this guidance. The third defendant ought to have known the elementary road traffic safety principle that cars must keep a safe following distance from each other. As conceded by the third defendant, the distance at which the BMW was following the Toyota was insufficient relative to guidelines found in the Malaysia Highway Code.[170]

86 Taken in the round, it is my decision that:

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[169] NEs dated 10 October 2023 at p 66, lines 19–28.

[170] 3DCS (Liability) at para 32.

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(a) The fourth defendant's actions, relative to the actions of the other primary tortfeasors, had high causative potency and a high degree of blameworthiness. I thus hold that the fourth defendant (and the fifth defendant vicariously) 50% liable for the plaintiff's injuries.

(b) The first defendant's actions, relative to that of the other primary tortfeasors, had high causative potency in that it was his overreaction (even without encroachment of the semi-trailer into his path) which directly caused the collision between the Toyota and the semi-trailer and which was responsible for the significant intrusion into the Toyota that caused Mr Lim's injuries. However, this has to be balanced against the fact that the other two primary tortfeasors were found to have flouted general safe driving principles while the first defendant was not found to have done so. I thus hold that the first defendant (and the second defendant vicariously) 30% liable for the plaintiff's injuries.

(c) The third defendant's actions, relative to the other primary tortfeasors, had low causative potency. As noted by the experts, the Toyota / BMW collision merely exacerbated Mr Lim's injuries with a 10% to 33.3% contribution to the injuries. However, he is found to have flouted safe driving principles. I thus hold the third defendant 20% liable for the plaintiff's injuries.

87 The first to fifth defendants are jointly and severally liable to the plaintiff for the injuries caused by the accident, but the said defendants are entitled to contribution from each other in the proportions that I have decided at [86]. In the light of this decision, there is no need for a *Sanderson* / *Bullock* order as none of the first to fifth defendants have been absolved of liability.

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Damages

Background

Plaintiff's educational, vocational and social background

88 Mr Lim was born on 30 November 1979.[171] He was 38 years old at the time of the accident. He is 44 years old today.

89 Mr Lim married Ms Fung in January 2011.[172] At the time of the accident on 12 February 2018, their two children were 1 year and 4 years of age.[173] According to the patient history record compiled by Dr Ang Lye Poh Aaron ("Dr Aaron Ang") in the course of his mental capacity review of Mr Lim, Mr Lim and Ms Fung co-own a Housing Development Board flat in Sengkang.[174]

90 Mr Lim possesses an Honours Degree of Bachelor of Science (Finance) from the National University of Ireland, which was awarded on 2 March 2012.[175] This degree was awarded on the basis of part-time study carried out from Singapore.[176]

91 On 7 February 2018, barely five days before the accident, Mr Lim commenced employment with the Society for the Aged Sick ("SAS") as a finance executive with his starting salary set at $3,500 per month.[177] In the light

171 ALPA-2023 06 23 at p 5.

172 NEs dated 12 October 2023 at p 8, lines 10–13.

173 NEs dated 3 October 2023 at p 5, lines 23–28.

174 ALPA-2023 06 23 at p 6.

175 JFWM-2023 08 22 at para 3 and p 174.

176 NEs dated 12 October 2023 at p 8, lines 14–24.

177 AEIC of Ms Koh Lay Ming ("Kate Koh") dated 25 September 2023 ("KLM-2023 09 25") at para 5.

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of the accident, Mr Lim was placed on long-term hospitalisation leave on a no-pay basis,[178] and his employment was officially terminated on medical grounds on 1 June 2020.[179] Ms Fung's evidence is that prior to Mr Lim's employment with the SAS, he was engaged in doing project work[180] with companies including Sembcorp Design and Construction,[181] Singapore Centre for Chinese,[182] and Changi Cove.[183]

92 Ms Fung's unrebutted evidence is that prior to the accident, Mr Lim was in excellent health, and had no pre-existing medical conditions.[184]

93 Mr Lim's injuries and the changes he suffered therefrom affected his family. Ms Fung gave evidence that she suffered a breakdown as a result of the setbacks in Mr Lim's recovery journey.[185] She deposed that she felt frustrated, lonely, isolated and increasingly depressed as she struggled with the family, Mr Lim's care and the family's financial situation.[186] Starting around May or June 2018, Ms Fung and her son attended therapy sessions with the Psychological Services Unit at AMKFSC Community Services Ltd.[187] Ms Fung saw a

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[178] KLM-2023 09 25 at p 10.

[179] KLM-2023 09 25 at p 11.

[180] NEs dated 12 October 2023 at p 37, line 17 to p 38, line 4.

[181] JFWM-2023 08 22 at pp 158–159; NEs dated 12 October 2023 at p 38, line 3 to p 39, line 6.

[182] JFWM-2023 08 22 at pp 158–159; NEs dated 12 October 2023 at p 39, lines 10–21.

[183] JFWM-2023 08 22 at pp 158–159; NEs dated 12 October 2023 at p 39, lines 15–21.

[184] JFWM-2023 08 22 at para 56.

[185] JFWM-2023 08 22 at para 35.

[186] JFWM-2023 08 22 at para 35.

[187] JFWM-2023 08 22 at para 36.

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parenting counsellor from around 2019 to May 2021.[188] Ms Fung's evidence is that she is still attending at the Psychological Services Unit and is still working with an organisation on day-to-day issues in caregiving.[189]

Injuries

94 As a result of the accident, Mr Lim suffered severe injuries. The specific injuries, as disclosed in the various medical reports tendered into evidence, have been summarised in Ms Fung's AEIC.[190] Broadly, the injuries are as follows:

(a) Head (Structural)

(i) depressed fracture of frontal bone extending to right parietal;

(ii) depressed fracture of temporal bone;

(iii) left frontal, temporal, greater wing of sphenoid fracture;

(iv) base of skull fractures;

(v) marked cerebral oedema;

(vi) large left temporoparietal bleed (6cm x 3cm x 3cm) with extra-axial component and extension into intraventricular haemorrhage;

(vii) temporoparietal subdural and subarachnoid haemorrhage requiring craniectomy and brain herniation;

188 JFWM-2023 08 22 at para 36.

189 JFWM-2023 08 22 at para 36.

190 JFWM-2023 08 22 at paras 15–16.

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(viii) left frontotemporoparietal acute subdural haematoma of thickness l cm;

(ix) multiple contusions in left basal ganglia;

(x) contusion in left frontal and temporal lobe requiring contusionectomy (left temporal contusion);

(xi) midline shift to the right by 9mm;

(xii) generalised effacement of cerebral sulci;

(xiii) effacement of basal cisterns;

(xiv) subgleal haematoma over left temporal-parietal region;

(xv) comminuted fracture involving temporal, frontal and crossed midline; and

(xvi) minimal anterior sagittal sinus tear during bone removal.

(b) Head (Cognitive)

(i) Glasgow coma scale E1V1M1 stridor (wheezing) with sPO2 80% under HFM upon arrival at Hospital Sultanah Aminah Johor Bahru;

(ii) global aphasia (both expressive and receptive);

(iii) dysphagia (difficulty swallowing) requiring insertion of percutaneous endoscopic gastrotomy (PEG) tube;

(iv) dysphasia (language disorder) resulting in lack of comprehension skills and incoherent speech; and

(v) inability to manage his personal welfare, property and affairs.

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(c) Facial Fractures

(i) left zygomatic complex fracture;

(ii) mandible & wall of maxillary sinus fracture (left LeFort I with split palate);

(iii) bilateral sphenoid sinus; and

(iv) left orbit fractures.

(d) Chest

(i) left hemopneumothorax with subcutaneous emphysema;

(ii) bilateral lung contusion; and

(iii) fractures of 3rd & 4th ribs with pneumomediastinum (presence of air in chest cavity).

(e) Abrasions and Lacerations

(i) jagged laceration wound at left eyelid; and

(ii) multiple facial and chest contusions and abrasions.

(f) Others

(i) blood transfusion of 4 pints of packed cells and 4 units of FFP intraoperatively;

(ii) cerebral resuscitation required in ICU;

(iii) further blood transfusion of 2 pints packed cells and 2 units FFP, 4 units platelets and 6 units cryoprecipitate; and

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(iv) admission complicated by possible pulmonary embolism, pneumonia, cellulitis, fever and left common carotid artery pseudoaneurysm.

95 Mr Lim underwent various medical procedures to address the aforementioned injuries and the consequences therefrom. Mr Lim was warded in various hospitals until 8 May 2019 when he was discharged home.[191]

96 On 25 April 2018, Mr Lim was attended to by Ms Liew Li Ling Petrina, a principal occupational therapist with the Occupational Therapy Department at Singapore General Hospital.[192] She noted that Mr Lim required assistance with most of his activities of daily living due to decreased motor control of his limbs and impaired cognition.[193]

97 On 3 August 2018, Mr Lim was attended to by Dr Lim Jia Xu, a doctor with the Department of Neurosurgery at Singapore General Hospital.[194] He noted that Mr Lim had sustained traumatic brain injury, which left Mr Lim unfit to perform complex decision-making due to his inability to speak as well as move his limbs adequately to indicate his thoughts and preferences through pointing or writing.[195]

98 From 19 February 2018 to 31 August 2018, Mr Lim saw Mr Chen Weixian Joseph ("Mr Chen"), a physiotherapist then working in Singapore

191 JFWM-2023 08 22 at para 25.

192 AEIC at Ms Liew Li Ling Petrina dated 18 September 2023 ("LLLP-2023 09 18") at paras 1 and 3.

193 LLLP-2023 09 18 at para 3.

194 AEIC of Dr Lim Jia Xu dated 4 September 2023 ("LJX-2023 09 04") at paras 1 and 3.

195 LJX-2023 09 04 at para 3.

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General Hospital, for a total of 89 sessions of physiotherapy.[196] Following the physiotherapy sessions, Mr Chen opined that Mr Lim was able to demonstrate some functional improvement and was able to perform sit and stand tasks with moderate assistance.[197]

99 On 27 June 2019, Mr Lim was reviewed by Dr Aaron Ang, a senior consultant with the Department of Psychiatry at Tan Tock Seng Hospital,[198] for a mental capacity assessment for the purpose of appointing a deputy.[199] Dr Aaron Ang found that Mr Lim suffered from traumatic brain injury with severe cognitive impairment which is permanent and likely irreversible. He found that Mr Lim was unable to communicate and was thus mentally incompetent to handle himself and his own financial affairs.[200] Under an order of court issued on 29 September 2020, Ms Fung was appointed as Mr Lim's deputy to make decisions on behalf of him that he is unable to make for himself in relation to his personal welfare, property and affairs.[201]

100 On 19 March 2021, Mr Lim was attended to by Dr Chua Sui Geok Karen ("Dr Karen Chua"), a senior consultant with the Department of Rehabilitation Medicine at Tan Tock Seng Rehabilitation Centre, Tan Tock Seng Hospital.[202] Dr Karen Chua reported that Mr Lim had strong indicators of very severe

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[196] AEIC of Mr Chen Weixian Joseph dated 6 September 2023 ("CWJ-2023 09 06") at para 3.

[197] CWJ-2023 09 06 at para 5.

[198] ALPA-2023 06 23 at para 1.

[199] ALPA-2023 06 23 at para 3.

[200] ALPA-2023 06 23 at para 3 and pp 8–10.

[201] FC/ORC 4632/2020.

[202] AEIC of Dr Chua Sui Geok Karen dated 23 June 2023 ("CSGK-2023 06 23") at paras 1 and 4.

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traumatic brain injury predicting chronic disability and unemployability. She stated that Mr Lim has plateaued in function and remains cognitively globally impaired with severe deficits in sustained attention and arousal, short-term memory, executive function, emotional regulation and traumatic brain injury-related fatigue. She also opined that it is highly unlikely that Mr Lim will regain independence in mobility, self-care, speech and communication and will require a trained caregiver to care for his physical, mental and emotional needs. Moreover, gainful employment is highly unlikely given the complexity of Mr Lim's traumatic brain injury-related disabilities. The overall prognosis for further functional or neurological improvement remains poor.[203]

101 Ms Fung gave evidence that around December 2021, Mr Lim's behaviour took a turn for the worse.[204] While Mr Lim had recovered well physically, he started engaging in verbal abuse and violence. The violence was sometimes directed towards his children.[205] Ms Fung stated that she had consulted Dr Karen Chua, who increased Mr Lim's medicine dosage, but this did not help for long.[206] Ms Fung further gave evidence that her children were also emotionally affected by Mr Lim's behaviour.[207] According to Ms Fung, from October 2022 to January 2023, Mr Lim's sleep at night became interrupted and he would switch on the lights, television and kitchen appliances and rummage for food.[208] He also absconded from home.[209] In the last two weeks of

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203 CSGK-2023 06 23 at p 6.

204 JFWM-2023 08 22 at para 34.

205 JFWM-2023 08 22 at para 34(b).

206 JFWM-2023 08 22 at para 34(c).

207 JFWM-2023 08 22 at para 34(c).

208 JFWM-2023 08 22 at para 34(d).

209 JFWM-2023 08 22 at para 34(d).

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December 2022, Mr Lim started attending a daycare centre, but Ms Fung's evidence is that he started falling sick more often, and this included suffering a relapse in asthma and skin issues.[210]

102 On 21 March 2023, the sixth defendant's medical expert, Dr Kantha Rasalingam ("Dr Kantha"), assessed Mr Lim for the purpose of preparing a specialist medical report.[211] His opinion is that Mr Lim had recovered considerably from his initial injuries, though he still has residual deficits. Dr Kantha opined that Mr Lim had moderate disability, with no need for assistance in everyday life, and that employment is possible but may require special equipment.[212]

103 In the lead-up to the trial, various updated medical reports were procured by the plaintiff from Mr Lim's treating doctors pursuant to a request made by the sixth defendant.[213] The contents of these updated medical reports will be discussed below when each of the heads of claim are analysed.

104 On 16 August 2023, Mr Lim was admitted for long-term residence in Orange Valley Nursing Home ("Orange Valley"), where he is slated to receive both physiotherapy and occupational therapy.[214]

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210 JFWM-2023 08 22 at para 34(d).

211 AEIC of Dr Kantha Rasalingam dated 18 August 2023 ("KR-2023 08 18") at p 19.

212 KR-2023 08 18 at p 20.

213 Core Bundle ("CB") at pp 88–109; Minute Sheet dated 4 September 2023; Minute Sheet dated 27 September 2023.

214 JFWM-2023 08 22 at para 45.

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105 Dr Kantha subsequently prepared a supplementary expert report dated 30 October 2023.[215] In this supplementary expert report, he referred to a report from one Dr Brian Yeo,[216] who is not called as a witness in this trial. According to Dr Kantha, Dr Brian Yeo was supposed to assist Dr Kantha in a medical re-examination of Mr Lim, and to review updated medical documents concerning Mr Lim provided by Orange Valley.[217] The medical re-examination of Mr Lim did not occur because Mr Lim had contracted shingles during the period when the medical re-examination was to take place. Dr Kantha opined that he agreed with Dr Yeo's comments that while it may be ideal for Mr Lim to be placed in a nursing home with close supervision, it is also important for Mr Lim to be able to have a continued relationship interacting with his growing children, and this is best achieved either in a daycare setting with appropriate adjustments, or by having trained domestic helpers.[218]

Summary of quantifications (Agreed and Disputed)

106 In relation to quantum, the third to sixth defendants filed joint closing and reply submissions.[219] The parties have managed to reach agreement on various heads of claim, as follows:[220]

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215 Supplementary AEIC of Dr Kantha Rasalingam dated 31 October 2023 ("KR-2023 10 31") at para 3.

216 Supplementary AEIC of Dr Kantha Rasalingam dated 31 October 2023 ("KR-2023 10 31") at p 10.

217 KR-2023 10 31 at p 6.

218 KR-2023 10 31 at p 10.

219 Third to sixth defendants' joint closing submissions on quantum dated 12 January 2024 ("DCS (Quantum)") at para 1; Third to sixth defendants' joint reply submissions on quantum dated 30 January 2024 ("DRS (Quantum)") at para 1.

220 Letter from Niru & Co dated 8 March 2024 annexing the plaintiff's summary table and the defendants' summary table ("Letter-2024 03 08") at pp 144–160.

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Head of claim	**Quantum**
General Damages	
Pain and Suffering	$253,000.00
Special Damages	
Medical Expenses	$336,310.11
Transport expenses	$3,210.00
Cost of application to appoint a deputy	$8,761.36

107 I award these sums stated in [106] as agreed.

108 The following heads of claim are not agreed, and the parties' respective quantifications are set out as follows:[221]

Head of claim	**Quantum submitted by plaintiff**	**Quantum submitted by third to sixth defendants**
General Damages		
Loss of future earnings	$1,569,960.03	No award
Loss of earning capacity	No submission	$80,000.00 or a maximum of $150,000.00
Cost of future nursing care at Orange Valley	$1,991,196.00	No award

221 Letter-2024 03 08 at pp 6–160.

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Cost of future nursing care through alternatives proposed by the defendants (*eg,* daycare, trained domestic helper, *etc*)	No submission	$522,708.25 to $570,284.00
Cost of future medical expenses	$247,546.74	$43,965.61
Cost of future transport expenses	$33,372.00	$2,224.80
Cost of future caregiver services rendered by plaintiff's wife and/or domestic helper	$11,124.00	No award
Cost of future domestic helper to assist in parenting the plaintiff's children	$140,000.00	No award
Special Damages		
Pre-trial loss of income	$355,521.57	No award
Incurred Orange Valley nursing care expenses	$34,240.91	No award
Cost of caregiver services from the plaintiff's wife and domestic helper prior to admission into nursing home	$240,240.00	No award
Cost of domestic helper to assist in parenting plaintiff's children	$76,665.45	$29,332.73

109 I turn to consider the various disputed heads of claim.

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Loss of Future Earnings / Loss of Earning Capacity

Parties' cases

(1) Plaintiff's case

110 The plaintiff claims a sum of $1,569,960.03 for loss of future earnings, which takes into account his expected monthly salary, increments, bonuses, annual wage supplement, Central Provident Fund ("CPF") contributions and deductions for income tax.[222] The plaintiff splits his calculations over three time periods: (a) 2024 to 2040 when Mr Lim would be aged 44 to 60 years; (b) 2041 to 2047 when Mr Lim would be aged 61 to 67 years; and (c) 2048 to 2050 when Mr Lim would be aged 68 to 70 years.[223] For (a), the plaintiff submits that the multiplicand should take into account salary increments of 3% per annum and bonuses of 14% of annual income.[224] For (b), the plaintiff submits that the multiplicand should be reduced by 1/3 to take into account the fact that Mr Lim may taper off his exertions towards employment as he ages.[225] For (c), the plaintiff submits that these would be lost years of income.[226] The plaintiff submits that based on Hauw Soo Hoon et al, *Actuarial Tables with Explanatory Notes for use in Personal Injury and Death Claims* (Academy Publishing, 2021) ("*Singapore Actuarial Tables*"), the appropriate multiplier to apply for loss of future earnings is 19.91 years.[227]

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222 Plaintiff's closing submissions on quantum dated 15 January 2024 ("PCS (Quantum)") at para 67.

