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

[2025] SGHC 11

Suit No 380 of 2022

Between

Lee Sim Leng

… Plaintiff

And

SMRT Buses Ltd

… Defendant

JUDGMENT

[Damages — Measure of damages — Personal injuries cases]

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Lee Sim Leng
v
SMRT Buses Ltd

[2025] SGHC 11

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26, 29–31 July, 1–2 August, 30 September 2024

20 January 2025 Judgment reserved.

Wong Li Kok, Alex JC:

Introduction

1 The present suit arises from a collision between a motor vehicle and a motor bus. The driver of the motor vehicle was one Lee Sim Leng (the "Plaintiff"), while the motor bus was driven by an authorised driver of the defendant, SMRT Buses Pte Ltd (the "Defendant").[1] By consent, interlocutory judgment for 100% liability was entered against the Defendant, with costs on the issue of liability to be paid by the Defendant on a standard basis and the costs on the issue of quantum to be reserved.[2]

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1 Statement of Claim (Amendment no. 2) dated 30 August 2023 ("SOC") at paras 1–3; Defence (Amendment no. 1) dated 1 February 2019 ("Defence") at paras 1–2.

2 Interlocutory Judgment (DC/JUD 773/2020) dated 31 March 2020.

Background to the dispute

2 On 26 August 2013, at around 10:00pm, the Defendant's authorised driver was driving a motor bus bearing the registration no. SMB 19H ("the Bus"). The Plaintiff was driving a motor vehicle bearing the registration no. SKL 6262C ("the Car"). Both vehicles were driving along Bukit Batok Central towards Bukit Batok Interchange. The Bus merged with the lane to its right and collided into the rear left side of the Car.[3] The Plaintiff was 51 years old as of the date of the accident.[4] Due to the collision, the Plaintiff suffered personal injuries and damage to the Car. From the images taken of the Car after the accident, I conclude that the accident was not a very serious one.[5] This is corroborated by the parties' expert evidence,[6] as well as the police report of the traffic accident wherein the Plaintiff states that she did not require an ambulance after the collision.[7]

3 On 8 May 2019, interlocutory judgment on liability was entered, by consent, by the Learned Deputy Registrar Ow Yong Tuck Leong, against the Defendant to "bear 100% of the damages to be assessed" and extracted on 31 March 2020 (the "Consent Judgment").[8]

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3 Core Bundle dated 18 July 2024 ("CB") at pp 47–52; SOC at paras 1 and 3–4; Defendant's Opening Statement dated 25 July 2024 ("DOS") at para 1.

4 CB at p 50.

5 CB at pp 53–60.

6 See, *eg*, Notes of Evidence ("NE") dated 29 July 2024 at p 38 lines 1–11.

7 CB at p 51.

8 Bundle of Pleadings dated 18 July 2024 ("BOP") at p 27.

The parties' cases

4 The Plaintiff's heads of claim are as follows. For General Damages, the Plaintiff sought the following:[9]

(a) pain and suffering;

(b) loss of earning capacity;

(c) future medical expenses;

(d) future transport expenses;

(e) future increase in flight expenses; and

(f) future increase in annual travel insurance premium.

As for Special Damages, the Plaintiff made the following claims:[10]

(a) medical expenses;

(b) pre-trial loss of income;

(c) transport expenses;

(d) increase in flight expenses;

(e) increase in annual travel insurance premium for 2023;

(f) cost of car repair; and

(g) cost of car rental.

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9 Plaintiff's Closing Submissions dated 19 September 2024 ("PWS") at para 4 S/N 1–9.

10 PWS at para 4 S/N 10–16.

The net sum of the Plaintiff's claim in damages is $5,476,169.67, specifically $4,202,561.55 in general damages and $1,273,608.12 in special damages.[11]

5 The Defendant contends that it should only be responsible for the Plaintiff's pain and suffering as well as pre-trial medical and transport expenses. In respect of those heads of claim, the Defendant further contends that the sum sought by the Plaintiff is excessive.[12]

Preliminary issue of causation

6 Before delving into the Plaintiff's claims, I will first address the preliminary issue of causation. More specifically whether, in light of the Consent Judgment, it remains open to the Defendant to contend that causation has not been made out. This issue formed a significant point of dispute between the parties.