223 PCS (Quantum) at para 67.

224 PCS (Quantum) at para 67(i).

225 PCS (Quantum) at para 67(ii)

226 PCS (Quantum) at para 67(iii).

227 PCS (Quantum) at para 67(iv).

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111 The plaintiff submits that Mr Lim was prevented from producing even more evidence of his income due to the incapacity caused by the defendants, and the plaintiff did not deliberately withhold evidence.[228] In relation to the relative lack of supporting documents to show the income earned by Mr Lim from project work that he had apparently undertaken in the past, the plaintiff submits that blame should not be foisted on Ms Fung, given that it is not foreseeable to her that Mr Lim would be injured such that she would need to acquaint herself with the source and location of Mr Lim's income.[229] The plaintiff submits that Mr Lim had already taken a pay-cut from higher-paying project work to work regular hours at SAS, and was unlikely to take on a lower paying job in the future after SAS.[230] The plaintiff notes that the available documents show that Mr Lim had earned a regular and grossly stable income for six months preceding the accident from September 2017 to February 2018, save that he had switched employment in February 2018.[231] The plaintiff also notes that Mr Lim's income is supported by national wage statistics.[232] The plaintiff adds that Mr Lim would have needed to provide for his two young children, which makes it unlikely that he would have left his job at SAS.[233] The plaintiff also contends that Ms Koh Lay Ming ("Ms Kate Koh"), the chief operating officer of SAS, has testified that but for the accident, SAS would have continued employing Mr Lim so long as he performed satisfactorily, and that SAS would have done due diligence on Mr Lim before offering him

228 Plaintiff's reply submissions on quantum dated 30 January 2024 ("PRS (Quantum)") at para 29.

229 PRS (Quantum) at para 30.

230 PCS (Quantum) at para 58.

231 PRS (Quantum) at paras 31–32.

232 PRS (Quantum) at para 34; PCS (Quantum) at para 61.

233 PCS (Quantum) at para 59.

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employment.[234] The plaintiff also places reliance on SAS's records, which contain fairly positive testimonials from Mr Lim's ex-employers.[235] The plaintiff submits that SAS has given credible evidence that Mr Lim is projected to receive annual wage increments of about 3%,[236] and bonuses of about $37,000 per annum.[237]

(2) Defendants' case

112 The defendants submit that there should be no award for loss of future earnings.[238] The defendants' overarching submission is that the plaintiff's estimations of Mr Lim's lost earnings lack any factual basis.[239]

113 The defendants' case is that the *Singapore Actuarial Tables* should be departed from completely in the present case (in relation to the loss of future earnings claim) as the multiplier and multiplicand cannot be reasonably ascertained or applied in this case because of the lack of cogent evidence of Mr Lim's earnings.[240] The defendants submit that the plaintiff's entire claim for loss of future earnings rests solely on extrapolation from 3.5 working days of employment with SAS, where Mr Lim was under probation at the time of the accident.[241] The defendants contend that the plaintiff has not provided any satisfactory evidence to prove that Mr Lim would have continued being

234 PCS (Quantum) at para 60.

235 PCS (Quantum) at para 62.

236 PCS (Quantum) at para 63.

237 PCS (Quantum) at para 64.

238 DCS (Quantum) at para 41.

239 DRS (Quantum) at paras 3–4; DCS (Quantum) at paras 40 and 42.

240 DRS (Quantum) at paras 55, 57, 66 and 69.

241 DCS (Quantum) at para 43.

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employed by SAS and would have received annual bonuses and salary increments up until 70 years of age,[242] nor has the plaintiff provided an alternative reasonable multiplicand to support the claim for loss of future earnings.[243]

114 The defendants argue that Ms Fung should have been able to produce more documents to demonstrate Mr Lim's earnings from the past,[244] including the time he was doing project work and allegedly earning a higher income.[245] The defendants submit that the evidence shows that Mr Lim engaged in fleeting employment instead of having a permanent job.[246] The defendants also argue that Ms Kate Koh is in no position to testify as to whether Mr Lim would be confirmed as an employee in SAS,[247] whether he would have continued to be employed in SAS if there was no accident, and what Mr Lim's future salary increments would be.[248] The defendants argue that any submission on potential bonuses that Mr Lim might get are speculative.[249] The defendants argue that the plaintiff had deliberately withheld evidence of Mr Lim's earnings from the court.[250] The defendants submit that the plaintiff cannot rely on general online salary statistics as a substitute for evidence.[251]

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242 DCS (Quantum) at para 45.

243 DCS (Quantum) at para 46; DCS (Quantum) at para 85.

244 DCS (Quantum) at paras 50–54 and 69–74.

245 DRS (Quantum) at paras 59 and 64.

246 DRS (Quantum) at paras 67, 72 and 80; DCS (Quantum) at paras 56–57 and 77.

247 DRS (Quantum) at para 83; DCS (Quantum) at paras 63 and 67.

248 DRS (Quantum) at paras 70–71 and 82.

249 DRS (Quantum) at paras 84–86.

250 DRS (Quantum) at para 74; DCS (Quantum) at para 75.

251 DRS (Quantum) at paras 7–8, 75–78; DCS (Quantum) at para 79.

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115 In relation to the loss of earning capacity, the defendants' primary position is that there should be no award for loss of earning capacity either.[252] The defendants note that the plaintiff does not plead a claim for loss of earning capacity,[253] and submit that the plaintiff's evidence is also inadequate for such a claim.[254] The defendants take the position that the award (if any), should ideally be fixed at $80,000.00 and $150,000.00 at the highest.[255]

Law

116 The primary prayer of the plaintiff is for an award of loss of future earnings. The defendants have submitted for a lower award on the basis of loss of earning capacity. There is thus a need to outline the difference between the two. The Court of Appeal in *Teo Sing Keng and another v Sim Ban Kiat* [1994] 1 SLR(R) 340 ("*Teo Sing Keng*") at [36]–[40] set out the difference. In essence, an award for loss of earning capacity is generally made where, at the time of trial, the plaintiff is in employment and has suffered no loss of earnings, but there is a risk that he may lose that employment at some time in the future, and may then, as a result of his injury, be at a disadvantage in getting another job or an equally well paid job; or where there is "no available evidence" of the plaintiff's earnings to enable the court to properly calculate future earnings (*Teo Sing Keng* at [40]). In contrast, an injured plaintiff is entitled to damages for the loss of earnings and profits which he has suffered by reason of his injuries up to the date of the trial and for the loss of the prospective earnings and profits of which he is likely to be deprived in the future. However, there must be evidence

[252] DCS (Quantum) at para 96.

[253] DCS (Quantum) at para 92.

[254] DCS (Quantum) at para 95.

[255] DRS (Quantum) at para 96.

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on which the court can find that the plaintiff will suffer future loss of earnings: *Teo Sing Keng* at [38], citing *Ong Ah Long v Dr S Underwood* [1983] 2 MLJ 324 at 333.

117 The Court of Appeal explained in *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 at [46] that an award for loss of future earnings should, as far as reasonably possible, provide the plaintiff with the income that he would have earned but for the accident which caused his injuries. In *Lua Bee Kiang (administrator of the estate of Chew Kong Seng, deceased) v Yeo Chee Siong* [2019] 1 SLR 145 ("*Lua Bee Kiang*") at [51], the Court of Appeal explained that the methodology to be deployed is the "multiplier *times* multiplicand" approach. This means that the court multiplies the difference between what the plaintiff was earning before the accident and what he is capable of earning after the accident by the number of months that the plaintiff was expected, before the accident, to have remained in work. A discount is applied to the multiplier to take into account the putative investment risk associated with the accelerated receipt of future income as a lump sum, as well as contingencies such as mortality and other considerations affecting life expectancy.

118 In relation to the multiplicand, the Court of Appeal held at [38] of *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] 3 SLR 610 that what is key is that "there are sufficient objective facts or evidence to enable the court to reasonably make the assessment", such that it is possible to make an award of loss of future earnings to an injured party who has yet to embark on a career. This was further elaborated on by the Court of Appeal in *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85 ("*Lee Wei Kong*") at [30], where the Court of Appeal noted the case of *Croke v Wiseman* [1982] 1 WLR 71 at 83D–E, which was a case

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where the English Court of Appeal made an award of loss of future earnings to a 21-month old victim on the basis of the child's excellent family background and the national average wage.

119 For assessment of damages in personal injury and death claims heard on or after 1 April 2021 (regardless of when the accident that gave rise to the claims occurred, and regardless of the date on which the action was commenced), the court refers to the *Singapore Actuarial Tables* to determine an appropriate multiplier, unless the facts of the case and the ends of justice dictate otherwise: Supreme Court Practice Directions 2013 at para 159.

120 One final note before I analyse the claim. I refer to the Court of Appeal's guidance in *Lua Bee Kiang* at [65] and [72]–[73]. An exercise in analysing a claim for loss of *future* earnings, *future* medical expenses, and the like, involve predictions about what the future holds. As the Court of Appeal noted at [65] of *Lua Bee Kiang,* "it would be unfair to fault a party for being unable to establish an assumption about a future event as true on the balance of probabilities … [i]nstead, the question in that context is whether that assumption is reasonable, and if it is, an appropriate discount may be applied to take into account the risk that the event may not happen". The Court of Appeal emphasised at [72] that "the court should not be fixated on discerning a precise percentage by which the award should be discounted, because the exercise is inherently imprecise" and that "the opposing probabilities must be weighed with sympathy and with fairness for the interests of all concerned and at all times with a sense of proportion".

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Decision

121 In the present case, I first need to decide if a claim for loss of future earnings is justified based on the evidence. If yes, I will then move on to the quantum of such loss of future earnings claim. If not, I will have to consider if an award for loss of earning capacity would be more appropriate and also the quantum for any such award.

(1) Entitlement

122 In my judgment, a claim for loss of future earnings is justified for this case.

123 I deal first with the defendants' characterisation of Ms Fung as an evasive witness who was deliberately suppressing evidence of Mr Lim's pre-accident income. I disagree with this submission. Ms Fung is a widow who was overwhelmed, overworked and exasperated in having to simultaneously juggle a sick husband, two young children and a full-time job to provide for all of them.[256] She gave testimony, for instance, that she called the Inland Revenue Authority of Singapore ("IRAS") to get tax documents relating to Mr Lim, and she simply did not "overthink" about the instructions that they gave her over the phone because she had "too many things to take care of".[257] She testified that she needs to "single-handedly take care of all of [her] family members".[258] She gave detailed testimony as to how her difficult circumstances caused her to be

256 JFWM-2023 08 22 at para 34(b).

257 NEs dated 12 October 2023 at p 34, lines 28–29.

258 NEs dated 12 October 2023 at p 71, lines 13–14.

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"burnt out"[259] and "too stress[ed]"[260], and that she and her children were "really living [in] like a hell … [as they] don't know how to cope anymore".[261] This is not simply something that only emerged at trial. Even Dr Karen Chua, in her report dated 21 September 2023, has noted that over the past six months, Ms Fung had verbalised carer burnout and stress with managing her multiple roles as sole breadwinner, wife and mother.[262]

124 Ms Fung also gave a reasonable explanation in court about her attempts to retrieve income documents relating to Mr Lim from the various authorities. She testified that while she knew that Mr Lim was doing project work over the years, she was unsure whether the projects were based in Singapore or abroad.[263] She tried to retrieve Mr Lim's CPF records online and saw records available dating back to 2017, and upon further enquiry via call to CPF, she was informed that six years' worth of CPF records were available for viewing.[264] Ms Fung testified that all along, Mr Lim had taken good care of the family as a provider, and paid for almost all of the expenses, and as someone who was a bit simple-minded, Ms Fung was content and did not ask Mr Lim about his job in any manner of detail.[265] Ms Fung insisted that she only wants to get justice for Mr Lim, and she has already presented all the evidence that she could present.[266]

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259 NEs dated 12 October 2023 at p 63, lines 2 and 10.

260 NEs dated 12 October 2023 at p 63, line 3.

261 NEs dated 12 October 2023 at p 63, lines 12–13.

262 CB at p 103.

263 NEs dated 12 October 2023 at p 32, lines 2–3.

264 NEs dated 12 October 2023 at p 32, lines 5–9.

265 NEs dated 12 October 2023 at p 32, lines 11–18.

266 NEs dated 12 October 2023 at p 32, lines 16–18; NEs dated 12 October 2023 at p 36, line 24.

She thereafter broke down on the stand and was given time to compose herself.[267]

125 Ms Fung is not a native Singaporean and had grown up in Sabah, Malaysia before marrying the plaintiff.[268] In that regard, she also did not grow up with familiarity with our information systems. Far from trying to hide information, I find that Ms Fung had tried her best to gather the documents and records that she could access with the limited capacity that she had.

126 However, Ms Fung's struggles still do not arm me with the evidence needed to consider if a loss of future earnings claim is justified. I still need to consider the evidence that is available in order to make that determination.

127 Ms Fung's evidence is that before taking on the job of finance executive with the SAS,[269] Mr Lim had been working on a project basis.[270] Her evidence is that Mr Lim had switched to SAS because he wanted to switch to a more stable and less busy job as his children were growing up and he wanted to spend more time with the children.[271] This necessarily entails that prior to the SAS job in 2018, there was no fixed long-term employment contract and Mr Lim would be moving from project to project with different employers. There is evidence to support this. Ms Fung had adduced into evidence Mr Lim's CPF records dating back to 2017.[272] The 2017 records show periods of CPF contributions by

[267] NEs dated 12 October 2023 at p 32, lines 18–30.

[268] NEs dated 12 October 2023 at p 2, lines 9–18.

[269] JFWM-2023 08 22 at para 54.

[270] NEs dated 12 October 2023 at p 37, lines 27 to p 38, line 4.

[271] NEs dated 12 October 2023 at p 97, lines 29–32.

[272] JFWM-2023 08 22 at para 57 and Tab LCY-6.

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various organisations – Sembcorp Design and Construction,[273] Singapore Centre for Chinese,[274] and Changi Cove.[275] In the course of trial, Ms Kate Koh gave evidence. She has been working at the SAS since 2009 and she is the current chief operating officer of SAS.[276] At the time Mr Lim was employed by SAS, Ms Koh was the deputy chief operating officer of SAS.[277] Ms Koh provided evidence of two sets of references provided as part of the reference checks SAS conducted on Mr Lim before employing him.[278] One of the references was from CBS Ventures Pte Ltd,[279] and the other reference was from GS Engineering & Construction Corp.[280] On the face of the references, Mr Lim was employed by CBS Ventures Pte Ltd from July 2009 to August 2013 and by GS Engineering & Construction Corp from 25 May 2016 to 21 November 2016. No salary information was indicated in the CBS Ventures Pte Ltd reference but the GS Engineering & Construction Corp reference indicated that Mr Lim's last position held was accounting officer with a last drawn basic salary of $3,600.00. The CBS Ventures Pte Ltd reference stated that Mr Lim's performance was acceptable and the GS Engineering & Construction Corp reference stated that Mr Lim's performance was above acceptable.

128 In line with the Court of Appeal's decision in *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686

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273 JFWM-2023 08 22 at pp 158–159; NEs dated 12 October 2023 at p 38, line 3 to p 39, line 6.

274 JFWM-2023 08 22 at pp 158–159; NEs dated 12 October 2023 at p 39, lines 10–21.

275 JFWM-2023 08 22 at pp 158–159; NEs dated 12 October 2023 at p 39, lines 15–21.

276 NEs dated 18 October 2023 at p 41, lines 5–8.

277 NEs dated 18 October 2023 at p 59, line 32 to p 60, line 1.

278 Exhibits P4A and P4B; NEs dated 18 October 2023 at p 37, line 21 to p 38, line 26.

279 Exhibit P4A.

280 Exhibit P4B.

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("*Gimpex*") at [95], I am prepared to hold that the CBS Ventures Pte Ltd and the GS Engineering & Construction Corp references are admissible evidence under s 32(1)(*b*)(iv) of the Evidence Act. The references were provided by persons (*ie,* the relevant officers of CBS Ventures Pte Ltd and the GS Engineering & Construction Corp) in the ordinary course of business (*ie,* the provision of references for former employees which is, undoubtedly, a common part of commercial life) and the references were documents forming part of the records of both the reference provider (*ie,* CBS Ventures Pte Ltd and GS Engineering & Construction Corp) and the reference receiver (*ie,* SAS). *Per* s 32(3) of the Evidence Act, I will also have to consider whether the references, as *prima facie* hearsay evidence, should be excluded because other countervailing factors outweigh the benefit of having the evidence admitted. In particular, I should consider whether the references are of limited probative value, and whether there are certain safeguards or measures that applied to that evidence which would ensure a minimal degree of reliability. In this regard, I note that the references were provided in January 2018 as part of SAS's standard hiring process, long before any litigation was contemplated, and was based on SAS's standard "Reference Check form" which was sent via e-mail from SAS's human resource department to Mr Lim's ex-employers.[281] The references are, for all intents and purposes, standard references that any ordinary human resource department would provide and receive. There is no allegation that they were forged or that they were drafted by persons with a vested interest or bias. As Ms Kate Koh said herself, SAS is really just a neutral party in this suit called upon to give evidence by a former employee.[282] She testified that she was not even in touch with Ms Fung.[283] This is very much unlike the situation in *Gimpex*,

281 Exhibit P4A at p 4; Exhibit P4B at p 4.

282 NEs dated 18 October 2023 at p 60, line 29.

283 NEs dated 18 October 2023 at p 51, line 12–15.

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where the Court of Appeal held that an inspection report admissible under s 32(1)(*b*)(iv) of the Evidence Act should nonetheless be excluded as it could be shown that the creator of the report was too willing to make alterations to the report at the request of the defendants without regard to what was the true position and the report was prepared in a sloppy manner: *Gimpex* at [113]–[120].

129 Ms Kate Koh's evidence for the SAS is neutral. She fairly conceded that Mr Lim's continued employment at the SAS after his probation (which Mr Lim was five days into at the time of the accident)[284] was dependent on his continued satisfactory performance, and that is something for which there is no sure answer.[285] However, Ms Kate Koh testified that when SAS employs an employee, the employment is done with a view that the employee will continue with the organisation "barring any very exceptional circumstances or he for some personal reasons … choose to leave".[286] Ms Kate Koh testified that Mr Lim was a "sound worker" in the few days that he was with SAS, which made SAS decide to make an exception for Mr Lim and make a claim on their corporate insurance policy to provide Mr Lim with funds even though Mr Lim was not entitled to such coverage as a probationee.[287] On Ms Kate Koh's account, the SAS also appears to have a fairly detailed selection process for employees, including shortlisting for interview via an initial application form,[288] and the aforementioned reference checks. The due diligence that SAS put into

284 NEs dated 18 October 2023 at p 62, lines 7–8.

285 NEs dated 18 October 2023 at p 58, lines 3–32; NEs dated 18 October 2023 at p 63, lines 2–13.

286 NEs dated 18 October 2023 at p 63, lines 26–30.

287 NEs dated 18 October 2023 at p 61, lines 10–17.

288 NEs dated 18 October 2023 at p 47, lines 13–36.

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the process for employing Mr Lim supports an inference that there is reasonable basis to take the view that Mr Lim would continue with the organisation but for the accident.

130 Ms Kate Koh gave evidence that Mr Lim's starting salary when he joined the SAS as a finance executive was $3,500 per month.[289] Her evidence is that if Mr Lim had continued his employment with the SAS and performed satisfactorily, his projected monthly basic salary would be approximately $4,000.00 as of September 2023.[290] Ms Koh elaborated on her projections and justified the figures on the basis that they were derived based on the SAS's annual increment percentages given to employees holding an executive position in SAS from 2018 to 2023.[291] She further deposed that executives in the SAS received an average annual salary increment of 3% over the five years from 2018 to 2023 and the projected bonuses and annual wage supplement that Mr Lim could have received from 2018 to 2023 is approximately $37,000, based on the payments given to executives in the SAS over 2018 to 2023.[292] In cross-examination, Ms Koh testified that the practice of SAS is to give the same increment for everyone unless the staff has disciplinary issues,[293] though she later said that there could be some fluidity based on performance.[294] In this regard, I note that there is no evidence before the court that Mr Lim's performance in SAS or elsewhere was sub-par.

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[289] KLM-2023 09 25 at para 5.

[290] KLM-2023 09 25 at para 8.

[291] KLM-2023 09 25 at para 8.

[292] KLM-2023 09 25 at para 9.

[293] NEs dated 18 October 2023 at p 74, lines 13–18.

[294] NEs dated 18 October 2023 at p 74, line 19 to p 75, line 22.

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131 All in all, the picture painted before me did indeed arm me with sufficient information to render an award for loss of future earnings. My task is not to predict the future with absolute certainly – no one can. But I have before me sufficiently robust documentary and oral evidence that allow me to make the relevant projections. Ms Fung's assertion that Mr Lim took a pay cut to work at the SAS is not supported by objective documentary evidence. [295] I cannot thus use the allegedly higher salary that Mr Lim commanded prior to SAS as a basis for awarding sums in respect of loss of future earnings. However, Mr Lim had been working prior to the accident, and the state of the evidence before me is more robust than that before the courts in the situations discussed at [118] above. Ultimately, Mr Lim had graduated from university in 2012 with a degree in finance earned part-time (see [90] above). He had married, settled down in a flat and had two children (see [89] above). These are signposts towards stability in life which would need stability in career to achieve. The evidence of Mr Lim's project-related work and income is sketchy, but his work history was sufficiently able to secure a full-time job at SAS (albeit he was still on probation at the time of the accident). There is evidence of Mr Lim's past work for various organisations from CBS Ventures Pte Ltd to Sembcorp Design and Construction (see [127] above). Looking at the evidence holistically, on a balance of probabilities, I find that these are sufficiently objective facts on which the court can make a reasonable assessment for loss of future earnings. I also find that the evidence does *not* support the defendants' argument that Mr Lim only engaged in fleeting work. Ms Fung's unrebutted evidence is that Mr Lim had been consistently working and providing for the family (see [124] above) and the defendants have not explained *where* this income would have come from had it not been for Mr Lim's work. In this regard, referring to the law stated at [116]

295 NEs dated 12 October 2023 at p 31, lines 3–13.

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above, this case is one where a loss of future earnings award ought to be given, and not an award for loss of earning capacity.

(2) Quantum

132 The defendants did not rebut the plaintiff's submission that Mr Lim's earning capacity has been entirely extinguished by the accident.[296] Dr Karen Chua has opined that Mr Lim is not employable in his current state.[297] The defendants did not adduce evidence of what sorts of jobs Mr Lim can still do in his post-accident condition, save for an opinion from Dr Kantha that "[e]mployment is possible but may require special equipment … [though it] is beyond the scope of [Dr Kantha's] specialty to elaborate more on the scope of [Mr Lim's] employment, or the equipment required for his employment".[298] Dr Kantha opined in the same paragraph of his report that Mr Lim has moderate disability.[299] In that same report, Dr Kantha opined that Mr Lim "has reached maximal medical improvement" and that he has "dysphasia, where he is unable to express himself and at times confused when he tries to execute a task", but is "able to follow simple commands … most likely due to the involvement of Broca's area located in the left frontal cortex, which was injured due to the trauma".[300] In this regard, the Court of Appeal decision in *Lee Wei Kong* is instructive. In that decision, the Court of Appeal noted at [27] that the appellant's capacity to work had effectively been destroyed by his serious memory and cognitive impairments, and the Court of Appeal opined that common sense would suggest that only a very exceptional employer, prompted

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296 PCS (Quantum) at para 66.

297 CB at p 103.

298 KR-2023 08 18 at p 20.

299 KR-2023 08 18 at p 20.

300 KR-2023 08 18 at p 19.

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perhaps by compassion, will employ someone like the appellant (who is so mentally impaired) to do the simplest of tasks. I am satisfied that I should be quantifying the award for loss of future earnings on the basis that Mr Lim is unlikely to ever be in employment again for the rest of his life.

133 I next must consider the age at which Mr Lim is projected to retire, but for the accident. In this regard, the decision of the court in *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 ("*Muhammad Adam*") concerning the plaintiff's retirement age in that case is instructive. The court in *Muhammad Adam* held at [179]–[182] that it was reasonable to expect the plaintiff, who graduated with a diploma in computer engineering, to retire at 70 years of age, taking into account the Singapore government's stance of raising the statutory re-employment age to 70 years of age by 2030. I note that the decision in *Muhammad Adam* was appealed and the Appellate Division of the High Court upheld the finding that the plaintiff would likely retire at the age of 70. The present plaintiff has an overseas degree in finance, and was working in an office job at the time of the accident. His profile in this regard is similar to the plaintiff in *Muhammad Adam.* I similarly hold that the present plaintiff would likely retire at the age of 70 but for the accident.

134 I am allowed to depart from the *Singapore Actuarial Tables* if the facts of the case and the ends of justice dictate so (see [119] above). There are no submissions on why I should depart from the *Singapore Actuarial Tables* from either party, on the assumption that I find sufficient evidence for the plaintiff's loss of future earnings claim. The defendants simply issue a blanket denial that the multiplier should be used at all based on the same reasons why they think that the plaintiff's loss of future earnings claim must fail. That being the case, I decide to follow the *Singapore Actuarial Tables*. The multiplicand faces a

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similar issue in that the defendants have simply issued a blanket denial of the plaintiff's calculations and have not provided a detailed alternative calculation. The plaintiff's calculation is based on evidence provided by SAS (see [130] above). I accept these figures in the absence of other evidence to the contrary. In fact, I note that Ms Koh's evidence of the monthly salary Mr Lim received (and was projected to receive as of September 2023 – see [130] above) is *lower* than the national average statistics that Ms Fung provided in her AEIC.[301] I am satisfied that the multiplicand adopted by the plaintiff is reasonable and supported by the evidence.

135 I turn to the calculations, with reference to the *Singapore Actuarial Tables*. The plaintiff's arguments in this regard have been summarised at [110] above and his calculations are reproduced as follows:[302]

	First Tranche: 44 years (2024) to 60 years (2040)	**Second Tranche: 61 years (2041) to 67 years (2047)**	**Third Tranche: 68 years (2048) to 70 years (2050)**
Average Annual Income (Including Wages) minus income tax	$83,065.60	$75,066.31	$63,815.79
Applicable multiplier	[17/ 27] x 19.91	[7/27] x 19.91	[3/27] x 19.91
Amount for each tranche	$1,041,304.16	$387,481.17	$141,174.70

301 JFWM-2023 08 22 at para 57.

302 PCS (Quantum) at para 68.

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Total amount	$1,569,960.03

136 I note that the plaintiff's submissions have adopted a reduced multiplicand for the Second Tranche and the Third Tranche referred to in the table above to account for the tapering off of Mr Lim's exertions as he approaches retirement. The plaintiffs also apply a multiplier of 19.91 *across the entire period from 2024 to 2050*.

137 I must say at this juncture that neither the plaintiff's submissions nor the defendants' submissions are entirely helpful to me in my effort to derive an appropriate figure to award for this claim. The defendants did not propose an alternative method of calculation or an alternative multiplier for the loss of future earnings claim (preferring instead to put all their eggs in the baskets of a blanket denial of this head of claim, along with an alternative submission for loss of earning capacity).[303] However, I am also unable to fully adopt the plaintiff's method of calculation. This is because the plaintiff's method of calculation (*viz,* applying a multiplier of 19.91 *across the entire period from 2024 to 2050*) does not accord with the method set out in the Explanatory Notes to the *Singapore Actuarial Tables*.

138 Example 4 of the Explanatory Notes to the *Singapore Actuarial Tables* sets out an illustration of the calculation of damages for loss of future earnings. Example 4 presents the hypothetical scenario of a suit brought by a male plaintiff rendered paraplegic by an accident, aged 36 years old at the time of the hearing. There is evidence (in the hypothetical scenario) that had the accident not occurred, that hypothetical plaintiff would have earned the following sums over the course of his working life:

303 DCS (Quantum) at paras 91 and 108.

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(a) 36 years’ old to 39 years’ old: $2,700.00 per month;

(b) 39 years’ old to 43 years’ old: $3,300.00 per month;

(c) 43 years’ old to 46 years’ old: $4,000.00 per month; and

(d) 46 years' old to 65 years’ old: $4,500.00 per month.

139 The Explanatory Notes then explains how the data provided in the hypothetical scenario can be used to calculate the loss of future earnings for that hypothetical plaintiff. It is worthwhile to reproduce the guidance provided in full:

Calculation:

Loss of future earnings:

Age period	**Multiplier**	**Average annual income for the period**	**Loss of earnings**
36 (as at the date of hearing)–39	3.00 (See Note (1) below)	$2,700 x 12 = $32,400	$97,200
39–43	6.99–3.00 = 3.99 (See Note (2) below)	$3,300 x 12 = $39,600	$158,004
43–46	9.95–6.99 = 2.96 (See	$4,000 x 12 = $48,000	$142,080

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	Note (3) below)		
46–65	21.45 –9.95 = 11.5 (See Note (4) below)	$4,500 x 12 = $54,000	$621,000
	21.45	**Total**	**$1,018,284**

Note:

(1) The multiplier is taken directly from Table 1-4 for males age 36 as at the date of hearing to age 39. The multiplier for this period would be 3.00.

(2) Take the multiplier from Table 1-5 for male age 36 as at the date of hearing to age 43, which is 6.99, and subtract the multiplier from Table 1-4 for males age 36 as at the date of hearing to age 39, which is 3.00. The multiplier for this period would be 3.99.

(3) For this period, take the multiplier from Table 1-5 for males age 36 as at the date of hearing to age 46, which is 9.95, and subtract the multiplier from the same table for Male age 36 as at the age of hearing to age 43, which is 6.99. The multiplier would be 2.96.

(4) Finally, take the multiplier from Table 1-5 for males age 36 as at the date of hearing to age 65, which is 21.45, and subtract the multiplier from the same table for Male age 36 as at the date of hearing to age 46, which is 9.95. The multiplier for this period would be 11.5.

The above calculation illustrates a more accurate apportionment of multipliers (consistent with how the UK Ogden Tables deal with such similar situations as well), instead of the current staggered multiplicand approach used, where the multiplier is

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> *split by the duration of the multiplicand segment, ignoring the effect of mortality and discounting through the entire period.*
>
> [emphasis added]

140 Thus, the Explanatory Notes for the *Singapore Actuarial Tables* at page 5 explains that the staggered multiplicand approach, which is the approach adopted by the plaintiff, is relatively inaccurate as compared to an approach that varies the multipliers used for different age bands of a plaintiff's working life (*ie,* to *change* the multiplier adopted for the First Tranche, Second Tranche and Third Tranche in the table at [135] above). Since, as noted above at [119], the applicable practice directions provide for the application of the *Singapore Actuarial Tables*, and the guidance in those tables state that the Example 4 approach is the more accurate one, in striving to achieve more accuracy in the calculation of damages for loss of future earnings, I adopt the more accurate approach set out in the Explanatory Notes.

141 The appropriate calculation, in accordance with the method used in Example 4 of the *Singapore Actuarial Tables*, is as follows:

	First Tranche: 44 years (2024) to 60 years (2040)	**Second Tranche: 60 years (2041) to 67 years (2047)**	**Third Tranche: 67 years (2048) to 70 years (2050)**
Average Annual Income (Including Wages) minus income tax	$83,065.60	$75,066.31	$63,815.79
Applicable multiplier	14.50	4.04	1.37

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Amount for each tranche	$1,204,451.20	$303,267.89	$87,427.63
Total amount			$1,595,146.72

142 Per Example 4 in the *Singapore Actuarial Tables*, the age periods for each of the three tranches have been plotted so that the start of one age period commences at the age when the previous age period ends. The multiplier of 14.50 for the First Tranche is from Table 1-6 of the *Singapore Actuarial Tables* (multiplier for male aged 44 at start of payments and aged 60 at end of payments). The multiplier of 4.04 for the Second Tranche is from the data from Table 1-6 and Table 1-7 (subtracting the multiplier from Table 1-6 for male aged 44 at start of payments and aged 60 at end of payments from the multiplier from Table 1-7 for male aged 44 at start of payments and aged 67 at end of payments). The multiplier of 1.37 for the Third Tranche is from the data from Table 1-7 (subtracting the multiplier from Table 1-7 for male aged 44 at start of payments and aged 67 at end of payments from the multiplier from Table 1-7 for male aged 44 at start of payments and aged 70 at end of payments).

143 For completeness, I note that the calculations adopted by the court are based on material facts on Mr Lim's earnings as pleaded by the plaintiff.[304] Where the court differs from the plaintiff's submissions concerns the arithmetical calculations undertaken with reference to the *Singapore Actuarial Tables*. The Court of Appeal recently restated the law on pleadings in *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 ("*How Weng Fan*"). At [19] of *How Weng Fan*, the Court of Appeal noted the "Material Facts Principle", which provides that it is the material facts

304 SOC-2022 08 12 at p 54, item 7.

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supporting each element of a legal claim that must be pleaded by the plaintiff, and the particular legal result flowing from the material facts that the plaintiff wishes to pursue need not always be pleaded. The Court of Appeal also noted that, equally, relevant propositions or inferences of law need not be pleaded. The Court of Appeal stated at [18] that the key rationale behind disallowing claims or defences that are not pleaded is to prevent injustice from being occasioned to the party who, because of the failure of the opposing party to plead, did not have a chance to respond to the claim or defence in question. In the present case, the material facts surrounding the plaintiff's loss of future earnings claim are amply pleaded and canvassed at trial. The plaintiff's reliance on the *Singapore Actuarial Tables* was also clearly telegraphed early on. Indeed, the general applicability of the *Singapore Actuarial Tables* to the present suit (leaving aside arguments on whether, for particular heads of claim, the court ought to exercise its discretion to depart from the *Singapore Actuarial Tables*) is not disputed. It is therefore my view that the defendants have had ample notice of the plaintiff's loss of future earnings claim, and have had a fair chance to submit on the proper quantification for this claim.

144 I therefore award the plaintiff $1,595,146.72 for loss of future earnings.

Future Nursing Care

Parties' cases

(1) Plaintiff's case

145 The plaintiff quantifies this claim at a total of $1,991,196.00, using a multiplicand of $107,400.00 and a multiplier of 18.54 years.[305] In essence, Mr

[305] PRS (Quantum) at para 38.

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Lim's nursing home costs have been quantified at $9,000 per month, and the plaintiff submits that this is a reliable costing that has been specifically tailored to Mr Lim.[306]

146 The plaintiff submits that he is entitled to the cost of future medical expenses which he would reasonably incur by reason of the defendants' tort, and there is no further principle that he can recover damages only to the extent that the treatment or care is medically necessary and effective.[307] The plaintiff argues that the measure of damages is the proper and reasonable costs of meeting his need for care, taking into account commercial rates of third-party service providers, with credit to be given for the domestic expenses which Mr Lim has saved.[308]

147 The plaintiff further submits that Mr Lim's challenging behaviour warrants admission into Orange Valley to be cared for by a team of trained nursing staff for his best interests and for his own safety.[309] The plaintiff contends that various alternatives – including medicating Mr Lim, management techniques, employing domestic help and daycare – have been attempted without success.[310] The plaintiff contends that evidence given by personnel from Orange Valley further show that living there permanently is suitable for Mr Lim.[311]

306 PCS (Quantum) at para 90.

307 PCS (Quantum) at paras 70 and 77.

308 PCS (Quantum) at para 70.

309 PCS (Quantum) at para 71.

310 PCS (Quantum) at paras 71–72.

311 PCS (Quantum) at para 73–75.

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148 In response to the defendants' various objections, the plaintiff argues that the claim was pleaded in good time and was raised as early as 10 February 2021 in the plaintiff's statement of claim.[312] The plaintiff submits that there is substantial evidence, spanning across time and presented by various parties, demonstrating Ms Fung's struggles with caring for Mr Lim and her reasonable attempts at pursuing various avenues of care.[313] The plaintiff argues that while much of the evidence of Mr Lim's behavioural problems came from Ms Fung, this is unobjectionable given that many of these episodes would have occurred in private at home. Further, Mr Lim, who lacks mental capacity, is unlikely to have the presence of mind to report or make a note of the incidents himself.[314] The symptoms reported were also consistent with Mr Lim's brain injuries and the account provided by Orange Valley personnel.[315] The plaintiff's case is that the overall picture shows that long-term nursing care was in Mr Lim's best interests, and the defendants should not be allowed to cherry-pick isolated instances where Mr Lim appears to not need or want long-term institutional care.[316] Moreover, even if there are cheaper alternatives to nursing homes, this does not change the fact that the plaintiff's claim is reasonable.[317] The plaintiff contends that Ms Fung is under no duty to take care of Mr Lim for the rest of his life or to subsidise the tortfeasors' liability at her own expense.[318]

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312 PRS (Quantum) at para 39.

313 PRS (Quantum) at para 40.

314 PRS (Quantum) at para 43.

315 PRS (Quantum) at para 43.

316 PRS (Quantum) at para 44.

317 PCS (Quantum) at para 84.

318 PCS (Quantum) at para 84.

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149 The plaintiff submits that the onus of proof for lack of mitigation lies with the defendants, who have failed to produce any form of credible evidence to dispute the reasonableness of the plaintiff's claim for future nursing care.[319] The plaintiff highlights that Ms Fung had done her due diligence by enquiring into different nursing homes and picked the most suitable of the options.[320] The plaintiff also submits that it is reasonable for Mr Lim to be placed in a two-bedder accommodation based on Orange Valley's assessment of his care needs.[321]

150 The plaintiff contends that the opinion provided by Dr Brian Yeo (see [105] above) is inadmissible hearsay.[322] According to the plaintiffs, even if Dr Brian Yeo's report is admitted, the evidence should be accorded minimal weight because the report is inconsistent with the opinions of Mr Lim's treating doctors,[323] fails to consider the realities of Mr Lim's condition,[324] and makes unfounded assumptions.[325] In any case, Dr Brian Yeo's report concedes that Mr Lim is suitable for nursing home care with close supervision.[326]

151 As for domestic expenses to be deducted (in view of savings accrued since Mr Lim is no longer living at home), the plaintiff submits that $860.00 per month is reasonable, considering that Mr Lim was not a high-income earner and had other heavy financial obligations. The incurring of personal expenses of

319 PCS (Quantum) at paras 70, 77, 83, 86 and 87.

320 PCS (Quantum) at para 87.

321 PCS (Quantum) at paras 88–89.

322 PRS (Quantum) at para 58(ii); PCS (Quantum) at para 79

323 PCS (Quantum) at para 80(i).

324 PCS (Quantum) at para 80(ii).

325 PCS (Quantum) at para 80(iii).

326 PCS (Quantum) at para 81.

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about 1/3 his income would be a realistic estimate.[327] The plaintiffs note that Ms Fung was not challenged on this amount whilst on the stand.[328]

(2) Defendants' case

152 The defendants submit that the plaintiff's claim for the costs of long-term nursing care in Orange Valley should be rejected in favour of a more reasonable alternative of daycare and home care, with support from a trained nurse and a domestic helper for childcare support.[329] The defendants quantify reasonable daycare costs for Mr Lim's projected life expectancy to be $101,484.25,[330] reasonable trained domestic helper costs to be $289,224.00,[331] and reasonable costs to engage a further domestic helper for childcare support to be $132,000.00.[332] Alternatively, the defendants submit that an award of $535,692.00–$570,284.00 should be made if the court considers long term nursing care to be reasonable for Mr Lim.[333] This is on the basis that: (a) the quantum should be calibrated based on Econ Nursing Home's rate for a two-bedder, with a 1/3 discount applied as Mr Lim should be housed in a four-bedder; (b) the nursing home award should be multiplied with a multiplier of only 10.81 because Mr Lim should only stay in a nursing home until his youngest child reaches 18 years of age; and (c) for the remaining projected

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327 PCS (Quantum) at para 94.