7 The Plaintiff argues that it is not open for the Defendant to dispute causation for any head of claim, save for her claim for damages for Major Depressive Disorder ("MDD"), as it "had conceded liability in this matter and agreed for only the issue of damages to be reserved to the Registrar".[13] In citing the Court of Appeal case of *Crapper Ian Anthony v Salmizan bin Abdullah* [2024] 1 SLR 768 ("*Salmizan (CA)*"), the Plaintiff argues that it is clear from the context and terms of the Consent Judgment that "the only remaining issue reserved is the issue of damages … [and] any issues pertaining to liability have

11 PWS at para 4.

12 Defendant's Closing Submissions dated 19 September 2024 ("DWS") at paras 9–10.

13 PWS at paras 7 and 14.

been resolved between parties by consent and this includes causation which is a criteria to establish liability".[14]

8 In contrast, although the Defendant does not dispute the fact that *Salmizan (CA)* is the leading authority on whether a consent judgment finally disposes of causation for the purpose of determining liability, it argues that *Salmizan (CA)* does not support the Plaintiff's claim that it is foreclosed from disputing that issue. First, the Defendant argues that it would have been clear from the trial proceedings that it was intending to dispute causation. Hence it is not open to the Plaintiff to claim that the Defendant is precluded from disputing causation only at the late stage of closing submissions, having not voiced its objections earlier.[15] Second, by conceding that the issue of causation remained alive for the MDD claim, the Plaintiff had adopted an internally inconsistent position. If her claim is that the subordinate point of causation had been decided by the Consent Judgment and is no longer open to dispute, it is then equally not open to her to subsequently add additional heads of damage.[16] Third, and primarily, the Defendant relied on the Court of Appeal's observation in *Salmizan (CA)* that the *context* in which the interlocutory judgment was entered into is crucial. Before Goh Yihan JC's (as he then was) decision in *Salmizan bin Abdullah v Crapper Ian Anthony* [2024] 5 SLR 257 ("*Salmizan (HC)*"), parties in personal injury claims generally adopted an approach where causation would be reserved at the assessment of damages stage (the "AD stage") unless provided for otherwise. The existence and prevalence of such a practice was evidenced by Goh JC's subsequent decision in *Foo Kok Boon v Ngow Kheong*

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14 PWS at paras 8 and 13.

15 Defendant's Reply Submissions dated 24 September 2024 ("DRS") at para 5.

16 DRS at paras 6–10.

Shen and others and another matter [2023] 5 SLR 1633 ("*Foo Kok Boon*"), where he held that the doctrine of prospective overruling should apply in relation to his decision in *Salmizan (HC)*.[17] In other words, a defendant who entered into an interlocutory judgment (whether by consent or not) prior to the date of the decision in *Salmizan (HC)* would be entitled to raise issues of causation at the AD stage with respect to every head of damage claimed by the claimant (*Foo Kok Boon* at [37]). With this context, the issue of causation should remain open for dispute by the Defendant.

9 Conversely, the Plaintiff argues that limited weight ought to be ascribed to Goh JC's decision on prospective overruling in *Foo Kok Boon*. By default, judicial pronouncements are retroactive in nature, unless the appropriate appellate court explicitly states otherwise (citing *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557 ("*Adri*") at [43]). Since no such express ruling was made in *Salmizan (CA)*, there is nothing to suggest that the Court of Appeal's decision in that case should only apply prospectively.[18] Moreover, Goh JC's application of the doctrine of prospective overruling in *Foo Kok Boon* (*ie*, that his decision in *Salmizan (HC)* should only apply prospectively) was merely meant to serve as a practical stopgap pending the appeal against *Salmizan (HC)*. Given the Court of Appeal's ruling in *Salmizan (CA)*, such a determination was superseded by the Court of Appeal's findings.[19]

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17 DRS at paras 11–14.

18 PWS at para 10(a).

19 PWS at paras 10(b)–(c) and 11.

The Defendant is not barred from disputing causation

10 As canvassed above, parties are in agreement that the key authority for whether a consent judgment finally disposes of causation, for the purpose of determining liability, is *Salmizan (CA)*. In that case, the Court of Appeal affirmed that "an interlocutory judgment can be entered by consent on issues that do not wholly establish liability" and it is thus "for the parties to agree on what had been resolved with *res judicata* effect and what had not". It is thus, "eminently possible and conceptually consistent" for parties to consent to leave certain issues to be determined, such as the existence and breach of a duty of care, and for the court assessing damages to decide subsequently that no damages were due as causation of damage was not made out (at [48]). That said, the Court of Appeal further stressed and underscored the "importance of ensuring accuracy, precision and clarity in drafting such a *consent* interlocutory judgment" [emphasis in original] (*Salmizan (CA)* at [51]). This is because what is crucial in determining the effect of an interlocutory judgment is "the *context* in which that particular interlocutory judgment has been entered and the terms of that interlocutory judgment" [emphasis in original]. Any doubt as to the effect of a consent interlocutory judgement "would be a consequence of the conduct of the parties' counsel in drafting … and not because of the legal effect of the consent interlocutory judgment" (*Salmizan (CA)* at [50]).