328 PCS (Quantum) at para 94.

329 DRS (Quantum) at para 129; DCS (Quantum) at paras 156 and 266.

330 DCS (Quantum) at paras 269.

331 DCS (Quantum) at paras 269.

332 DCS (Quantum) at paras 269.

333 DCS (Quantum) at paras 272.

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duration of Mr Lim's life, an award of $120,588.00 should be made for him to be cared for by a trained domestic helper.[334]

153 The defendants submit that it is not in the bests interests of Mr Lim to admit him to a nursing home on a permanent basis,[335] as such a placement neither addresses nor improves Mr Lim's condition, and goes against his wishes to go home.[336] The defendants submit that there is no evidence that any of Mr Lim's treating doctors recommended that he be admitted into a nursing home on a permanent basis.[337] The defendants submit that Mr Lim's behaviour appeared worse prior to August 2023 when he was placed in Orange Valley, which calls into question why he was placed there at that time.[338] The defendants argue that the evidence suggests that although Mr Lim requires supervision due to his psychiatric condition, his physical condition is good,[339] and he is able to independently manage activities of daily living.[340] Instead, the defendants allege that Ms Fung did not wish to continue taking care of Mr Lim and decided on her own accord to place Mr Lim in a nursing home on a permanent basis.[341] In this regard, the defendants submit that as a married couple, Ms Fung and Mr Lim have legal and moral obligations to care for each other.[342]

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[334] DCS (Quantum) at paras 272.

[335] DCS (Quantum) at para 168, 193 and 229.

[336] DCS (Quantum) at paras 193, 218, 221 and 224.

[337] DRS (Quantum) at paras 99–100; DCS (Quantum) at paras 169–171, 175 and 182.

[338] DCS (Quantum) at para 149–153.

[339] DRS (Quantum) at para 170–171.

[340] DCS (Quantum) at para 174.

[341] DRS (Quantum) at para 101; DCS (Quantum) at paras 172 and 177–178.

[342] DCS (Quantum) at paras 276.

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154 The defendants submit that nothing prevented the plaintiff from adducing independent medical expert evidence to justify her decision to place Mr Lim in Orange Valley on a permanent basis.[343] The defendants argue that the evidence of Mr Lim's allegedly worsening behaviour all come from Ms Fung only, with no corroborative evidence.[344] The defendants argue that even if Mr Lim has experienced adverse behavioural changes, the issues will not improve by placing him permanently in a nursing home, and placing him away from home may even have been the cause of the adverse behavioural changes.[345]

155 The defendants dismiss the evidence provided by Ms Fitri Dahliana ("Ms Fitri"), the assistant nurse manager in Orange Valley, as not credible.[346] In contrast, the defendants submit that Dr Kesavaraj Jayarajasingam's ("Dr Kesavaraj") evidence that there is no medical reason for Mr Lim to be provided with a two-bedder room as opposed to a four-bedder room at Orange Valley should be preferred.[347]

156 The defendants submit that reliance should be placed on the medical report provided by Dr Brian Yeo dated 26 October 2023, who had opined that Mr Lim's behavioural issues had remained the same.[348] The defendants assert that Dr Yeo's report is admissible as, (a) it has been adduced through the testimony of Dr Kantha and referred to by Dr Kantha as part of Dr Kantha's

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343 DRS (Quantum) at paras 152–156.

344 DCS (Quantum) at paras 195–196.

345 DCS (Quantum) at paras 214–217.

346 DRS (Quantum) at paras 102–111.

347 DRS (Quantum) at para 107; DCS (Quantum) at paras 186–187.

348 DRS (Quantum) at paras 118–119.

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supplementary report,[349] and (b) it is admissible under s 32(1)(*b*)(iv) of the Evidence Act as a document constituting, or forming part of, the records of a profession.[350]

157 The defendants assert that the plaintiff has failed to provide evidence that alternative options other than permanent nursing care was considered for Mr Lim.[351] The defendants submit that the failure of the plaintiff to seek or consider alternative options amounts to a serious failure to mitigate.[352] According to the defendants, staying at Orange Valley is beyond Mr Lim's and Ms Fung's station in life.[353] The defendants submit that alternatives, including daycare for Mr Lim, having a trained nurse, having a trained domestic helper, admitting Mr Lim to a public sector nursing home, and medically optimising Mr Lim, are reasonable and suitable options.[354]

Law

158 A plaintiff is entitled to recover damages from tortfeasors for the cost of future medical expenses which the plaintiff will reasonably incur by reason of the defendant's tort: *Pollmann, Christian Joachim v Ye Xianrong* [2021] 5 SLR 1111 ("*Pollmann*") at [151], referring to Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 19th Ed, 2014) at para 38-181. There is no requirement that the treatment be medically necessary and effective in order for and award of the costs to be incurred for such treatment: *Pollmann* at [151]–

349 DRS (Quantum) at paras 119 and 186–189.

350 DRS (Quantum) at para 191–197.

351 DRS (Quantum) at para 123–125; DCS (Quantum) at paras 153 and 232.

352 DRS (Quantum) at para 128; DCS (Quantum) at paras 233, 258 and 261.

353 DRS (Quantum) at para 127.

354 DCS (Quantum) at paras 179–184, 188, 234–253.

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[153]. Thus, in *Seah Yit Chen v Singapore Bus Service (1978) Ltd and others* [1990] 1 SLR(R) 490 at [15], the court held that in order to claim the costs of *traditional* treatment, there "should be some evidence before the court that the traditional treatment was undergone on reliable advice, with a reasonable expectation of benefit, and not just on the impulse of the plaintiff".

159 In relation to the issue of nursing care in particular, I note the decision of Tay Yong Kwang J (as he then was) in *Toh Wai Sie and another v Ranjendran s/o G Selamuthu* [2012] SGHC 33 ("*Toh Wai Sie*"). In *Toh Wai Sie*, there was an issue of whether the plaintiff should be placed in a nursing home. Crucially, *both* the plaintiffs' expert witness and the defendant's expert witness took the position that care can be given at home. As noted at [14], the plaintiffs' expert witness stated that "the care process could be carried out by family members if they followed the proper techniques and that this was a decision to be made by the family members". The defendant's expert witness categorically stated that "there was 'no need for her to be in a nursing home from a medical point of view'". However, at [40], the court held that having the victim taken care of in a nursing home is in her best interest. The court acknowledged at [40(a)] that "[b]oth expert witnesses confirmed that the choice was firmly that of the family members and that either option would not be an unreasonable one to take". The court also took the view that it was "perfectly reasonable and understandable in the circumstances" for the victim's family members to take the position that they "felt inadequate with regard to looking after [the victim] and dealing with her potential medical complications": *Toh Wai Sie* at [40(b)].

160 I further note that in *Muhammad Adam* at [245], the court had "little hesitation rejecting out of hand the defendant's somewhat callous argument that the plaintiff's father can serve as his 'free of charge caregiver'". The court held that while the plaintiff's family members have all pitched in to help the plaintiff,

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"their care and efforts borne out of familial love and affection for the plaintiff should not be taken as a free resource that the defendant can take advantage of to reduce the sum that it ought to pay as fair compensation to the plaintiff". Moreover, the court also found that it was "unreasonable for the defendant to expect the plaintiff's father, who is already past the age of retirement, to take on the responsibility of being the plaintiff's surrogate caregiver for the rest of his natural life". The decision in *Muhammad Adam* was appealed, and the Appellate Division upheld the General Division's finding that the plaintiff would require a long-term caregiver for the rest of his life, but the Appellate Division took note of video evidence which showed that the plaintiff was able to function in society without supervision including travelling on public transport, managing small expenditure and being able to pen written communication and thus discounted the caregiver award by a third.

161 As for the issue of mitigation, the established position (see para 240.043 of *Halsbury's on Tort*) is that "[w]hether or not [the victim] has done so is a question of fact. The burden of proof that the plaintiff has failed to take all reasonable steps to mitigate his loss is upon the defendant." In *Xu Jin Long v Nian Chuan Construction Pte Ltd* [2001] 3 SLR(R) 494 ("*Xu Jin Long*"), the court, in assessing a claim for pre-trial loss of earnings, held at [11] that the defendants, who bore the burden of proving failure to mitigate, "cannot rely merely on the allegation that the plaintiff had made no effort to find employment" and "were at least obliged to adduce some evidence of the kind of jobs available in China which the plaintiff would be capable of doing". On the other hand, the plaintiff "cannot rely on a bare statement that the job market is too competitive [and] ought at least show what attempts he had made to secure a job".

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Decision

162 In my judgment, an award for long-term future nursing care at Orange Valley is justified in the circumstances of the present case.

163 The ultimate question that I need to answer is what is in Mr Lim's best interests. This is not disputed by the defendants.[355] As noted above at [158]–[159], there is no legal requirement for an explicit medical opinion that permanent nursing home placement is medically necessary before such an option can be held to be reasonable and thus awarded as part of general damages.

(1) Reasonableness of permanent nursing home placement

164 In my judgment, Ms Fung has provided cogent evidence to support the reasonableness of permanent nursing home placement for Mr Lim. Ms Fung gave detailed evidence of Mr Lim's behavioural problems over time. She gave evidence that from end-2021, Mr Lim started becoming violent (*eg*, hitting, kicking, pushing, pulling hair, biting, holding or squeezing people's wrists tightly), angry and started spewing vulgarities.[356] According to Ms Fung, Mr Lim could not be controlled by herself and her domestic helper, and he would get agitated and violent when Ms Fung or her domestic helper reminded him to mind his behaviour.[357] Ms Fung gave evidence that Mr Lim hit not just Ms Fung but *also* his two children.[358] Ms Fung also gave evidence that Mr Lim became difficult to manage even with his medication, and Mr Lim would exhibit

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[355] DRS (Quantum) at para 114.

[356] JFWM-2023 08 22 at para 34; NEs dated 12 October 2023 at p 70, line 12 to p 71, line 22.

[357] NEs dated 12 October 2023 at p 70, lines 22–25.

[358] JFWM-2023 08 22 at para 34(b); NEs dated 12 October 2023 at p 71, lines 1–5.

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behaviours such as switching on appliances at night, rummaging for food at night, burning food, running out of the house,[359] and snatching food from the children.[360]

165 I note that Ms Fung's account is corroborated by multiple sources.

166 Firstly, the account is corroborated by the assistant nurse manager at Orange Valley, Ms Fitri,[361] who has testified that Mr Lim would sometimes throw tantrums and throw items such as the tissue box and television remote.[362] Ms Fitri's evidence is that Mr Lim's agitation and violent tendencies were "on and off"[363] and were unpredictable.[364] She gave examples of triggers that might make Mr Lim angry, which include when someone changes the television channel and when he is denied a request for food.[365] Her evidence is that the nursing team at Orange Valley is able to manage Mr Lim well (including by managing the triggers to his anger)[366] such that the aggression has lessened,[367] though there needs to be multiple nurses around in the event Mr Lim becomes agitated because Mr Lim is of a fairly large build such that when he becomes agitated, a nurse alone cannot handle Mr Lim.[368] To be clear, Ms Fitri's evidence

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359 JFWM-2023 08 22 at para 34(d).

360 NEs dated 12 October 2023 at p 127, lines 8–9.

361 NEs dated 3 November 2023 at p 2, lines 12–16.

362 NEs dated 3 November 2023 at p 43, line 10 to p 44, line 1.

363 NEs dated 3 November 2023 at p 38, line 38 to p 39, line 3.

364 NEs dated 3 November 2023 at p 43, lines 20–22.

365 NEs dated 3 November 2023 at p 43, lines 7–13.

366 NEs dated 3 November 2023 at p 42, lines 11–17.

367 NEs dated 3 November 2023 at p 39, lines 9–11.

368 NEs dated 3 November 2023 at p 42, lines 25–32; NEs dated 3 November 2023 at p 44, lines 5–28.

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is not that multiple nurses have to supervise *only* Mr Lim at any one time. Her evidence instead is that *when* Mr Lim gets agitated or throws a tantrum, the nurses working at that particular floor in Orange Valley can come together to manage the issue.

167 Dr Kantha (the sixth defendant's expert) had the benefit of studying the nursing notes provided by Orange Valley pertaining to Mr Lim. Dr Kantha agreed that the notes evidenced an overall pattern of behaviour whereby Mr Lim was recorded to be physically and verbally aggressive.[369] Dr Kantha agreed that these behavioural manifestations are consistent with the frontal lobe injury that Mr Lim had suffered from the accident.[370] Dr Kantha explained that frontal lobe damage causes disinhibition.[371] He also opined that Ms Fung's account of Mr Lim's violence when he is told to mind his behaviour is consistent with Mr Lim's injury.[372]

168 In this regard, I note that the evidence of Ms Fung is important in the context of a case where the accident victim has suffered from brain injury and lacks mental capacity. The court in *Muhammad Adam* faced a similar situation. At [44] in *Muhammad Adam*, the court noted that the "mere fact that those episodes are based off the family's reporting is not objectionable in and of itself – most of the episodes occurred in private at home and the plaintiff (lacking mental capacity) is unlikely to have the presence of mind to report or make a note of them himself". These observations are eminently applicable to the present case, and indeed, I note that the evidence in this case is *even more*

369 NEs dated 2 November 2023 at p 52, line 23 to p 54, line 17.

370 NEs dated 2 November 2023 at p 54, lines 3–7.

371 NEs dated 2 November 2023 at p 54, line 22 to p 55, line 4.

372 NEs dated 2 November 2023 at p 55, line 26 to p 56, line 4.

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reliable than that in *Muhammad Adam* because there is third-party evidence to corroborate Ms Fung's account.

169 I turn to the evidence given by the other doctors who have treated or seen Mr Lim.

170 Dr Aaron Ang explained that he took the view that Mr Lim can go to a normal nursing home.[373] On the stand, he elaborated on his thought process in coming to that opinion.[374] He explained that Mr Lim is a patient who has had a traumatic brain injury which has resulted in a lot of behavioural issues. Dr Aaron Ang's view is that a normal nursing home, instead of nursing homes for patients needing a higher acuity of care like psychiatric patients or dementia patients, would be good enough. Dr Aaron Ang ultimately takes the view that a good nursing home can manage Mr Lim's behaviour.[375] Indeed, after reading a set of clinical notes prepared by Ms Fitri, Dr Aaron Ang opined that Ms Fitri's assessment was "quite consistent" in that having an appropriate way of handling Mr Lim can avert a lot of triggers, and the concern that Orange Valley's personnel have concerning Mr Lim is with him being provoked into some level of aggression that may cause harm to himself or to others.[376] Dr Aaron Ang also opined that while other options such as daycare for Mr Lim would be good options, there are limitations with those options. For daycare, Dr Aaron Ang stated that the main challenge is the evening behaviours that Mr Lim exhibits and the burden of care on evenings, weekends and public holidays.[377] Dr Aaron

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[373] NEs dated 17 October 2023 at p 11, line 21.

[374] NEs dated 17 October 2023 at p 11, line 21 to p 12, line 16.

[375] NEs dated 17 October 2023 at p 11, line 21 to p 12, line 16.

[376] NEs dated 17 October 2023 at p 29, lines 21–27.

[377] NEs dated 17 October 2023 at p 12, lines 20–31.

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Ang noted that Mr Lim is physically well but without a matching cognitive ability, with symptoms such as wandering at night while the children, Ms Fung and the domestic helper have to rest,[378] and wanting to get food, pacing about, and getting agitated and aggressive when he is stopped.[379] Dr Aaron Ang also opined that private nurses or trained carers are options that can be considered too.[380] However, in Dr Aaron Ang's view, professional private nursing care or a 24/7 professional carer is not readily available and is very costly.[381] As for medications to attenuate undesirable behaviours, Dr Aaron Ang opined that there was an obvious risk because the major medications come with metabolic side effects, worsened cholesterol control, diabetic control, stiffness, weakness and risk of falls.[382]

171 Dr Karen Chua indicated in her report dated 21 September 2023 that she had reviewed Mr Lim on 27 November 2022 and 28 July 2023.[383] She opined that Mr Lim's "prognosis remains poor for further functional independence, cognitive recovery and return to work as >2 years have elapsed since his traumatic brain injury … hence he is considered to have plateaued and further recovery is not expected". Dr Karen Chua opined that Mr Lim "cannot be left alone at home for short periods at a time due to his amnestic state, poor learning even for short-term memory items and daily orientation, poor insight, impaired safety awareness, behavioural impulsivity." Dr Karen Chua noted that Mr Lim has been managing well in a daycare setting, but she also noted that from

378 NEs dated 17 October 2023 at p 37, lines 26–29.

379 NEs dated 17 October 2023 at p 37, lines 29–31.

380 NEs dated 17 October 2023 at p 13, line 16 to p 14, line 17.

381 NEs dated 17 October 2023 at p 38, lines 1–7.

382 NEs dated 17 October 2023 at p 13, lines 3–12.

383 CB at p 102.

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descriptions given by Ms Fung, Mr Lim "has intermittent sleep disturbances despite medication" and "may awaken to look for food from the fridge or cabinets, attempt to leave the house at midnight or search for things". Dr Karen Chua also noted that Mr Lim "has irritability, regressive behaviours (e.g., stealing food from his children or friends at a table) as well as verbal outbursts at his young children" and when "questioned about his behaviours, he has no memory of them nor insight into his actions".[384] Dr Karen Chua explained that from a healthcare perspective, the number one priority is the safety of the patient, having an appropriate level of care, and matching the medical/nursing needs of the patient with the institution.[385] In Dr Karen Chua's view, Mr Lim's nursing home placement is meant to be long-term/permanent based on his current life situation, which is not likely to change based on her knowledge of Mr Lim over several years of treatment/observation.[386] Dr Karen Chua had considered the option of having Mr Lim stay at home (a four-room HDB flat) with an additional caregiver to supervise him in addition to a domestic helper.[387] In Dr Karen Chua's view, having two caregivers for Mr Lim in the home, together with Ms Fung and the two children, will be very crowded. In Dr Karen Chua's view, this is unideal for Mr Lim, and the children, in terms of psychological health.[388]

172 Dr Kesavaraj – a doctor employed by Fullerton Healthcare and who has been deployed to provide medical services to Orange Valley – gave evidence as well. He was pointedly asked in cross-examination whether it would be better

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384 CB at pp 102–103.

385 NEs dated 18 October 2023 at p 9, lines 4–9.

386 NEs dated 18 October 2023 at p 9, line 32 to p 10, line 7.

387 NEs dated 18 October 2023 at p 6, lines 2–8.

388 NEs dated 18 October 2023 at p 6, lines 8–17.

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for Mr Lim to live in a home environment with assistance from helpers and a nurse rather than to live in a nursing home.[389] Dr Kesavaraj took the view that there has been some evidence of behaviour where Mr Lim could be a risk to himself if he is at home, and the family has said that when he is at home, he is sometimes violent, so if he is sent home, "we only have to get it wrong once, and you have a bad outcome like someone dies".[390] Dr Kesavaraj further opined that if Mr Lim is sent "home, when other people have said not to, then you risk a bad outcome. And you only have to get it wrong once".[391]

173 I further note that in Dr Kantha's supplementary specialist report dated 30 October 2023, Dr Kantha had opined that "Mr Lim can reside in a normal nursing home instead of a psychiatric nursing home"[392] and that "while it may be ideal for Mr Lim to be placed in a nursing home with close supervision, the focus is whether there is any actual necessity of placing him in such a nursing home as opposed to a daycare setting".[393] On the stand, Dr Kantha took the view that whether Mr Lim is the sort of patient that would need an environment with constant supervision, minimisation of triggers, and handling by trained staff with experience and manpower depends on whether Mr Lim has been medically optimised.[394] However, Dr Kantha stated that he is unable to optimise Mr Lim as Dr Kantha is not a psychiatrist.[395]

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389 NEs dated 2 November 2023 at p 174, lines 8–10.

390 NEs dated 2 November 2023 at p 174, lines 12–17.

391 NEs dated 2 November 2023 at p 174, lines 20–22.

392 Dr Kantha Rasalingam's Supplementary AEIC dated 31 October 2023 at p 7.

393 Dr Kantha Rasalingam's Supplementary AEIC dated 31 October 2023 at p 10.

394 NEs dated 2 November 2023 at p 57, lines 7–13.

395 NEs dated 2 November 2023 at p 57, lines 28–30.

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174 I pause here to discuss a "psychiatric opinion" rendered by Dr Brian Yeo and dated 26 October 2023, which is annexed to Dr Kanatha's affidavit dated 31 October 2023.[396] The defendants chose not to call Dr Brian Yeo as a witness,[397] although curiously they subsequently tried to introduce this piece of hearsay evidence through the back door as an appendix to Dr Kantha's report. The defendants argue that Dr Brian Yeo's opinion was admissible evidence and should be given weight as it was referred to by Dr Kantha, and it could be admitted under s 32(1)(*b*)(iv) of the Evidence Act (see [156] above). I have no hesitation in rejecting this submission for two key reasons.