11 Subsequently, in *Choo Yew Liang Sebastian v Koh Yew Teck and another (Direct Asia Insurance (Singapore) Pte Ltd, third party) (Etiqa Insurance Pte Ltd, intervener)* [2024] SGHC 212 ("*Sebastian Choo*"), Lee Seiu Kin SJ further stressed and affirmed the need for parties "to be precise in expressing the manner of the bifurcation of the proceedings" – though

admittedly such an observation was made in the context of an interlocutory judgment after trial (at [33]).

12 Ultimately, what is clear from the authorities is that the question of whether a consent judgment finally disposes of causation for the purpose of determining liability, must be resolved with reference to the specific terms and context of the interlocutory consent judgment. Put another way, the court is tasked with ascertaining what parties have agreed to resolve with *res judicata* effect, with reference to the terms of the interlocutory judgment as well as the context in which that particular interlocutory judgment was entered. To this end, it would be imperative for parties, when drafting such interlocutory judgments, to be clear and precise about whether they wish to resolve the issue of causation for the purposes of determining liability, or leave it open to be contested at the AD stage.

13 As for whether the decision of *Salmizan (CA)* ought to apply only prospectively, I agree with the Plaintiff that nothing in the Court of Appeal's decision appears to suggest that its determination only has prospective effect. Indeed, in *Foo Kok Boon*, Goh JC had observed that prospective overruling was necessitated by the fact that his decision in *Salmizan (HC)*, *ie*, that it is not possible to dispute causation *at all* at the AD stage, was an unforeseeable and extensive departure from the previous approach and practice on which various stakeholders would have placed heavy reliance. Thus, prospective overruling was necessary to "avoid serious and demonstrable injustice to the parties or to the administration of justice in general" (*Foo Kok Boon* at [29]–[32]). In contrast, the Court of Appeal's decision in *Salmizan (CA)* was a significantly less dramatic shift from the existing practice of reserving the issue of causation for the purposes of determining liability. The prejudice which necessitated Goh

JC's declaration of prospective overruling thus did not arise. Indeed, this was likely why the Court of Appeal made no explicit comment on whether its determination ought to only have prospective effect. It is well-established that "judicial pronouncements are *by default* retroactive in nature" save for instances where "the appropriate appellate court *explicitly* states that a judicial pronouncement is to take effect only *prospectively*" [emphasis in original] (*Adri* at [43]). As there was no explicit statement in *Salmizan (CA)* to such an effect, it is clear that the Court of Appeal's finding applies retroactively and thus would apply to the present case. That said, as I will go on to elaborate further (at [18] below), I do not find that the Defendant is necessarily taking the position that the ruling of *Salmizan (CA)* ought to apply prospectively.

14 I now turn to the interpretation of the Consent Judgment in the present case.

15 As affirmed in *Seiko Epson Corp v Sepoms Technology Pte Ltd and another* [2008] 1 SLR(R) 269, a consent judgment should be interpreted like a contract with the same principles of contractual interpretation to apply (at [25]–[26]). In *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170, the Court of Appeal provided a helpful outline of the key principles for contractual interpretation (at [19]):

> We begin with a brief statement of the relevant principles to be applied in the construction of contracts. These are well established in several decisions of this court and before us in the course of the oral arguments there was no real

disagreement as to these. Stated briefly, these principles are as follow:

> (a) The starting point is that one looks to the text that the parties have used (see *Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd [2016] 1 SLR 1069 at [2]).*
>
> (b) At the same time, it is permissible to have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties (see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [125], [128] and [129]).
>
> (c) The reason the court has regard to the relevant context is that it places the court in "the best possible position to ascertain the parties' objective intentions by interpreting the expressions used by [them] in their proper context" (see *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [72]).
>
> (d) In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear (see, eg, *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [31]).

16 Given the importance of the terms of the Consent Judgment, I set out its terms in full:

> BY CONSENT IT IS THIS DAY ADJUDGED:
>
> *1. Interlocutory Judgment is entered for the Plaintiff against the Defendant* ***who will bear 100% of the damages to be assessed***;
>
> 2. Costs on the issue of liability to be paid by the Defendant on a standard basis; and
>
> 3. Costs on the issue of quantum to be reserved to the Registrar assessing the damages.
>
> [emphasis added]

17 From a plain reading of the words of "will bear 100% of the damages to be assessed", there appears to be a degree of uncertainty as to what, specifically,

parties had intended to reserve for determination at the AD stage. In *Salmizan (CA)*, the Court of Appeal placed particular emphasis on drawing a clear distinction "between an interlocutory judgment on *issues* and an interlocutory judgment on *liability*" [emphasis in original] (at [51]). Here, as the term used was "damages", it is uncertain as to whether parties had intended to have only resolved the issue of responsibility for the accident, or whether they further intended to have also fully resolved liability for all of the Plaintiff's alleged damages.

18 To this end, it would be helpful to have regard to the context in which the Consent Judgment was entered. Specifically, I will consider the practice of the personal injury bar, as of 2019, in relation to such interlocutory judgments. It is in this regard that Goh JC's observations in *Foo Kok Boon*, on which the Defendant seeks to rely, offer great assistance. In *Foo Kok Boon*, Goh JC noted that the practice of parties "reserv[ing] all issues of causation to the AD stage, was well-entrenched". This was evidenced, *inter alia*, by: (a) Form 9I of the State Courts Practice Directions 2014, which had, prior to 1 March 2021, permitted parties to leave "the issues of damages and causation to be assessed and costs reserved to the Registrar assessing the damages"; (b) various cases from the District Court, such as *Kek Lai Quan (Guo Laiquan) v Lim Junyou* [2022] SGMC 7 and *Gannison s/o Varimuthu v Choa Beng Teck* [2023] SGDC 92; and (c) the Ministry of Law's website which specifies that for "determining quantum", the injuries claimed for needs to be "clearly caused by the accident" (*Foo Kok Boon* at [27]–[28]). Indeed, the extensiveness and degree of entrenchment of such a practice had formed part of Goh JC's reasoning when he decided that his ruling in *Salmizan (HC)* ought to have prospective effect (*Foo Kok Boon* at [32]).

19 In light of the foregoing, it is clear that, at the time the Consent Judgment was entered into between parties on 8 May 2019, parties had likely entered into it with the assumption that issues of causation could be reserved to the AD stage. Indeed, this would be aligned with the common practice at the time. Consequently, given the vagueness of the term "damages" and the prevailing context in which parties entered into the Consent Judgement, it would be reasonable to assume that parties had intended to leave the issue of causation open for dispute at the AD stage. Therefore, it cannot be said that causation has been decided with *res judicata* effect such that the Defendant is no longer entitled to dispute causation save for the MDD head of claim.

20 As the common practice appears to have been that parties would reserve all issues of causation to the AD stage, unless otherwise specified (see above at [18]), it would appear that many consent interlocutory judgements would have been entered into with the expectation that parties would still be entitled to dispute the issue of causation subsequently. Indeed, it is not hard to imagine that until the decision of *Salmizan (CA)*, many defendants may have decided not to dispute or contend liability, thereby entering into a consent interlocutory judgment, with the expectation that issues of causation could still be contested and disputed at the AD stage (see also *Foo Kok Boon* at [31]). In this context, and considering the guidance from *Salmizan (CA)* that the court should be sensitive to the *context* in which an interlocutory judgment had been entered into as well as its terms, there is benefit in creating a presumptive assumption that parties would have intended for causation, for the purposes of determining liability, to remain at issue when entering into consent interlocutory judgments. Such a presumption would only apply for consent interlocutory judgments entered pre-*Salmizan (CA)*. Additionally, this presumption can be readily displaced if the context and/or terms of the interlocutory judgement suggests

otherwise. Put another way, if there is any ambiguity, arising from the terms and circumstances, on whether parties intended to reserve the issue of causation to be subsequently disputed, such ambiguity would be resolved in favour of causation, for the purposes of determining liability, remaining an open issue for dispute.

21 As regards interlocutory judgments entered post-*Salmizan (CA)*, I reiterate the Court of Appeal's emphasis on the "importance of ensuring *accuracy, precision and clarity* in drafting such a consent interlocutory judgment" [emphasis added] (at [51]). Parties engage in vague and nebulous drafting at their own peril.