175 Firstly, Dr Brian Yeo's opinion does not qualify for the business documents exception under s 32(1)(*b*) of the Evidence Act. This is made crystal clear in *Pinsler on Evidence* at para 6.006A, as follows:

> 6.006A The rationale for the exception to the hearsay rule in s 32(1)(b) is that statements in the course of 'a trade, business, profession or other occupation' are assumed to be reliable because of their official, legal and/or professional nature. The underlying commitment involved in such communications tends to imbue them with a degree of veracity, although this may not always be the situation (in which case, the evidential value statement may be reduced or it may be excluded altogether). *Statements and documents which are specifically prepared for the purpose of litigation (as opposed to being spontaneously generated in the usual and ordinary course of a trade, business, profession or other occupation) are certainly not admissible under s 32(1)(b). For example, a party would not be able to rely on s 32(1)(b) for the purpose of admitting a document as evidence of its content if that document was prepared specifically for trial. The person who prepared the document would be expected to give evidence of the information in the document.*
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> [footnotes omitted; emphasis added in italics]

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396 KR-2023 10 31 at pp 22–30.

397 Minute Sheet dated 10 October 2023.

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176 Dr Brian Yeo's opinion, dated 26 October 2023, explicitly states at the second paragraph that he was "appointed by [the sixth defendant's solicitors] to give an opinion on the issue relating to the claim by the Plaintiff's wife, Janet Fung, that the Plaintiff has experienced behavioural changes since February 2023, which necessitated her to place her husband permanently in an institutionalised nursing home at Orange Valley Nursing Home (Balestier)".[398] The opinion was plainly rendered for the purpose of litigation and does not qualify for the exception to the hearsay rule found in s 32(1)(*b*) of the Evidence Act. Indeed, as, noted in *Pinsler on Evidence* at para 6.006, "the rationale underlying s 32(1)(b) is that a statement or entry made in the ordinary course or routine of business or duty may be presumed to have been done from disinterested motive and may therefore be taken to be generally true". This presumption certainly cannot apply in the case of Dr Brian Yeo's opinion.

177 Secondly, and more generally, the mere reference by Dr Kantha to Dr Brian Yeo's opinion cannot result in the admission of this opinion. The adoption of such a rule would render the hearsay rule otiose and run contrary to the very purpose of the hearsay rule. As the Court of Appeal in *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 noted at [27], the rationale for the hearsay rule is that "the person who does have personal knowledge of the facts is not in court, [therefore] the accuracy of his perception and his veracity cannot be assessed and tested in cross-examination" and thus hearsay evidence "is unreliable and should hence be excluded from consideration". The contributors to *Halsbury's Laws of Singapore - Evidence vol 10 and 10(2)* (LexisNexis Singapore, 2023) at para 120.225 have noted that "[w]here an expert is asked to form an opinion on the basis of reports made by other experts not called as witnesses, care must

[398] KR-2023 10 31 at p 22.

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be taken to ensure that the facts stated in those reports are independently proved; otherwise, the expert called as a witness would have relied on the hearsay of those report writers." Ultimately, Dr Brian Yeo sought to provide a substantive, reasoned opinion on a live issue before this court. His reasoning ought to be tested in the crucible of cross-examination. The plaintiff ought to be given a chance to confront Dr Brian Yeo's reasoning and conclusions. The defendants did not call Dr Brian Yeo as a witness, and cannot seek to slip in Dr Brian Yeo's evidence through the back door.

178 In any case, even if Dr Brian Yeo's evidence was admitted, it was inconclusive and cannot overcome the substantial evidence that long-term placement of Mr Lim in a nursing home is reasonable. Dr Brian Yeo stated that "[t]hat Mr Lim is suitable for nursing home care with close supervision is not disputed, as this would be a closely monitored scenario, which would be suitable for most patients in most cases",[399] though Dr Brian Yeo questions the "actual necessity" of Mr Lim being placed in the nursing home setting.[400] He follows on to opine that if the decision is made for Mr Lim to continue staying in a nursing home, Mr Lim "can reside in a normal nursing home instead of a psychiatric nursing home".[401] I note that there is nothing on the face of this opinion that asserts that permanent nursing home placement is *unreasonable*.

179 In relation to the defendants' allegation that Mr Lim wishes to go home and his wishes should be respected (see [153] above), the defendants' evidence here must be analysed in the context of the medical evidence of Mr Lim's cognitive deficits. The issue of Mr Lim's desire was directly put to the

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399 KR-2023 10 31 at p 25, para 6.

400 KR-2023 10 31 at p 25, para 7.

401 KR-2023 10 31 at p 27, para 20.

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psychiatrist Dr Aaron Ang. Dr Aaron Ang's evidence is that when Mr Lim expresses a desire to go home, those expressions "would be an expression of his wishes" but "[w]hether he fully comprehends what is going on is a separate matter".[402] Dr Aaron Ang opined that an assessment of how firm, how sincere, or how convicted Mr Lim is to his beliefs would also involve an examination of Mr Lim's actions.[403] Dr Aaron Ang gave evidence that a state of confusion, coupled with some fear response, may make someone want to leave a place, and this is commonly seen in patients who are confused in a hospital setting and who try to leave the ward, not realising that they require treatment.[404] Dr Aaron Ang also noted that Mr Lim has a significant brain injury and a more extended period may be needed for him to adjust and to adapt to the nursing home environment.[405] Dr Aaron Ang was further referred specifically to the nursing notes from Orange Valley which recorded attempts by Mr Lim to abscond.[406] Dr Aaron Ang's view is that the notes suggested that Mr Lim might have attempted to abscond because he was confused, and this does not speak to the fact that Mr Lim was longing to go home.[407] I note in this regard that Dr Kantha has also opined that Mr Lim could say that he wanted to go home, but Dr Kantha would not be sure whether Mr Lim knew where he was in the first place.[408] Dr Kantha was referred to the evidence given that even when Mr Lim was at home, he tried to abscond from his own home, and Dr Kantha opined that it may be impulsivity

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402 NEs dated 17 October 2023 at p 22, lines 3–5.

403 NEs dated 17 October 2023 at p 22, lines 10–20.

404 NEs dated 17 October 2023 at p 35, lines 7–11.

405 NEs dated 17 October 2023 at p 22, lines 24–30.

406 NEs dated 17 October 2023 at p 34, lines 2–3.

407 NEs dated 17 October 2023 at p 34, lines 4–10.

408 NEs dated 2 November 2023 at p 81, line 32 to p 82, line 6.

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that has driven Mr Lim's various abscondment attempts.[409] Ultimately, Mr Lim has serious brain injuries and cognitive deficits that render his purported expressions of a desire to go home and his actions (which include abscondment *from* home – see [101] above) equivocal. He lacks mental capacity, and I note that he is not before me as a witness. There has been rightly no attempt by the defendants to ask that Mr Lim be brought before this court to testify as to his personal wishes. I ultimately had to decide what is in Mr Lim's best interests.

180 In my judgment, looking at the evidence holistically, the medical opinion evidence read alongside the cogent factual evidence provided by Ms Fung supports permanent nursing home care as a reasonable option for Mr Lim. To the extent that the defendants have argued that Mr Lim is "physically well and independent",[410] this misses the point in that it is the chronic *cognitive* deficits, which manifest in behavioural issues including disinhibition and violence, which requires the nursing home environment where there are multiple nurses on-hand, all days of the week and at all times, to supervise and look after Mr Lim, and where the triggers for Mr Lim's aggression can be reduced by trained staff. And to the extent that Dr Kantha speculates that Mr Lim has further potential for "medical optimisation" (see [173] above), this is highly speculative because Dr Kantha conceded that he is not a psychiatrist and cannot medically optimise Mr Lim (see [173] above), and Dr Aaron Ang, who is a psychiatrist, has provided evidence of risks that accompany a high reliance on medications to attenuate undesirable behaviours in Mr Lim (see [170] above). Finally, I repeat Dr Kesavaraj's opinion that "we only have to get it wrong once, and you have a bad outcome like someone dies" (see [172] above).

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409 NEs dated 2 November 2023 at p 82, lines 9–17.

410 DCS (Quantum) at paras 174–176.

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The risks of Mr Lim doing harm to himself or others outside the controlled confines of permanent nursing home care are too significant to ignore.

181 I note that the defendants have submitted that Ms Fung has "legal and moral obligations" to care for Mr Lim,[411] and that nursing home placement for Mr Lim is to serve Ms Fung's interests and not Mr Lim's interests.[412] The submission that Ms Fung has *legal* obligations to look after Mr Lim is not accompanied by any citation of legal authority. Indeed, this submission flies in the face of the court's observation in *Muhammad Adam* at [245] (see above at [160]) that family members should not be seen as a "free of charge caregiver" that defendants "can take advantage of to reduce the sum that [they] ought to pay as fair compensation to the plaintiff". Indeed, while I note that the defendants have quoted from Dr Karen Chua's oral evidence to illustrate the point that the nursing home placement arrangement for Mr Lim was requested by Ms Fung,[413] I note that Dr Karen Chua has also given evidence that it was at the point of "severe stress and potential breakdown" that the entry of Mr Lim into a nursing home was a respite for Ms Fung.[414]

182 I am therefore satisfied that permanent nursing home placement is reasonable for Mr Lim.

(2) Mitigation

183 The defendants allege that Ms Fung had not tried alternative options other than permanent nursing care for Mr Lim, and this amounts to a failure to

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411 DCS (Quantum) at para 276.

412 DCS (Quantum) at paras 172 and 178.

413 DCS (Quantum) at para 178.

414 NEs dated 18 October 2023 at p 7, lines 18–20.

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mitigate (see [157] above). This allegation is unsubstantiated. Ms Fung's uncontradicted evidence is that she had attempted different options to care for Mr Lim before his admission to Orange Valley, including an increase in Mr Lim's medicine dosage, behaviour management methods, enrolment of Mr Lim into a daycare centre,[415] having two domestic helpers to attend to Mr Lim at home,[416] and engaging a caregiver.[417] Plainly, Ms Fung had in fact tried other options. As detailed above at [170], [171] and [172], Dr Aaron Ang, Dr Karen Chua and Dr Kesavaraj have all explained the limitations of these alternatives to permanent placement in Orange Valley. These limitations are rooted fundamentally in the notion that Mr Lim remaining at home, even if it is just for the evenings, weekends and public holidays, poses safety risks to himself and to the people around him.

184 I then have to consider whether Orange Valley *specifically* is a reasonable choice as opposed to other nursing homes.

185 Ms Fung deposed that she had enquired with at least three nursing homes before she decided on Orange Valley.[418] In this regard, she did not pick the most expensive option – Allium Care Suites which cost $7,560.00–$10,040.00 per pax per month for a two-bedder room – nor the cheapest option – ECON Nursing Home which cost $4,800.00–$5,200.00 per pax per month for a two-bedder room. The Orange Valley costs are $8,000.00–$9,000.00 per pax per month for a two-bedder room.[419] Ms Fung's evidence is that she did not pick

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415 JFWM-2023 08 22 at para 34.

416 NEs dated 12 October 2023 at p 68, line 4 to p 70, line 2.

417 NEs dated 12 October 2023 at p 69, lines 8–18.

418 JFWM-2023 08 22 at para 48.

419 Exhibit P3 at p 3.

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Allium Care Suites as the price is too high and the services provided are luxury nursing services.[420] She did not pick ECON Nursing Hone as she visited their branch in Buangkok and found that the facilities were run-down with outdated therapy equipment, and the customer service and administration were unpleasant.[421] She picked Orange Valley as the price is in the middle of the range, and she found from her visit to Orange Valley that the environment was pleasant and clean, there was a good rehabilitation facility room with up-to-date equipment, there was good customer service and administration, and the branch was small with a small patient cluster which made it appear to be a safe environment for Mr Lim.[422] Ms Fung further explained in oral evidence that she had called many other nursing homes other than the aforementioned three nursing homes that she had shortlisted.[423] Her evidence is that she had asked the staff of these other nursing homes that she had enquired with to drop her an e-mail with information about the nursing homes, but they staff had refused to provide the information in writing.[424]

186 The defendants did not provide any explicit evidence to contradict the options and cost figures provided by Ms Fung, and they did not call any factual or expert witness to testify as to the costs of nursing homes suitable for Mr Lim. The defendants allege that they were rebuffed by the court in their attempt to admit a bundle of documents that contained extracts from four websites concerning nursing home options.[425] I declined to admit these because they were

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420 JFWM-2023 08 22 at para 48(i).

421 JFWM-2023 08 22 at para 48(iii).

422 JFWM-2023 08 22 at para 48(ii).

423 NEs dated 12 October 2023 at p 77, lines 3–4.

424 NEs dated 12 October 2023 at p 77, line 15 to p 78, line 3.

425 DCS (Quantum) at paras 241–242.

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of limited or no relevance because they were copies of websites pertaining to general nursing homes and did nothing to provide specific costing tailored to the specific circumstances of Mr Lim. Moreover, the defendants simply sought to adduce this bundle unaccompanied by any factual witness who can explain the information in the websites and be cross-examined on the same. I would not know whether the information therein is applicable for nursing care for Mr Lim with the sorts of injuries and needs that he has. This was pointed out by counsel for the plaintiffs in chambers on 18 October 2023.[426] The defendants had more than sufficient opportunity to seek such specific costing to rebuff the plaintiff's claims but did not do so. In this regard, I note that in the very first version of the plaintiff's statement of claim filed on 10 February 2021, the issue of nursing care for the rest of Mr Lim's life was already pleaded.[427] Relatedly, to the extent that the defendants submit that consideration must be had to Mr Lim's station in life,[428] the defendants have adduced no evidence to suggest that Orange Valley's services are unreasonably decadent or that its costs are exorbitant. As noted above, there is evidence to indicate that Mr Fung had decided *not* to place Mr Lim in Allium Care Suites because the costs are too high and the services provided there are luxury services. Ultimately, the evidence indicates that Ms Fung made a reasonable choice in choosing Orange Valley and the defendants have not shown otherwise.

187 I turn to consider if the choice of a two-bedder room as opposed to a four-bedder room in Orange Valley is a reasonable choice for Mr Lim.

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426 Minute Sheet dated 18 October 2023.

427 Statement of Claim dated 10 February 2021 at p 53, item 8.

428 DRS (Quantum) at para 127.

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188 Ms Fitri gave evidence that Mr Lim was up-lodged to a two-bedder room from a four-bedder room because he was verbally and physically aggressive with a risk of abscondment.[429] For him to be roomed in a room with fewer beds would be safer for Mr Lim, the staff, and other residents.[430] She testified that this arrangement allows for closer supervision of Mr Lim as the two-bedder room would be in closer proximity to the nurses station.[431] She further testified that the two-bedder set up reduces Mr Lim's agitation as it is a quiet set up, and reduces the risk of harm to other residents as Orange Valley can pair Mr Lim with another resident whom the nursing team can manage.[432]

189 I note that Dr Kesavaraj has opined that there is no *medical* reason for having a two-bedder room as opposed to a four-bedder room.[433] He stated that it is "either have an isolation room where you are the only one, right, that makes sense for certain things, contagious conditions, or you can stay in the room that's got two beds or four beds".[434] However, I also note that Dr Kesavaraj stated that he did not know why the nurses decided to up-lodge Mr Lim to a two-bedder room.[435] He gave evidence that it was the purview of the nurses to decide whether to shift a patient from a four-bedder room to a two-bedder room, and not the purview of the visiting doctor.[436] I note further that Ms Fitri was confronted with Dr Kesavaraj's view about the lack of a medical difference

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429 NEs dated 3 November 2023 at p 7, lines 8–11.

430 NEs dated 3 November 2023 at p 7, lines 12–14.

431 NEs dated 3 November 2023 at p 35, lines 7–10.

432 NEs dated 3 November 2023 at p 34, line 2 to p 35, line 10; Exhibit P3 at p 3.

433 NEs dated 2 November 2023 at p 152, lines 25–27.

434 NEs dated 2 November 2023 at p 152, lines 27–29.

435 NEs dated 2 November 2023 at p 153, lines 3–20.

436 NEs dated 2 November 2023 at p 152, lines 15–17.

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between a two-bedder and a four-bedder room, and she stated that she disagreed with Dr Kesavaraj's view; instead, her view is that one has to see the situation from a different aspect.[437]

190 After evaluating the opinions of Ms Fitri and Dr Kesavaraj, I find that it is reasonable to place Mr Lim in a two-bedder room. While it is true that *medically* speaking, a two-bedder room and a four-bedder room might be similar because, for instance, there is still a risk of contagious diseases spreading to one's roommate in both settings,[438] Ms Fitri has given cogent and reasonable evidence of the care considerations that have animated the nursing team's decision to place Mr Lim in a two-bedder room, and even Dr Kesavaraj has acknowledged that such decisions were within the purview of the nurses and not the visiting doctor. I thus do not find that the defendants have given sufficiently cogent reasons to say that the plaintiff's position on this is unreasonable. The defendants do not present any positive case to show why a two-bedder room is an unreasonable choice. Their attempts to poke holes in the plaintiff's case is ultimately not sufficient to satisfy their burden of showing that the plaintiff acted unreasonably and failed to mitigate his losses.

191 Referring back to *Xu Jin Long* (see [161] above), the plaintiff has adduced plenty of evidence – far more than what the court required in *Xu Jin Long* – to demonstrate that the costs claimed are reasonable. The defendants have not discharged *their burden* of proving a failure to mitigate.

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437 NEs dated 3 November 2023 at p 35, lines 14–31.

438 NEs dated 2 November 2023 at p 152, lines 27–29.

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(3) Quantum

192 The plaintiff did not make clear why he is claiming the higher end ($9,000.00) of the price range quoted by Orange Valley (see [185] above). I would take median level of $8,500.00 as that quote would have already taken into account the particular circumstances of Mr Lim's case.[439] I note, in relation to the multiplier, that there is no dispute that Mr Lim's life expectancy should be taken as 67 years and the appropriate multiplier under the *Singapore Actuarial Tables* is 18.54.[440] The plaintiffs submit that domestic expenses (a monthly sum of $860.00) need to be deducted from this award given the savings in this regard that Mr Lim would reap.[441] The defendants did not submit for an alternative figure. The calculations work out as follows:

(a) Annual cost of nursing care: $8,500.00 x 109% x 12 = $111,180.00

(b) Annual domestic expenses to be deducted: $860.00 x 12 = $10,320.00

(c) Multiplicand = $100,860.00

(d) Agreed multiplier = 18.54

(e) Total award = $100,860.00 x 18.54 = $1,869,944.40

193 I award the plaintiff a total of $1,869,944.40 for the future costs of nursing care.

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439 PCS (Quantum) at para 90.

440 PCS (Quantum) at para 52; PRS (Quantum) at para 17; DCS (Quantum) at paras 111–113.

441 PCS (Quantum) at para 94.

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Future Medical Expenses

Parties' cases

(1) Plaintiff's case

194 Under the general head of claim relating to future medical expenses, the plaintiff submits that a total of $271,297.14 should be awarded,[442] comprising:

(a) $34,426.96 for the future cost of medication.[443] This sum is computed using a multiplicand of $1,703.58 and a multiplier of 18.54 years, with the addition of goods and service tax ("GST") at 9%.[444]

(b) $4,445.89 for the future cost of rehabilitation treatment.[445] This is computed on the basis of $110.00 times two visits to Dr Karen Chua per annum for 18.54 years, with the addition of GST.[446]

(c) $32,571.86 for the future cost of dental treatment.[447] In this regard, the plaintiff's case is that this cost is supported by Dr Png Lu Lin's costs estimates, which is predicated on a forecast of deterioration and likely dental costs over the long term.[448] The plaintiff also notes that the authenticity and contents of Dr Png Lu Lin's reports were not disputed or challenged.[449]

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442 PRS (Quantum) at para 17.