The "crumbling skull rule" is unnecessary

22 I address the Defendant's argument that the "crumbling skull rule" should be applied in this case, and more broadly, be incorporated into Singapore's law on negligence.[20] The Defendant seeks to rely on the "crumbling skull rule" to discount the amount the Plaintiff would be entitled to claim in damages. It cites cases from Canada and Hong Kong in support of this proposition. The Defendant's case is that, when deciding on the appropriate amount of compensation to award, the "crumbling skull rule" would require the court to take into account whether the claimant had any pre-existing conditions, such that the defendant's act merely *accelerated* an existing process of deterioration. Such a consideration would be more consistent with the compensatory purpose of awards for damages for personal injury, *ie*, to place the claimant in the position he would have been in if not for the accident and not in a better position (citing *The "MARA"* [2000] 3 SLR(R) 31 ("*The*

[20] DWS at para 52.

"MARA"") at [26]).[21] Although the Defendant concedes that the "crumbling skull rule" does not feature in any reported decisions in Singapore, it argues that this rule ought to be adopted for the aforementioned reasons.[22] In response, the Plaintiff objects to the Defendant's suggestion that the court should consider incorporating the "crumbling skull rule" into Singapore jurisprudence on the basis that the existing jurisprudence on negligence sufficiently addresses the concerns that this rule seeks to prevent.[23]

23 While the Defendant is correct in observing that the "crumbling skull rule" has not been explicitly relied upon or cited in reported Singapore jurisprudence, I agree with the Plaintiff that this does not mean that this rule needs to be incorporated into Singapore's law. Indeed, the state of the law on negligence in Singapore appears to be sufficiently robust to address such factual scenarios where the claimant suffers from a pre-existing condition.

24 In *Lua Bee Kiang (administrator of the estate of Chew Kong Seng, deceased) v Yeo Chee Siong* [2019] 1 SLR 145, the Court of Appeal affirmed that while it "may take as its starting point an award corresponding to the full extent of that loss", it would then adjust this sum "to account for the remoteness of the possibility and the chance that factors unconnected with the defendant's negligence might contribute to bringing about the loss" (at [72]). In undergoing such an exercise, the court would generally compare two sets of predictions, namely: "(a) what would have happened in the future had the injury not been sustained and (b) what is likely to happen in the future now" (at [73]). In that

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21 DWS at paras 42–50 and 53.

22 DWS at para 51.

23 Plaintiff's Reply Submissions dated 24 September 2024 ("PRS") at paras 16–20.

case, the Court of Appeal decided to apply a discount of 40% to the compensation awarded to the respondent as although there was an appreciable risk that he would develop dementia towards the end of his life before the accident, the appellant had doubled that risk as a result of the accident (at [76]–[80]).

25 In the more recent case of *Sebastian Choo*, Lee SJ similarly gave "due consideration … to the fact that the appellant had a pre-existing condition that would have continued regardless of the [a]ccident". This is because "ignor[ing] such a condition would be artificial and effectively attribute excessive liability onto the respondent" (at [44]). Lee SJ then went on to consider the *extent* to which the accident aggravated and exacerbated the appellant's pre-existing condition, and considered precedents which similarly involved an aggravation of an existing injury (at [44]–[52]).

26 From the above authorities, although no reported cases in Singapore explicitly reference the "crumbling skull rule", the principle underpinning this rule has featured repeatedly in local case law. To the extent that the Defendant is simply seeking to argue that the court ought to have due regard to the fact that some of the Plaintiff's losses and injuries would have been suffered in any event due to the natural deterioration of her body – I believe that, as can be seen above (at [24]–[25]), there is more than sufficient local jurisprudence on how the damages to be awarded can be appropriately reduced or discounted to take into account any pre-existing conditions.

27 Therefore, I saw no need to specifically apply or incorporate the "crumbling skull rule" into my analysis below on the appropriate quantum of damages to award to the Plaintiff.

General Damages

Pain and suffering and loss of amenities

28 The Plaintiff sought damages for pain and suffering caused by the following: (a) neck injuries and resultant disabilities; (b) parathesia and radicular pain of hands to arms, as well as numbness in fingers; (c) two separate surgical scars on each side of the neck; and (d) MDD.[24]

29 Having determined (at [19] above) that causation, for the purposes of determining liability, remains in play, the first question which must be addressed is whether such causation has been made out on the facts. If so, then the second question would be whether there was any subsequent break in the chain of causation. Finally, the third and last question is what would be the appropriate sums to award the Plaintiff for pain and suffering. I address each of these issues, in relation to each of the heads of damages, in turn.

The Plaintiff's alleged physical injuries

30 The Plaintiff alleged that she suffered several injuries to her neck, due to the accident, which necessitated various surgeries and caused her to suffer pain as a result. These alleged injuries are set out in Dr Tan Siah Heng James's ("Dr Tan") various medical reports and summarised in the Plaintiff's closing submissions as follows:[25]

> (a) whiplash Grade 3 injury with two prolapsed discs at C4/5 and C5/6 resulting in cord and nerve root compression;

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24 PWS at para 4 S/N 1–4.

25 PWS at para 49.

(b) persistent axial right sided neck pain radiating down the neck to her scapula and upper back;

(c) narrowed spinal canal by 30% to 40%;

(d) C4/5 and C5/6 disc protrusion causing compression of the spinal cord;

(e) buckling of the ligamentum flavum (ligaments on the back of the spinal cord);

(f) on the posterior aspect of the spinal cord, the ligamentum flavum is folded inwards, causing spinal cord indentation;

(g) presence of bone spurs causing foraminal stenosis at C4/5 and C5/6 levels worst on the right;

(h) excessive strain occurring at C3/4 and C6/7; and

(i) accelerated degeneration to the uncovertebral joints (on the sides of the vertebral disc) causing bone spurs to grow and compress nerve roots.

31 I find that the above nine alleged injuries broadly fall into three main categories. These are: (a) disc protrusions at C4/C5 and C5/C6 resulting in compression of the spinal cord; (b) buckling of the ligamentum flavum (*ie*, ligaments on the back of the spinal cord); and (c) narrowing of the exit foramina at C4/C5 and C5/C6 (*ie*, foraminal stenosis) due to the formation of bone spurs.[26] After a magnetic resonance imaging ("MRI") report (dated 16 September 2013)

[26] CB at p 63.

revealed the Plaintiff's deteriorating neurological condition (arising from the aforementioned three categories of medical conditions), Dr Tan recommended that she undergo decompressive spinal surgery to relieve pressure on the spinal cord and nerve roots.[27] The Plaintiff thus underwent her first spinal surgery on 18 September 2013 (the "2013 Surgery").[28] Despite the 2013 Surgery, the Plaintiff experienced radiculopathy and persistent pain along her right neck which radiated to her scapula and upper back.[29] As a result, the Plaintiff decided to undergo a revision surgery on 16 November 2019 (the "2019 Surgery"). However, due to the 2019 Surgery, the Plaintiff's spine was fused from C4 to C6. This meant that there was a risk of "accelerated degeneration of the adjacent cervical discs at C3/4 and C6/7" as there was "excessive strain now occurring at [C3/C4] and [C6/C7]".[30] From the foregoing, I find that the three main categories of medical conditions suffered by the Plaintiff form the basis from which the rest of her other neck conditions emanated.

32 The Defendant, in response, seeks to argue that *none* of the three categories of medical conditions were *caused* by the accident. Instead, they were the result of a pre-existing condition, specifically, cervical spondylosis.[31] To this end, the Defendant chiefly relies on Dr Ho King Hee's ("Dr Ho") medical report wherein he observed that the "C4/5 and C5/6 disc protrusion causing compression of the spinal cord, buckling of the ligamentum flavum, spinal cord compression and narrowing of the exit foramina at C4/5 and C5/6 are pre-

27 CB at p 84.

28 CB at p 84.

29 CB at pp 84 and 112.

30 CB at pp 105.

31 DWS at paras 18–19 and 60.

existent and unrelated to the accident". Dr Ho took the view that the Plaintiff had been suffering from "asymptomatic cervical spondylosis that became symptomatic as a result of the accident".[32] The three categories of medical conditions were thus resultant from the Plaintiff's pre-existing asymptomatic cervical spondylosis, and the accident merely brought the symptoms of her pre-existing condition to the fore, which manifested in the subsequent pain experienced by the Plaintiff. Thus, the Plaintiff's damages for pain and suffering should be limited to a Grade 2 Whiplash injury that resulted in the aggravation of her pre-existing cervical spondylosis.[33]

33 Arising from parties' position, the fundamental dispute as to the Plaintiff's claims for pain and suffering is thus whether the Plaintiff's pain and suffering were caused by *either* the accident *or* her pre-existing condition of cervical spondylosis.

(1) The accident was not the cause of the Plaintiff's medical conditions

34 Dr Tan accepted that it was possible that the Plaintiff was suffering from pre-existing cervical spondylosis that was simply asymptomatic. However, he observed that it was highly unlikely for her spinal canal to be narrowed by 30%–40% and yet not experience any symptoms or discomfort. Since the Plaintiff never sought treatment or therapy for neck issues prior to the accident, any pre-existing disc degeneration "would have been mild with no compression of the spinal cord or nerve roots". This led Dr Tan to conclude that the impact from

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32 CB at p 149.