443 PRS (Quantum) at para 18.

444 PRS (Quantum) at para 18.

445 PRS (Quantum) at para 19.

446 PRS (Quantum) at para 19.

447 PRS (Quantum) at para 20.

448 PRS (Quantum) at para 21.

449 PRS (Quantum) at para 21.

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(d) $4,850.43 for the future cost of eye treatment.[450] The plaintiff contends that the medical evidence reflects that Mr Lim requires this treatment and the head of claim is not challenged.[451]

(e) $50,000.00 for the future cost of other treatments including scans, tests and therapies in the event new complications arise.[452] The plaintiff argues that these costs are pegged at a nominal 15% of the current costs already incurred by the plaintiff.[453] The plaintiff emphasises that these are real contingencies that the plaintiff is at a risk of facing.[454] The plaintiff submits that the court should determine in this regard if there is an appreciable risk that the plaintiff will suffer loss, and, if yes, the court should evaluate the risk.[455] The plaintiff further submits that the court may take as its starting point the full extent of the loss, and then adjust it to account for the remoteness of the possibility and the chance that factors unconnected with the defendants' negligence might contribute to bringing about the loss.[456]

(f) $111,540.00 for the future cost of occupational therapy.[457] The plaintiff argues that small steps in providing occupational therapy to Mr Lim might make some difference and may prevent further

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450 PRS (Quantum) at para 22.

451 PRS (Quantum) at para 22.

452 PRS (Quantum) at para 23.

453 PRS (Quantum) at para 23.

454 PRS (Quantum) at para 23; PCS (Quantum) at paras 48(vi), 53(v)(c).

455 PCS (Quantum) at para 53(v)(b).

456 PCS (Quantum) at para 53(v)(b).

457 PRS (Quantum) at para 24.

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deterioration.[458] The plaintiff emphasises that Ms Andrea Lin, an occupational therapist, had testified that it was her professional opinion that Mr Lim would benefit from continued therapy, and she has noted that Mr Lim has made improvements in hand functions since starting occupational therapy.[459] The plaintiff submits that Dr Karen Chua's opinion that Mr Lim "does not need further rehabilitation therapies… unless there are new complications"[460] relates only to his treatment at Tan Tock Seng Hospital and does not refer to the need (or lack thereof) for occupational therapy in general.[461]

195 The multiplier applied by the plaintiffs with reference to the *Singapore Actuarial Tables* is 18.54 years.[462]

196 The plaintiff submits that Dr Kantha conceded that Mr Lim's treating doctors would be in the best position to opine on his future treatment needs. According to the plaintiff, the fact that the defendants did not put to Ms Fung that the plaintiff's claim for the cost of future treatment in the plaintiff's opening statement on quantum is telling, and the defendants also did not adduce evidence to contest the future medical expenses of Mr Lim.[463]

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458 PRS (Quantum) at para 24.

459 PCS (Quantum) at para 50.

460 CB at p 104.

461 PCS (Quantum) at para 51.

462 PRS (Quantum) at para 17.

463 PCS (Quantum) at para 47.

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(2) Defendants' case

197 The defendants submit that the plaintiff should be awarded $43,965.61 for future medical expenses.[464] This sum comprises:

(a) Cost of future medications valued at $31,584.37.[465] In this regard, the defendants use $1,703.58 as the multiplicand,[466] and 18.54 years as the multiplier.[467]

(b) Cost of future follow-up with Dr Karen Chua valued at $4,078.80.[468] In this regard, the defendants use $220.00 as the multiplicand,[469] and 18.54 years as the multiplier.[470]

(c) Cost of future dental treatment valued at $8,302.44.[471] The defendants use 18.54 years as the multiplier.[472] As for the multiplicand, the defendants submit that it should be $286.00 (two dental reviews with cleaning of teeth per year).[473] This works out to $5,302.44. The defendants then submit that Mr Lim may not require tooth fillings or root canal treatments on a regular basis, and may incur expenses for

464 DCS (Quantum) at para 145.

465 DCS (Quantum) at para 113.

466 DCS (Quantum) at paras 109–110.

467 DCS (Quantum) at paras 112–113.

468 DCS (Quantum) at para 115.

469 DCS (Quantum) at para 114.

470 DCS (Quantum) at para 115.

471 DCS (Quantum) at para 122.

472 DCS (Quantum) at para 122.

473 DCS (Quantum) at para 122; Dr Png Lu Lin's report dated 13 September 2023 at CB at p 101.

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regular dental treatment even if the accident did not happen.[474] Thus, the defendants submit that an additional low award of $3,000.00 for future dental treatment (to add to the dental review and cleaning costs) would be enough to cater for such dental contingencies.[475]

198 The defendants submit that no award should be made in respect of the cost of future eye treatment.[476] The defendants argue that the evidence suggests that Ms Fung did not purchase any further eyedrops and eye ointment from the middle of 2021 onwards.[477] The defendants say that there is no evidence that Mr Lim attended any further medical reviews with an ophthalmologist after 2021[478] and there is no evidence that Mr Lim requires eye lubricants or eye ointment indefinitely.[479]

199 The defendants insist that no award should be made in respect of the cost of other treatments in the event new complications arise.[480] The defendant submits that Dr Karen Chua had opined that there has been minimal change in Mr Lim's status and that he is medically stable and free of seizures.[481] Further, Mr Lim did not suffer complications from around March/April 2021 onwards,[482] and has been physically well.[483] The defendants say that Dr Karen Chua's

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474 DCS (Quantum) at paras 120–121.

475 DCS (Quantum) at para 121.

476 DCS (Quantum) at para 133.

477 DCS (Quantum) at paras 127–129.

478 DCS (Quantum) at para 130.

479 DCS (Quantum) at paras 131–132.

480 DCS (Quantum) at para 139.

481 DCS (Quantum) at para 136.

482 DCS (Quantum) at para 137.

483 DCS (Quantum) at para 138.

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updated medical report indicates that Mr Lim does not require any rehabilitative therapy unless there are new complications – Mr Lim's condition has plateaued.[484] The defendants argue that the plaintiff has not explained the increase in the quantum of his claim for cost of treatments (in the event new complications arise) from $20,000.00 to $50,000.00.[485]

Decision

(1) Medication and rehabilitation treatment

200 The parties' cases on the cost of future medical expenses coincide on the following claims:

(a) Costs of medication: $31,584.37 (before GST) ($1,703.58 annually x 18.54 agreed multiplier);[486] and

(b) Costs of future rehabilitation treatment with Dr Karen Chua: $4,078.80 (before GST) ($110.00 x 2 annual visits x 18.54 agreed multiplier).[487]

201 I note that the plaintiff altered his claim slightly in the reply submissions to claim GST at 9% on these two items. I note that GST is part of the costs that the plaintiff has to reasonably bear and has been awarded in claims in various precedents (see, *eg*, *Muhammad Adam* at [223] and *Quek Yen Fei Kenneth v Yeo Chye Huat* [2016] 3 SLR 1106 at [50]–[52]). I thus adopt the plaintiff's figures, which account for GST at 9%, and award $34,426.96 for future cost of

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484 DRS (Quantum) at para 49.

485 DRS (Quantum) at paras 50–51.

486 PRS (Quantum) at para 18; DCS (Quantum) at para 113.

487 PRS (Quantum) at para 19; DCS (Quantum) at para 114.

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medication and $4,445.89 for future cost of rehabilitation treatment with Dr Karen Chua.

(2) Dental

202 The plaintiff relies on Dr Png Lu Lin's two medical reports to justify their claim for future costs of dental treatment.[488] In Dr Png Lu Lin's latest medical report dated 13 September 2023,[489] she stated that she had reviewed Mr Lim on 12 September 2023. After setting out Mr Lim's current dental problems, Dr Png Lu Lin stated the following for Mr Lim's treatment plan and estimated costs:

> Treatment plan and estimated costs:
>
> 1) Scaling and polishing and reassessment of caries status - $143
>
> 2) Dental fillings for lower right first premolar and first molar - $108
>
> 3) Root canal treatment of upper left lateral incisor - $405
>
> 4) Periodic dental reviews with cleaning of teeth every 6 months - $143 each visit
>
> More teeth may have to be filled or extracted in the future if they become decayed or if their condition deteriorate. His current dental prognosis would be questionable.

203 Items (1) to (3) in Dr Png Lu Lin's report are *prima facie* one-time costs totalling $656.00, while item (4) would amount to a recurring cost of $286.00 per year. Dr Png Lu Lin's opinion, in relation to Mr Lim's future dental prognosis, is that more teeth *may* have to be filled or extracted. In my judgment, the plaintiff's submissions at [194(c)] adopt an overly negative view of Mr

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488 PCS (Quantum) at para 48(iii), referring to CB at pp 64 and 101.

489 CB at p 101.

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Lim's future dental health. There is no indication from Dr Png Lu Lin's latest report that Mr Lim's teeth would likely be extracted such that dentures are likely to become necessary. A budget of $1,000.00 per year in treatment, over and above an award for tooth filings, is also likely to be too high. In my judgment, it would be reasonable to budget an addition $200.00 per annum, over and above the $286.00 per annum in dental review and cleaning costs, to deal with Mr Lim's future dental treatment costs. I find the $200.00 per annum approach on future treatment a more accurate reflection of future costs than the $3,000.00 lump sum approach suggested by the defendants (see [197(c)] above). Factoring in GST at 9%, the calculations would be as follows:

(a) Multiplicand = ($200.00 + $286.00) x 109% = $529.74

(b) Multiplier: 18.54

(c) Award: $529.74 x 18.54 = $9,821.38

204 I award $9,821.38 for the future costs of dental treatment.

(3) Eye treatment

205 The plaintiff relies on Dr Heng Li Wei's medical report dated 22 July 2021 for this claim, coupled with an invoice dated 4 February 2021 for eye drops and eye ointment costing a total of $141.05.[490] While I note the defendants' submission that there is no evidence supporting Ms Fung's assertion that Mr Lim requires eye lubricants daily and will likely need them indefinitely,[491] this is incorrect. Dr Heng Li Wei's medical report states that "[f]rom the Ophthalmology point of view, [Mr Lim] is **unlikely to require any further**

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490 PCS (Quantum) at para 48(iv), referring to CB at p 62 and BAEIC Vol 1 at p 238.

491 DCS (Quantum) at para 132.

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procedures (based on his last clinical assessment on 6th April 2021), and he would be **required to continue the ocular lubricants as listed above indefinitely** …" [emphasis in original].[492] Given that Dr Heng Li Wei is the ophthalmology expert and his report is unchallenged from a medical point of view, I place weight on the opinion that the ocular lubricants costing $141.05 *per* the 4 February 2021 invoice is a reasonable claim. I note that the invoice lists the "total amount payable" as $141.05, so I do not further include GST in computing the multiplicand for this claim even though the plaintiff seeks to claim additional GST on top of the "total amount payable".[493] I decline to award $2,000 provisionally for reviews and scans as Dr Heng Li Wei's evidence is that Mr Lim is unlikely to require any further ophthalmology procedures. The calculations are as follows:

(a) Multiplicand: $141.05

(b) Multiplier: 18.54

(c) Award: $141.05 x 18.54 = $2,615.07

206 I award $2,615.07 for the costs of future eye treatment.

(4) Other treatments in the event new complications arise

207 Dr Karen Chua reviewed Mr Lim on 27 November 2022 and 28 July 2023 and she is of the opinion that there has been minimal change in Mr Lim's functional, cognitive and behavioural status.[494] In her words, Mr Lim is

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492 CB at p 63.

493 PRS (Quantum) at para 22.

494 CB at p 102.

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"medically stable" and "he is considered to have plateaued".[495] Absent any specific evidence of the risk of medical ailments linked to the accident arising in the future, I find this claim to be speculative. The plaintiff's own claim for the cost of future treatment is also inconsistent. The plaintiff had initially set this figure at $20,000 in their opening statement,[496] and then subsequently changed this to $50,000 in their closing submissions.[497] The plaintiff appears not to have a firm basis for this claim. The plaintiff is already being separately compensated for specific ongoing medical issues which have been identified such as dental care, occupational therapy and nursing home supervision. I note that the plaintiff has cited *Lua Bee Kiang* at [72] in support of this claim.[498] In my judgment, *Lua Bee Kiang* cannot assist the plaintiff because, as guided by the Court of Appeal in *Lua Bee Kiang* at [72], "the court must first determine whether there is an *appreciable risk* that the claimant will suffer that loss" [emphasis in original]. The evidence does not persuade me that there is such a risk. I thus decline to make an award for other treatments in the event new complications arise.

(5) Occupational therapy

208 Ms Andrea Lin, an occupational therapist with Orange Valley, provided a report dated 29 September 2023 setting out an occupational therapy intervention plan for Mr Lim.[499] The plan included cognitive skills training and hand functions training, covering areas such as attention span, memory and orientation, perceptual skills, fine motor skills and coordination skills. On the

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495 CB at p 102.

496 Plaintiff's Opening Statement on Quantum at p 6, item 6.

497 PCS (Quantum) at para 53(v).

498 PCS (Quantum) at para 53(v)(b).

499 Exhibit P3 at pp 4–5.

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stand, Ms Andrea Lin testified that part of the goal of occupational therapy is to help Mr Lim attain enjoyment of his life, and the therapy also serves to maintain him.[500] Even if Mr Lim is not likely to be able to take up employment, occupational therapy would serve the function of promoting self-care, engagement, leisure and self-esteem.[501] Despite being told on the stand that Dr Karen Chua has opined that Mr Lim does not need further rehabilitation therapies, Ms Andrea Lin maintained that it was her professional opinion that occupational therapy would still help Mr Lim in areas such as concentration and communication.[502] Ms Andrea Lin further explained that the goals of therapies in an acute hospital – like Tan Tock Seng Hospital – and a nursing home is different, and the end point would be different as well.[503]

209 In terms of Dr Karen Chua's opinion dated 21 September 2023 that Mr Lim "does not need further rehabilitation therapies or scans unless there are new complications",[504] the key dispute between the plaintiff and the defendants is whether Dr Karen Chua's opinion would extend to *occupational* therapy in a nursing home setting. According to the plaintiff, Dr Karen Chua's opinion relates only to his treatment at Tan Tock Seng Hospital and does not refer to the need (or lack thereof) for occupational therapy in general (see [194(f)] above). The defendants in contrast take the position that Dr Karen Chua's report indicates that no occupational therapy is needed (see [199] above).

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500 NEs dated 3 November 2023 at p 116, line 30 to p 117, line 3.

501 NEs dated 3 November 2023 at p 104, lines 8–14.

502 NEs dated 3 November 2023 at p 119, line 27 to p 120, line 24.

503 NEs dated 3 November 2023 at p 124, lines 11–25.

504 CB at p 104.

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210 In my judgment, the plaintiff's interpretation is to be preferred. Dr Karen Chua's 21 September 2023 report contemplates a difference between "rehabilitation therapies" (which, in Dr Karen Chua's view, are no longer needed), and other forms of therapy that serve to engage Mr Lim. This is made clear at an earlier paragraph in that very same report, where Dr Karen Chua opined that Mr Lim was "not receiving active rehabilitation therapies apart from 2x/year (6 monthly intervals) follow up from myself" but "[c]osts of current daycare centre should be factored in as well as it contributes significantly to his well being, safety, positive behaviours and reduced family stress".[505] Evidently, Dr Karen Chua takes the view that the sorts of activities done at a daycare centre contributes significantly to Mr Lim's wellbeing and are distinct from rehabilitation therapies. Moreover, I note that Dr Karen Chua's earlier medical report dated 4 May 2021[506] contains a distinct reference to "occupational therapy"[507] that is *additional to*, and not subsumed under, rehabilitation. When Dr Karen Chua was on the stand, she was not asked about whether she was of the view that occupational therapy was unreasonable or non-beneficial for Mr Lim. Ultimately, I hold that the better interpretation of Dr Karen Chua's report is that she did not opine on the reasonableness of occupational therapy for Mr Lim.

211 I further note that Mr Pillai for the defendants had questioned Dr Aaron Ang on Ms Andrea Lin's report. Mr Pillai read from Ms Andrea Lin's report, quoting the line that Mr Lim is "motivated and keen during therapy sessions", and asked Dr Aaron Ang if these are good signs.[508] Dr Aaron Ang replied that

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505 CB at p 103.

506 CB at p 57–59.

507 CB at p 59.

508 NEs dated 17 October 2023 at p 30, lines 11–15.

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having a professional who knows how to deal with Mr Lim, plays with him, knows what his triggers are, when to push, and when to back off – that "would be beneficial for him".[509]

212 Ultimately, I give weight to Ms Andrea Lin's professional opinion that occupational therapy is beneficial for Mr Lim. I note that Dr Aaron Ang's and Dr Karen Chua's evidence also suggest that occupational therapy (as distinct from rehabilitation therapies) is beneficial for Mr Lim. In my judgment, an award for such therapy is reasonable. I thus award the plaintiff costs of occupational therapy calculated as follows:

(a) Multiplicand:[510] $500 x 12 = $6,000.00

(b) Multiplier: 18.54

(c) Award: $6,000.00 x 18.54 = $111,240.00

213 I note that the plaintiff did not submit for GST for this particular claim in their closing or reply submissions, and I thus did not include an additional sum for GST in the multiplicand. I award $111,240.00 for the future costs of occupational therapy.

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509 NEs dated 17 October 2023 at p 30, lines 16–19.

510 Exhibit P3 at p 5.

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Future Transport Expenses

Parties' cases

(1) Plaintiff's case

214 The plaintiff submits that $33,462.00 should be awarded for the cost of future transport.[511] The plaintiffs have budgeted for five trips per month costing $30 per round trip, with a multiplier of 18.54 years.[512] This sum would provide for transport costs incurred when Mr Lim goes for home visits, medical reviews, social outings and the like.[513] The plaintiff notes that Mr Lim could have easily coped with public transport at a fraction of the claimed costs but for his injuries.[514] Given Mr Lim's current state, Ms Fung and the domestic helper she employs cannot cope with Mr Lim on public transport which would take a longer duration and provide more triggers.[515] The plaintiff further submit that this claim was not challenged during cross-examination.[516] The plaintiff's computation accounts for the fractional cost of public transport, which should be deducted from the claim, by omitting a GST component when computing the multiplicand.[517]

511 PRS (Quantum) at para 25.

512 PCS (Quantum) at para 54 read with PRS (Quantum) at para 25 (adjustment of multiplier).

513 PCS (Quantum) at para 54.

514 PRS (Quantum) at para 25.

515 PRS (Quantum) at para 25.

516 PRS (Quantum) at para 25.

517 PRS (Quantum) at para 25.

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(2) Defendants' case

215 The defendants submit that the plaintiff should be awarded $2,224.80 for future transport expenses.[518] The defendants argue that the plaintiff would incur transport expenses in daily life even if the accident did not happen, and thus, only the transport expenses incurred in connection with Mr Lim's medical reviews for his residual disabilities are claimable.[519] The defendants hence submit that Mr Lim should be able to claim only four trips per year – for two follow-up appointments with Dr Karen Chua and two dental reviews annually.[520]

Decision

216 The defendants do not dispute that it is reasonable for Mr Lim to *not* be taking public transport (bearing in mind his condition and propensity to react negatively to triggers) in relation to this head of claim – the defendants' submissions similarly budget for $30.00 per round trip for transport.[521] The dispute between the parties relate to the frequency at which these trips are needed and the defendants' contention that the plaintiff should only be entitled to claim for transport expenses relating to personal injuries suffered.