33 DWS at para 59; CB at p 149–150.

the accident must have resulted in her whiplash injury and damage to her cervical spine.[34]

35 In contrast, Dr Ho took the position that the Plaintiff had pre-existing cervical spondylosis and that it was what caused the Plaintiff's various neck conditions. This is due to the fact that, *inter alia*, the MRI scans of the Plaintiff's cervical spine did not show acute changes, typical of an accident. Therefore, it was unlikely that the sideswipe of the Plaintiff's Car by the Bus was of such force as to result in the severe MRI findings observed. Additionally, had the Plaintiff experienced a sudden compression of her spinal cord, she should have felt immediate and severe neck pain at the time of impact. However, this was not the case. Taken together, Dr Ho says that this points to a finding that the Defendant's neck conditions were largely the result of a pre-existing condition, specifically cervical spondylosis.[35] Indeed, the MRI on 16 September 2013 showed that the Plaintiff's spinal canal narrowing was in such a severe state that it was highly unlikely that a mere sideswipe would have caused the full extent of her medical conditions. Rather it would seem that the accident merely triggered and brought to the fore the symptoms of the Plaintiff's already deteriorating and degenerating spine.[36]

36 As for Dr Tan's claim that it is unlikely for the Plaintiff to have been asymptomatic with such extensive spinal narrowing, Dr Ho noted that it is well-established that "severe radiographic findings in the cervical spine do not

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34 CB at pp 111–113.

35 DWS at para 18; citing CB at p 149.

36 DWS at paras 56–59 and 125; citing NE dated 29 July 2024 at p 50 line 10 to p 51 line 24.

necessarily reflect severe clinical findings".[37] The Defendant further points out that Dr Tan had accepted on the stand that the Plaintiff's condition, as observed in the 16 September MRI, was pre-existing, but that it was the accident that caused her to be symptomatic.[38] Moreover, the fact that the Plaintiff did not complain of any pain prior to the accident was not probative as it is possible that her self-reporting may not be entirely accurate. Indeed, Dr Tan had conceded that it is possible that the Plaintiff had experienced some discomfort and symptoms arising from a pre-existing condition, but was able to ignore and/or endure them until the accident exacerbated her condition and rendered it unbearable, thereby prompting her to seek medical aid.[39]

37 In response, the Plaintiff contends that Dr Tan had explained that one of the ways in which the spinal cord may be damaged is by chemical irritation when the annulus, which surrounds the centre of the disc, is torn which causes certain chemicals to leak into the epidural space and result in severe pain, tingling and numbness. In such an instance, high-velocity impact is not required to cause such injury to the disc as the "disc annulus is not very strong". Hence, it is not improbable that even a minor sideswipe could result in the Plaintiff's alleged injuries.[40] Ultimately, the Plaintiff contends that Dr Tan's expert opinion – *ie*, that the impact from the accident was what "directly caused [the Plaintiff's] neurological deterioration and persistent symptoms" due to the whiplash injury to her cervical spine[41] – ought to be preferred in light of his credentials. Unlike

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37 CB at p 149.

38 DWS at paras 20–21; citing NE dated 29 July 2024 at p 42 lines 26–31.

39 DWS at paras 54–55; citing NE dated 29 July 2024 at p 15 lines 11–32.

40 PWS at para 20(c); citing NE dated 29 July 2024 at p 32 lines 10–32 and p 38 lines 15–17.

41 PWS at para 25 and CB at p 85.

Dr Tan, the Defendant's experts (Dr Ho and Dr Sarbjit Singh ("Dr Singh")) were not specialists in neurosurgery and had not been in direct contact with the Plaintiff for the past ten years. Hence, Dr Tan's opinion ought to be given greater weight.

38 After having reviewed the evidence given by parties' expert witnesses, I prefer Dr Ho's expert evidence and agree that the Plaintiff was indeed suffering from a pre-existing condition of cervical spondylosis. I agree with Dr Ho that it is more likely than not that the three categories of medical conditions outlined above were the result of pre-existing cervical spondylosis, and that their existence was only brought to the Plaintiff's attention and notice by the accident. In other words, the accident had not caused the Plaintiff's various medical conditions relating to her neck, but had only made them symptomatic.