217 I have decided at [186] above that it is reasonable for Mr Lim to be placed on a permanent basis in Orange Valley. The cost of future transport should include transport beyond just medical follow-ups. The fact that Mr Lim has to reside in a nursing home arises out of the injuries he has suffered. There

518 DCS (Quantum) at para 144.

519 DCS (Quantum) at paras 141–142.

520 DCS (Quantum) at para 143.

521 DCS (Quantum) at para 140–144.

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is evidence that Mr Lim does go on home leave.[522] Ms Fung gave evidence that the children are not allowed to visit Mr Lim at Orange Valley, so she brings Mr Lim out on home leave about once a week.[523] Dr Aaron Ang did give evidence as to the general benefits of allowing Mr Lim to have closeness to his family.[524] In my judgment, it is reasonable for Mr Lim to go on home leave at a reasonable frequency, and once a week is reasonable in my judgment. Moreover, the defendants' strict approach of budgeting only for the two follow-ups with Dr Karen Chua and the two dental reviews per year would also undercompensate the plaintiff because it is reasonable to forecast that some of these follow-ups or reviews would spawn the need for further treatment for issues uncovered during these reviews. Instead of the monthly calculation proposed by the plaintiff, a more reasonable approach should be based on 52 weeks in a year which will include medical and other social travel. Such medical and other social travel should reasonably be integrated within the weekly home leave outings. As the plaintiff did not ask for GST to be included in this award so as to account for the savings accrued from foregone public transport trips that Mr Lim would still have to take if not for the accident, I do not include GST in the multiplicand.[525] The cost of future travel expenses is thus calculated as follows:

(a) Multiplicand: $30.00 x 52 = $1,560.00

(b) Multiplier: 18.54

(c) Award: $1,560.00 x 18.54 = $28,922.40

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522 Supplementary Joint Agreed Bundle of Documents (Orange Valley Documents) dated 19 October 2023 at p 817.

523 NEs dated 12 October 2023 at p 24, lines 17–29.

524 NEs dated 17 October 2023 at p 37, lines 16–21.

525 PRS (Quantum) at para 25.

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218 I award $28,922.40 for the costs of future transport.

Future Caregiver Services by Wife and Domestic Helper

Parties' cases

(1) Plaintiff's case

219 The plaintiff claims $11,124.00 for the costs of future caregiver services by Ms Fung and a domestic helper.[526] The plaintiff submits that there is no double-claiming as this claim is for instances where the plaintiff is brought out of the nursing home for family and social outings, and the defendants have pointed out that it is in the interests of Mr Lim to maintain interactions with his family.[527]

(2) Defendants' case

220 The defendant submits that the plaintiff's claim for cost of future caregiver services should be rejected as it is an attempt at double claiming.[528] Moreover, the defendants assert that the plaintiff has to prove that Ms Fung has forgone her employment and suffered a loss of income and then prove the value of services rendered before an award for caregiver services can be awarded.[529] The defendants argue that the plaintiff has not proven this.[530]

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526 PRS (Quantum) at para 48.

527 PRS (Quantum) at para 48; PCS (Quantum) at para 101.

528 DCS (Quantum) at para 279.

529 DCS (Quantum) at para 282.

530 DCS (Quantum) at paras 283.

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Decision

221 I have found at [217] above that it is reasonable for Mr Lim to go on home leave from Orange Valley. The defendants also do not dispute that Mr Lim has to go for medical and dental follow-ups. It would be Ms Fung, accompanied by her domestic helper, who will bear the burden of caring for Mr Lim during these periods of time when he is on home leave and when he is going for his follow-ups. These are reasonable expenses which Mr Lim would have to incur in the future due to the accident and I hold that they are claimable.

222 I next consider the submission that the plaintiff needs to prove that Ms Fung had suffered a loss of income before a claim can be made for the caregiver services rendered by her to Mr Lim.[531] The defendants rely on, amongst other cases, the Court of Appeal's decision in *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2022] 1 SLR 689 ("*Noor Azlin*") for this proposition.

223 *Noor Azlin* does not support the defendants' position and instead favours the plaintiff. At [193], the Court of Appeal considered the submission that the tort victim's mother had looked after the victim for some periods of time. The Court of Appeal held that "it was open to the appellants to claim for [the mother's] expended time and effort in looking after [the victim] by exploring the fair value of the nursing and caring services which [the victim] had received from [the mother], *and/or* whether [the mother] had suffered any loss of income … because she was looking after [the victim]" [emphasis added]. The use of the term "and/or" is key. The Court of Appeal contemplated *two* complementary and also alternative ways for the appellants to claim the costs of caregiver

[531] DCS (Quantum) at para 282.

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services, one of which is to explore the fair value of nursing and caring services provided by the caregiver to the victim. Relatedly, in *AOD (a minor suing by his litigation representative) v AOE* [2016] 1 SLR 217 ("*AOD*") at [142], the court held that in assessing the cost of gratuitous care received by a plaintiff, the caregiver's foregone income is to be the starting point, but this starting point may be departed from where appropriate if the foregone income is less than the fair value of the nursing and caring services provided to the plaintiff. In such a case, the cost of the gratuitous care received by a plaintiff shall be taken to be the fair value of the nursing and caring services the plaintiff actually requires and receives. At [141], the court pointedly noted that plaintiffs cared for by *homemakers*, who would not have any foregone income when providing gratuitous care, should still get a substantial and not merely a nominal award.

224 It leaves me to consider quantum. The plaintiffs submitted for a multiplicand of $600 for this head of claim.[532] I have found above at [217] that it is reasonable for Mr Lim to have home leave from Orange Valley once per week (*ie,* 52 times in a year), and this includes leaving Orange Valley for both social reasons and also for medical and dental follow-ups. On the footing that on each of these 52 trips, Ms Fung and/or a domestic helper would be taking care of Mr Lim, the multiplicand submitted for would amount to a very small award of $11.54 for caregiver services provided per trip. In my judgment, this quantum is highly reasonable, in that it is *below* the fair value of the nursing and caring services the plaintiff actually requires and receives from Ms Fung and/or a domestic helper. I thus grant the plaintiff an award for this head of claim, calculated as follows:

(a) Multiplicand: $600.00

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[532] PCS (Quantum) at para 102.

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(b) Multiplier: 18.54

(c) Award: $600.00 x 18.54 = $11,124.00

225 I award $11,124.00 for the costs of future caregiver services by Ms Fung and/or a domestic helper.

Future Parenting of Plaintiff's Children by Domestic Helper

Parties' cases

(1) Plaintiff's case

226 The plaintiff submits for a sum of $140,000.00 for the future costs of engaging a domestic helper to assist in parenting the plaintiff's children.[533] The plaintiff argues that this claim is supportable under the trite law of causation,[534] and supportable on the basis that the law entitles the plaintiff to claim the cost of a service provider to assist in parenting his children now that he has, as a consequence of losing his mental capacity, lost the ability to care for and co-parent his children.[535] The plaintiff further argues that Mr Lim's inability to co-parent his children is the essence of the loss claimed, and Ms Fung's efforts as a single parent juggling a career and caregiving responsibilities would fall woefully short compared to a dual-parent household.[536] The plaintiff adds that the loss is foreseeable and is not causally remote in so far as the tort injuring Mr Lim is the proximate cause of the loss.[537] The plaintiff's case is that Mr Lim and

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[533] PRS (Quantum) at para 51; PCS (Quantum) at para 106.

[534] PRS (Quantum) at para 50.

[535] PCS (Quantum) at para 103.

[536] PRS (Quantum) at para 50(i).

[537] PRS (Quantum) at para 50(ii).

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Ms Fung had contemplated sending their children for childcare services and terminating the domestic helper's employment, whilst rotating co-parenting duties.[538] This is no longer possible as a result of the accident and such a loss is claimable.[539]

(2) Defendants' case

227 The defendants submit that the plaintiff's claim for future parenting of his children by a domestic helper should be rejected.[540] This is because the inability to co-parent children is not a claimable head of damages.[541]

Decision

228 In my judgment, this claim is untenable.

229 To the extent that Ms Fung and/or Mr Lim's children are now, and in the future, suffering a detriment due to Mr Lim's injuries which impede his ability to parent his children and place an increased burden on Ms Fung to exercise parenting responsibilities, these losses would be losses suffered by Ms Fung and the children and properly belong in a dependency claim mounted by them (see, *eg*, *Armstrong, Carol Ann (executrix of the estate of Peter Traynor, deceased, and on behalf of the dependents of Peter Traynor, deceased) v Quest Laboratories Pte Ltd and another and other appeals* [2020] 1 SLR 133 at [214] and [238]).

538 PCS (Quantum) at para 104.

539 PCS (Quantum) at para 104.

540 DCS (Quantum) at paras 287.

541 DCS (Quantum) at paras 286–287.

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230 To the extent that it is Mr Lim himself who has suffered loss – perhaps because he is now unable to feel the satisfaction of discharging his parental responsibilities – then this is properly a claim for loss of amenity. In this regard, I refer to the case of *Hoffman v Sofaer* [1982] 1 WLR 1350 at 1353C, where the court described the plaintiff's inability to take part in games he enjoyed with his nine children due to his injury. Academic commentary has treated such a loss as part of the loss of amenities of life: James Edelman, *McGregor on Damages* (Sweet & Maxwell, 21st Ed, 2021) at para 40-263 and n 1239. The problem with the plaintiff's claim in this regard is that there is already *agreement* as between parties on the quantum for the pain and suffering and loss of amenities claim.[542]

231 I thus decline to render a further award for the future parenting of the plaintiff's children by a domestic helper.

Incurred Orange Valley Nursing Care Expenses

Parties' cases

(1) Plaintiff's case

232 The plaintiff claims of $34,240.91 for pre-trial cost of nursing home expenses ($15,576.49 at time of trial, with additional expenses).[543] The plaintiff submits that the cost of treatment and care is not contingent on one's station in life and a tort victim is entitled to the cost of reasonable treatment.[544] The

542 Letter-2024 03 08 at p 115, read with PRS (Quantum) at the header above para 4.

543 PCS (Quantum) at para 96; PRS (Quantum) at para 45; Letter-2024 03 08 at p 116.

544 PRS (Quantum) at para 46.

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plaintiff submits that the defendants have not discharged their burden of proving that the costs incurred by Mr Lim are unreasonable.[545]

(2) Defendants' case

233 The defendants submit that the plaintiff's claim for incurred nursing home care expenses should be rejected as the expenses were not reasonably incurred.[546] The defendants further submit that the plaintiff's claim for Orange Valley charges post-trial are not admissible as the trial is the cut-off date.[547] Moreover, the defendants allege that these claims lack supporting documentation.[548]

Decision

234 I agree with the defendants that the trial is the cut-off date. As noted by the Court of Appeal in *Yap Boon Fong Yvonne v Wong Kok Mun Alvin and another and another appeal* [2019] 1 SLR 230 ("*Yap Boon Fong Yvonne*") at [31], citing *British Transport Commission v Gourley* [1956] AC 185 at 206, special damages consists of out-of-pocket expenses and loss of earnings incurred to the date of trial, while general damages includes compensation for pain and suffering and compensation for loss of earning power in the future. The Court of Appeal in *Yap Boon Fong Yvonne* at [31] further cited *Teo Seng Kiat v Goh Hwa Teck* [2003] 1 SLR(R) 333 at [8], which is even clearer in holding that the "date of trial or assessment provides the dividing line".

545 PRS (Quantum) at para 46; PCS (Quantum) at para 96.

546 DCS (Quantum) at para 315.

547 DRS (Quantum) at para 5.

548 DRS (Quantum) at para 5.

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235 Thus, to the extent that the plaintiff submits that $15,576.49 was incurred as the pre-trial cost of nursing home expenses until the time of trial, with supporting evidence admitted during the trial in the core bundle,[549] that sum is claimable as special damages since I have found at [186] above that it is reasonable for Mr Lim to be placed in Orange Valley.

236 In so far as the rest of the sums claimed by the plaintiff under this head of claim relate to expenses incurred *post-trial*, those are not claimable as special damages and are instead part of the general damages which I have awarded at [193] above. In this regard, I state for avoidance of doubt that I am cognisant of the fact that Mr Lim was aged 43 years and 10 months at the start of trial. However, parties were content before me to adopt a multiplier of 18.54, which is the multiplier to be applied where the plaintiff is aged 44 at start of payments and 67 at end of payments.[550] I note in this regard that even where the *Singapore Actuarial Tables* are used, a decision on the appropriate multiplier to adopt engages substantive issues of fact and law, and is not merely arithmetic. For instance, the plaintiff frames his adoption of 18.54 as the appropriate multiplier as a concession at paragraph 48 of his reply submissions on quantum.[551] The defendants, in their closing submissions, have also taken a considered position that it would be reasonable to peg the life expectancy of Mr Lim (for the purposes of calculating the multiplier) at 67 years old, taking the average of a range of values provided in the medical evidence.[552] In other words, the proper starting and ending age to be used to discern the multiplier are issues that may

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549 PCS (Quantum) at para 96, referring to CB at pp 458–461.

550 PRS (Quantum) at paras 17, 18, 19, 21, 22, 25, 38, 45 and 48; DCS (Quantum) at paras 112–114, 122, 144, 269 and 272.

551 PRS (Quantum) at para 48.

552 DCS (Quantum) at paras 111–113, referring to CB at pp 103–104.

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well be live in each case, and these are issues that may be disposed of from agreement as between the parties. In this case, I do not disturb the parties' agreement that the starting age used to discern the multiplier is 44 years old, and the ending age is 67 years old.

237 I award the plaintiff $15,576.49 for incurred Orange Valley nursing care expenses.

Pre-Trial Loss of Income

Parties' cases

(1) Plaintiff's case

238 The plaintiff submits that by reason of the legal principles and evidence set out in their claim for loss of future earnings, the plaintiff should be awarded $355,521.57 for pre-trial loss of income from February 2018 to January 2024, on the basis of a monthly income of $3,500 per month and annual increment of 3% from 2018 to 2023 plus bonuses and annual wage supplements at 14% per year.[553]

(2) Defendants' case

239 The defendants argue that the plaintiff's claim for pre-trial loss of income should be rejected.[554] The defendants submit that this claim is afflicted with the same evidential deficiencies as the plaintiff's claim for loss of future earnings.[555]

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553 PCS (Quantum) at para 69 and Annex B.

554 DCS (Quantum) at para 314.

555 DCS (Quantum) at para 312.

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Decision

240 I have held above at [131] that there is sufficient evidence of Mr Lim's pay to entitle him to an award for loss of future earnings. On the basis of the same evidence, I hold that Mr Lim is entitled to an award for pre-trial loss of income.

241 However, an issue then arises as to the cut-off date for the claim for pre-trial loss of income, which is a species of special damages. I have noted above at [234] that the trial is the cut-off date, and that special damages consists of, amongst other things, loss of earnings incurred to the date of trial. This trial started on 3 October 2023. However, the plaintiff's calculations at Annex B of their closing submissions on quantum take into account income loss from February 2018 until *January 2024*. There is thus an excessive claim for four months' worth of income from October 2023 to January 2024. From the calculations done in Annex B (which arithmetic the defendants did not take issue with), Mr Lim's income for January 2024 would have been $5,432.36. As for 2023, Mr Lim's monthly income would have been $5,279.72. I therefore deduct a sum of $21,271.52 (*ie,* $5,432.36 + ($5,279.72 x 3)) from the plaintiff's claim of $355,521.57 for pre-trial loss of income.

242 I award $334,250.05 to the plaintiff for pre-trial loss of income.

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Cost of Caregiver Services from Wife and Domestic Helper prior to Admission into Nursing Home

Parties' cases

(1) Plaintiff's case

243 The plaintiff submits for a sum of $240,240.00 for caregiver services rendered by Ms Fung and/or a domestic helper prior to Mr Lim's admission to Orange Valley.[556] This is calculated on the basis of half of the monthly cost of Orange Valley's nursing services (*ie,* $9,000 / 2 = $4,500), with deductions of $860.00 per month to account for monthly domestic expenses.[557]

244 The plaintiff submits that he is entitled to claim damages in respect of services provided by a third party which were reasonably required by the plaintiff because of physical needs directly attributable to the accident.[558] The plaintiff notes that Ms Fung had provided extensive caregiver services to Mr Lim in the aftermath of the accident up until his admission into the nursing home, including providing deputy services, showering, feeding, supervising his physical exercises and bringing him for his medical appointments.[559] The plaintiff asserts that Ms Fung was unable to devote her full attention, time and energy into her job due to her caregiving needs, which caused her to be overlooked for promotions which she would have secured earlier in time, with consequential harm caused to her income.[560] The plaintiff further submits that the appropriate measure for the cost of gratuitous care provided by Ms Fung

556 PCS (Quantum) at para 100.

557 PCS (Quantum) at para 100.

558 PCS (Quantum) at para 97.

559 PCS (Quantum) at para 99.

560 PCS (Quantum) at para 99.

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should be pegged against the fair value of care services provided by Orange Valley.[561]

(2) Defendants' case

245 The defendants do not dispute that the plaintiff is entitled to the cost of third-party caregiver services reasonably incurred.[562] However, the defendants submit that there is nothing to claim in the present suit in respect of caregiving services provided by Ms Fung because she did not give up her job to look after Mr Lim.[563] In addition, the defendants contend that the alleged care provided by Ms Fung to Mr Lim was not detailed in her AEIC and was first raised in submissions.[564] The defendants argue that it is not disputed that the family had a domestic helper and, at some point a caregiver, to look after Mr Lim, so there is no reason to believe that Ms Fung herself had to provide caregiving services to Mr Lim.[565] The defendants also assert that there is no evidence to substantiate Ms Fung's assertion that she had suffered in her promotional prospects from having to care for Mr Lim.[566]

Decision

246 I have set out the law concerning entitlement to compensation for gratuitous caregiver services rendered by family members and the method of assessing quantum at [222]–[223] above.

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561 PCS (Quantum) at para 100.

562 DRS (Quantum) at para 131.

563 DRS (Quantum) at paras 133–136; DCS (Quantum) at para 319.

564 DRS (Quantum) at paras 139–140.

565 DRS (Quantum) at paras 141.

566 DRS (Quantum) at para 142–145.

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247 It is apposite in this regard to note that the $240,240.00 claimed by the plaintiff under this head of claim is for caregiver services rendered by Ms Fung *and/or* domestic helper prior to Mr Lim's admission to Orange Valley.[567] The defendants stated that they do not dispute that "the family had a domestic helper to look after the Plaintiff. And at some point, even a caregiver."[568] It is therefore strange for the defendants to object to this head of claim largely on the basis that *Ms Fung* did not give up her job to care for Mr Lim and suffered no loss. Plainly, costs were incurred in engaging a domestic helper and a caregiver in looking after Mr Lim. I note that while $336,310.11 has been agreed between the parties as the costs of pre-trial medical expenses, this cost *does not* include the costs of pre-trial caregiver services.[569]

248 I agree with the plaintiff that he is entitled to claim the value of caregiver services provided by Ms Fung and domestic helper. To the extent that the defendants insinuate that Ms Fung herself provided no care to Mr Lim because the domestic helper or caregiver employed by Ms Fung could care for Mr Lim, I reject that submission. Ms Fung had given evidence in her AEIC that she – herself – also provided care to Mr Lim.[570] There are concrete examples given in AEIC, such as Ms Fung (together with others in the household) running out to bring Mr Lim back home when he absconded from home.[571] I note that Ms Fitri's evidence is that when Mr Lim gets agitated, multiple nurses may have to

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567 PCS (Quantum) at para 100.

568 DRS (Quantum) at para 141.

569 PCS (Quantum) at para 107, referring to the documents set out in the Joint Agreed Bundle of Documents Vol 1 at pp 22–173, 454–455. The documents evidencing caregiver expenses are at a different portion of the Joint Agreed Bundle of Documents Vol 1 at pp 610–639.

570 JFWM-2023 08 22 at para 33.

571 JFWM-2023 08 22 at para 34(d).

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come together to deal with the situation (see [166] above). I thus find it believable that Ms Fung would have helped to care for Mr Lim as well, *alongside* the domestic helper, even though the domestic helper might have taken on more of the caregiving responsibilities. I note that there was a period of five months in 2019 during which Ms Fung additionally employed a caregiver to take care of Mr Lim,[572] and there was also a short period of time when Ms Fung tried employing two domestic helpers to care for Mr Lim.[573] These are all expenses that would have been *additional* to the expenses incurred from employing just *one* domestic helper to care for Mr Lim. All in all, therefore, I am of the view that the plaintiff is putting in a reasonable claim for the caregiving services incurred prior to Mr Lim's admission to Orange Valley.

249 The question then becomes what the quantum of this claim should be.

250 The defendants correctly point out that Ms Fung did not leave her job to look after Mr Lim so there is no loss of income on her part. Ms Fung became the sole breadwinner for the household after the accident so it would have been difficult for her to leave her job in any event. The evidence of her having foregone promotions because of care rendered is also inconclusive. The plaintiff's own case admits that there is insufficient data to support this.[574] While Ms Fung did say on the stand that she could have been promoted earlier at work if not for Mr Lim's accident because the accident affected her mentally and physically,[575] there is insufficient evidence concerning Ms Fung's allegedly delayed promotion.

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[572] NEs dated 12 October 2023 at p 69, lines 8–18.

[573] NEs dated 12 October 2023 at p 68, lines 9–17.

[574] PCS (Quantum) at para 100.

[575] NEs dated 12 October 2023 at p 94, lines 18–28.

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251 The plaintiff has contended that the quantum of the claim should be based on the cost of Orange Valley nursing care as a starting point and then reduced from there.[576] I do not agree that this is a calculation that will best reflect the value of the plaintiff's claim. This artificial calculation does not accurately consider all the costs that go into the costs of nursing care such as overheads, profits, insurance, amortisation of capital costs, amongst others. Moreover, nursing care at Orange Valley is qualitatively different from the care provided at home because of the availability of trained personnel to care for Mr Lim such as Ms Fitri and Dr Kesavaraj. A more closely linked calculation of the cost of care at home would be the cost of *one* domestic helper multiplied by 1.5x to reflect the *additional* care given by a spouse alongside the domestic helper and to account for the various additional costs at various points in time when there were two domestic helpers and when there was an additional caregiver engaged (see [248] above). I note in this regard that there is no dispute by the defendants that having two domestic helpers or a trained caregiver is reasonable for Mr Lim.[577] I am satisfied that this 1.5x calibration is a reasonable calibration to reflect the total value of caregiver services (by Ms Fung and others in the household) received by Mr Lim prior to his Orange Valley admission. I have also considered, in arriving at my calibration, the fact that Mr Lim got a place in a daycare centre in December 2022.[578] I note Dr Aaron Ang's evidence that the placement of Mr Lim in daycare must be considered alongside the family's caregiving burden when the daycare is not operating at night, on weekends and on holidays (see [170] above). I have also considered the defendants' argument that the plaintiff got better physically as time went on,[579] but I note the clear

576 PCS (Quantum) at para 100.

577 DCS (Quantum) at para 266.

578 JFWM-2023 08 22 at para 34(d).

579 DRS (Quantum) at para 141.

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evidence that whilst the plaintiff recovered physically, his cognitive ability has not recovered and thus Mr Lim became more difficult to manage behaviourally and that required just as much if not more supervision and consideration (see [164] and [170] above).

252 I note that the defendants made an argument (albeit in relation to the issue of having a domestic helper parent Mr Lim's children, which I will get to later) that the household already had a domestic helper prior to the accident and the domestic helper would be able to assist with household tasks aside from taking care of Mr Lim.[580] In this regard, I note the High Court's decision in *Yap Boon Fong Yvonne v Wong Kok Mun Alvin and another* [2018] SGHC 26 ("*Yap Boon Fong Yvonne (HC)*") at [55]–[69] on claimable domestic helper expenses. At [66], the court found that the plaintiff's sole caregiver in that case was her domestic helper, such that it was reasonable to conclude that the domestic helper would have spent a large percentage of her time caring for the plaintiff, and would have provided relatively few benefits to the household in general. This led the Judge in *Yap Boon Fong Yvonne (HC)* to opine that he did not think that the value of the domestic helper's services for benefits allegedly conferred to the plaintiff's household should necessarily be accounted for through discounting of the award. I further note that at [67] of *Yap Boon Fong Yvonne (HC)*, the Judge held, referring to *AOD* at [81], there is no reason to apply a discount to account for benefits accruing to the household if the domestic helper was simply doing housework that, but for the accident, would have been done by the plaintiff's current caregiver or the plaintiff personally. I am satisfied that these principles would apply to the present case such that I should not discount the sum awarded for caregiver services just because there is a possibility that

[580] DCS (Quantum) at para 321.

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the domestic helper could also help out with household tasks when not caring for Mr Lim. I further note that Ms Fung had given unrebutted evidence in her AEIC that the family was planning to phase out employing a domestic helper and send the children to after school care, but this was no longer an option in the light of Mr Lim's condition.[581] In this sense, the expense of continuing to employ a domestic helper (and indeed, the costs of employing a second domestic helper and a caregiver as noted at [248] above) were incurred *due to* Mr Lim's accident. I am thus satisfied that no further discount need be applied.

253 In relation to the precise costs incurred by the plaintiff in engaging a domestic helper, the defendants adopt the figures used by the plaintiff.[582] These are agency fees of $5,571.00, medical bills of $94.45, and salary, levy and living expenses totalling $1,000.00 per month.[583] Mr Lim was discharged home on 8 May 2019 (see [95] above). He was admitted into Orange Valley on 16 August 2023 (see [103] above). There was therefore a period of 51 months that he spent at home prior to being admitted to Orange Valley. I therefore calculate the quantum of this claim as follows:

(a) Domestic helper agency fee: $5,571.00

(b) Domestic helper medical bills: $94.45

(c) Domestic helper monthly outlay, with 1.5x multiplier: $1,000.00 x 1.5 x 51 = $76,500.00

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581 JFWM-2023 08 22 at para 50.

582 DCS (Quantum) at para 322.

583 DCS (Quantum) at para 322, referring to Plaintiff's Opening Statement (Quantum) dated 2 October 2023 at p 15, para 2.

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254 I award the plaintiff $82,165.45 for the costs of caregiver services from Ms Fung and domestic helper prior to admission to Orange Valley.

Incurred Cost of Parenting of Plaintiff's Children by Domestic Helper

Parties' cases

(1) Plaintiff's case

255 The plaintiff submits for a sum of $76,665.45 for the pre-trial costs of engaging a domestic helper to assist in parenting the plaintiff's children.[584] The plaintiffs submit that it is within the discretion of the court whether to apply a discount, and, if so, the quantum of the discount in relation to pre-trial expenses for employing a domestic helper to exercise parenting responsibilities in relation to the plaintiff's children.[585] However, the plaintiffs submit that any discount applied should be marginal as the bulk of the domestic helper's tasks were directed towards caring for the children and the plaintiff during the pre-trial period.[586]

(2) Defendants' case

256 The defendants submit that the plaintiff should be awarded $29,332.73 for the incurred cost of parenting of the plaintiff's children by a domestic helper.[587] In this regard, the defendants adopt the figures for agency fees and monthly domestic helper salary used by the plaintiff.[588]

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584 PRS (Quantum) at para 51; PCS at para 105.

585 PRS (Quantum) at para 49.

586 PRS (Quantum) at para 49.

587 DCS (Quantum) at para 323.

588 DCS (Quantum) at para 322.

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257 The defendants contend that the plaintiff had always employed a domestic helper to assist with general household chores including looking after the children.[589] Therefore, the most that the plaintiff can be compensated for the incurred costs of parenting of his children by a domestic helper is 50% of the said costs.[590]

Decision

258 In my judgment, this claim is untenable for the same reasons why the plaintiff's claim for the *future* costs of parenting his children by a domestic helper cannot be claimed. The law and analysis in this regard has been set out at [229]–[230] above. In summary, to the extent that Ms Fung and/or the children are suffering a detriment due to Mr Lim's inability to discharge parental responsibilities, this is a loss that should properly be claimed by them. And to the extent that Mr Lim has suffered loss from his inability to feel the satisfaction of discharging his parental responsibilities, that is a loss of amenity claim, for which sums have already been agreed and no further claim should be admitted. I mention for completeness that the plaintiff's claim for the incurred pre-trial costs of caregiver services from Ms Fung and domestic helper prior to admission to Orange Valley has already been granted (see [254] above).

Dr Kantha's re-examination of Mr Lim

259 Before I conclude, I will say a few words about the defendants' submission about Dr Kantha's aborted medical re-examination of Mr Lim at Orange Valley.

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589 DRS (Quantum) at para 148; DCS (Quantum) at para 321.

590 DRS (Quantum) at para 149; DCS (Quantum) at para 321.

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260 The defendants submit that it is unclear what was the legal basis for the court revoking an earlier order, made on 10 October 2023, for Dr Kantha and Dr Brian Yeo to medically re-examine Mr Lim at Orange Valley.[591] The defendants argue that, in particular, the sixth defendant was deprived of the opportunity to determine the present medical status of Mr Lim as claimed by Ms Fung and to ascertain if placing Mr Lim in Orange Valley is in his best interests.[592]

261 The plaintiff submits that the court was entitled to decline the defendants' application for medical re-examination of Mr Lim. The plaintiff submits that the court has jurisdiction over its own processes,[593] and there is a need for finality in litigation.[594] To allow for a further delay to make time for medical re-examination might involve the recall of witnesses, delayed closure of the trial and wastage of judicial resources.[595] The plaintiff submits that there is also little utility in a further examination as there has been no change in Mr Lim's condition since Dr Kantha's earlier medical examination of Mr Lim.[596]

262 I find it disturbing that the defendants would make this argument in a way that leaves out significant facts, particularly the sixth defendant's counsels' own shifting position on whether to carry out the medical re-examination. I had explained my final decision not to allow the medical re-examination in detail in

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591 DCS (Quantum) at paras 294–295.

592 DCS (Quantum) at para 297

593 PRS (Quantum) at para 60.

594 PRS (Quantum) at paras 56–57.

595 PRS (Quantum) at para 57.

596 PRS (Quantum) at para 58(i).

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my brief grounds of decision given on 27 October 2023,[597] and there is no need to repeat that in detail here. I set out a brief timeline of events for context:

(a) On 21 March 2023, Dr Kantha conducted a medical examination on Mr Lim and prepared a medical report dated 26 July 2023.[598]

(b) On 10 October 2023, in chambers, counsel for the sixth defendant stated that Dr Kantha wishes to make a special trip to Orange Valley to see Mr Lim, together with Dr Brian Yeo.[599] The plaintiff objected on the basis that nothing has changed since the latest medical reports were produced.[600] The sixth defendant responded that Dr Kantha cannot find medical evidence to justify the admission of Mr Lim to institutionalised care, and thus wished to review Mr Lim.[601] The sixth defendant also clarified that they are not intending to call Dr Brian Yeo as an expert witness in the suit.[602] After considering the matter over the lunch break, I granted an order in the following terms: "I will order the [plaintiff] to be examined again by Dr Kantha at a time that is agreed".[603] Given that Dr Kantha was only slated to testify in court on 19 October 2023,[604] I decided that allowing for the further medical re-examination

597 Minute Sheet dated 27 October 2023.

598 KR-2023 08 18 at p 12.

599 Minute Sheet dated 10 October 2023.

600 Minute Sheet dated 10 October 2023.

601 Minute Sheet dated 10 October 2023.

602 Minute Sheet dated 10 October 2023.

603 Minute Sheet dated 10 October 2023.

604 Letter from plaintiff's counsel dated 4 October 2023 enclosing List of Witnesses and Attendance Schedule; Letter from sixth defendant's counsel dated 29 September 2023 enclosing List of Witnesses and Attendance Schedule with sixth defendant's annotations.

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in the intervening days struck a balance between the efficient conduct of proceedings and the possibility of revealing additional information that may assist the court.

(c) On 11 October 2023, the court was informed that Mr Lim had shingles and was in an isolation ward in Orange Valley.[605] The plaintiff's counsel informed that any doctors going in to examine Mr Lim should do so with protective garments, and Orange Valley would like for a witness to be present and video recording to be done to avoid liability issues for Orange Valley.[606] In principle, therefore, the medical re-examination could still take place. However, the sixth defendant's counsel updated that Dr Kantha and Dr Brian Yeo both did not wish to conduct any medical re-examination of Mr Lim in the circumstances.[607]

(d) On 12 October 2023, after having inquired with the Registry, I offered counsel four additional dates between 31 October 2023 and 3 November 2023, out of which the parties could pick two dates for two additional days of trial.[608] Whereas trial was originally slated to end on 20 October 2023, and Dr Kantha was originally scheduled to take the stand on 19 October 2023,[609] I decided to offer the additional dates to give the sixth defendant an additional chance to arrange for Dr Kantha's medical re-examination. I explicitly informed counsels for the parties

605 Minute Sheet dated 11 October 2023.

606 Minute Sheet dated 11 October 2023.

607 Minute Sheet dated 11 October 2023.

608 Minute Sheet dated 12 October 2023.

609 Letter from plaintiff's counsel dated 4 October 2023 enclosing List of Witnesses and Attendance Schedule; Letter from sixth defendant's counsel dated 29 September 2023 enclosing List of Witnesses and Attendance Schedule with sixth defendant's annotations.

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that if Dr Kantha does not conduct the medical re-examination of Mr Lim before the additional trial dates, the trial will have to go on as the court cannot wait indefinitely for the medical re-examination to occur.[610] Parties selected 2 and 3 November 2023 as the two additional trial dates.[611]

(e) On 17 October 2023, the court was informed that parties were still waiting for Mr Lim to recover from shingles.[612] The sixth defendant informed the court that Dr Kantha could not make it on the additional trial dates offered by the court.[613] Parties thus confirmed that Dr Kantha will still be testifying on 19 October (as originally scheduled), without conducting any medical re-examination on Mr Lim.[614]

(f) On 19 October 2023, before Dr Kantha took the stand (and whilst he was waiting outside the court), plaintiff's counsel, Mr Raj Singh Shergill ("Mr Raj"), received a call informing him that his 11-year-old son was hit by a car.[615] The trial on 19 October 2023 was thus vacated to allow Mr Raj time to attend to his son. Thereafter, the sixth defendant informed that Dr Kantha was now willing to go to Orange Valley to examine Mr Lim and prepare an expedited report on Mr Lim.[616] The

610 Minute Sheet dated 12 October 2023.

611 Letter from plaintiff's counsel dated 13 October 2023.

612 Minute Sheet dated 17 October 2023.

613 Minute Sheet dated 17 October 2023.

614 Minute Sheet dated 17 October 2023.

615 Minute Sheet dated 19 October 2023.

616 Minute Sheet dated 19 October 2023.

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plaintiff objected on the basis that there was too short a notice.[617] I agreed with the plaintiff.

(g) On 23 October and 26 October 2023, the court wrote to parties in reply to correspondence from the parties to reiterate that no further order would be made for any medical re-examination of Mr Lim. In particular, in the 23 October 2023 letter, the court highlighted that the sixth defendant had "dispensed with the need to carry out any re-examination of the Plaintiff. The Plaintiff's counsel's subsequent inability to attend court in the afternoon of 19 October 2023 does not change this position without further sanction from the court."[618]

263 I had initially granted the defendants' request for medical re-examination only to be told that the doctors did not wish to examine Mr Lim when he had shingles (even though Orange Valley indicated that the medical re-examination was possible with protective garments worn). I had provided additional trial dates to give the defendants the medical re-examination that they sought, only to be told that the defendants no longer needed the medical re-examination to take place because of scheduling issues with Dr Kantha. Dr Kantha was thereafter arranged to testify on 19 October 2023 *without* any medical re-examination of Mr Lim. On 19 October, the defendants then changed their minds again. I did not look favourably on this *volte-face* which would put the already strained and extended trial schedule in jeopardy. I was cognisant that parties had prepared for cross-examination on the basis that Dr Kantha would *not* be medically re-examining Mr Lim. I gave weight to the plaintiff's objection that there was too short a notice for Dr Kantha to proceed with the medical re-

617 Minute Sheet dated 19 October 2023.

618 Letters from the court dated 23 and 26 October 2023.

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examination, and for whatever opinion that Dr Kantha may generate from this medical re-examination to be produced, analysed and used for the remaining days of cross-examination. I further took into account the evidence (see [100] and [171] above) that the plaintiff's condition had plateaued and there was little or no change to the plaintiff's condition since Dr Kantha had last seen the plaintiff on 21 March 2023. I note in this regard that Dr Kantha had indeed opined in his 26 July 2023 medical report that when he saw Mr Lim on 21 March 2023, Mr Lim had "reached maximal medical improvement".[619] I further note that in the very first version of the plaintiff's statement of claim filed on 10 February 2021, the issue of nursing care for the rest of Mr Lim's life was already pleaded.[620] Dr Kantha's medical examination of Mr Lim on 21 March 2023 thus already took place against a backdrop of the possible claim for nursing care. It was therefore unclear what additional information would be revealed from a medical re-examination of Mr Lim. I took guidance from the Court of Appeal's decision in *Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 at [24]–[25] that every litigant has a general right to bring all evidence relevant to his or her case to the attention of the court, but adduction of relevant evidence must, as far as practicable, take place in accordance with the rules of procedure whose purpose is to ensure the fair, economical, swift and orderly resolution of a dispute. I decided that the sixth defendant has had the opportunity to bring relevant medical evidence from Dr Kantha to the attention of the court, and that it was in the interests of a fair, economical, swift and orderly resolution of the trial for me to not make a renewed order for further medical re-examination of Mr Lim after the sixth

619 KR-2023 08 18 at p 19.

620 Statement of Claim dated 10 February 2021 at p 53, item 8.

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defendant had decided to dispense with the medical re-examination at multiple points in time between 10 and 19 October 2023.

Conclusion

264 To conclude, for the reasons set out above, I grant the plaintiff judgment in the total sum of $4,700,960.28, with the following breakdown of the various heads of claim:

Head of claim	**Quantum of award**	**Reference paragraph in judgment**
General Damages		
Pain and suffering	$253,000.00	[106]
Loss of future earnings	$1,595,146.72	[142]
Cost of future nursing care at Orange Valley	$1,869,944.40	[193]
Cost of future medication	$34,426.96	[201]
Cost of future rehabilitation treatment with Dr Karen Chua	$4,445.89	[201]
Cost of future dental treatment	$9,821.38	[204]
Cost of future eye treatment	$2,615.07	[206]
Cost of future occupational therapy	$111,240.00	[213]
Cost of future transport	$28,922.40	[218]

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Cost of future caregiver services by Ms Fung and/or a domestic helper	$11,124.00	[225]
Special Damages		
Medical Expenses	$336,310.11	[106]
Transport expenses	$3,210.00	[106]
Cost of application to appoint a deputy	$8,761.36	[106]
Incurred Orange Valley nursing care expenses	$15,576.49	[237]
Pre-trial loss of income	$334,250.05	[242]
Cost of caregiver services from Ms Fung and domestic helper prior to admission to Orange Valley	$82,165.45	[254]
Total: $4,700,960.28		

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265 My decision on liability, along with the apportionment of responsibility for the accident for the purpose of contribution as between the defendants, have been set out at [86]–[87] above.

266 Unless agreed, I will hear the parties on the issue of costs and interest.

Wong Li Kok, Alex
Judicial Commissioner

Raj Singh Shergill and Koh Jia Min Desiree (Lee Shergill LLP) for the plaintiff;
The first and second defendants absent and unrepresented;
Lin Hui Yin Sharon and Phng Boon Yew Gideon (Withers KhattarWong LLP) for the third defendant;
Fernandez Christopher and Low Huai Pin (Tan Kok Quan Partnership) for the fourth and fifth defendants;
Niru Pillai, Liew Teck Huat and Phang Cunkuang for the sixth defendant.

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