39 To begin with, I believe it would be apposite to highlight certain key concessions made by Dr Tan in his medical reports. In Dr Tan's most recent medical report, dated 21 September 2023, he "agree[d] with Dr Ho that [the Plaintiff] has asymptomatic cervical spine spondylosis" and that "the changes reported in the MRI on 16 [September] 2013 was not likely the immediate result of the road traffic accident". Indeed, from that medical report, it would appear that the only medical condition which Dr Tan has categorically maintained to *not* be the result of cervical spondylosis, is the narrowing of the foramina (*ie*, foraminal stenosis).[42]

40 Dr Tan made further concessions on the stand when cross-examined by the Defendant's counsel. Importantly, Dr Tan accepted the Defendant counsel's

[42] CB at p 174.

characterisation of his report on 21 September 2023 as essentially stating that the medical conditions "that were seen in the 16th September MRI [were] all pre-existing … [and] that the accident caused [the Plaintiff] to be symptomatic".[43] In contrast, even under cross-examination, Dr Ho maintained his opinion that the Plaintiff had been suffering from pre-existing asymptomatic cervical spondylosis which was aggravated as a result of the whiplash injury she suffered from the accident.[44] Dr Ho further clarified, in re-examination, that this meant there was simply a "temporal relationship between the accident and the onset of her symptoms" such that the pre-existing cervical spondylosis "became symptomatic as a result of the accident".[45]

41 Even as it relates to foraminal stenosis, which is the one area that Dr Tan has maintained to be caused by the accident, I prefer Dr Ho's evidence. Dr Tan took the position that the narrowing of the foramina was caused by the damage to the cervical nerves at the moment of impact during the accident.[46] As outlined above, one of the key reasons for this is because "[i]t is very unlikely that [the Plaintiff] was walking around without any symptoms with that kind of narrowing and compression".[47] Dr Tan also took the view that a large amount of force would not be needed to cause narrowing of the extent observed in the MRI on 16 September 2013 as "high-velocity impact [is not required] to injure

43 NE dated 29 July 2024 at p 42 line 26 to p 43 line 3.

44 NE dated 1 August 2024 at p 10 lines 1–7 and p 13 lines 27–32.

45 NE dated 1 August 2024 at p 22 lines 10–27.

46 CB at p 174.

47 CB at p 111.

the disc [annulus as] the disc annulus is not very strong", particularly when there is already pre-existing degeneration.[48]

42 Conversely, Dr Ho opined in his medical report on 6 January 2023 that it was unlikely that the accident caused the various medical conditions observed in the 16 September 2013 MRI. This is because had that been the case, "there would almost certainly be associated signs of oedema (swelling) of the bone or the soft tissue [but t]hese signs of oedema [were] absent". Dr Ho further differed from Dr Tan's opinion that limited force would be required to cause the observed medical conditions. Rather he opined that "the forces acting on the neck must be very considerable to result in sudden development of [the] severe MRI findings" and that this is inconsistent with the fact that the accident appeared to be quite minor. Moreover, had the medical conditions been the result of the accident, "it would be expected that [the Plaintiff] would have experienced immediate very severe neck pain at the time of impact [but t]his was not the case".[49] As such, Dr Ho concluded that it is more likely that the Plaintiff had asymptomatic cervical spondylosis that became symptomatic.

43 It is undisputed between parties' experts that the accident had been relatively minor, and that the Plaintiff had not felt significant pain immediately. Indeed, this can be seen from the recorded police accident statement, which states that the Plaintiff did not require an ambulance after the incident, and the images of the Car after the accident.[50] I accept Dr Tan's explanation that the mere fact that the Plaintiff did not *appear* to experience very severe neck pain

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48 NE dated 29 July 2024 at p 38 lines 15–17 and 27–32.

49 CB at p 149.

50 CB at pp 48 and 53–60.

immediately at the time of the accident is not dispositive. As he had explained during cross-examination, the initial adrenaline could have masked the severity of the Plaintiff's pain.[51] However, Dr Ho had also opined that the Plaintiff's report of numbness in *both* of her arms is atypical of radiculopathy (*ie*, injury or damage to the nerve roots) since usually only one arm would be affected.[52] Although he accepted that bilaterial numbness was theoretically possible, Dr Ho ultimately took the position that the bilateral nature of her symptoms is not typical of radiculopathy and that he had never seen this before.[53] As this aspect of Dr Ho's expert opinion remained uncontradicted by the Plaintiff's experts, I find that it serves to detract from the Plaintiff's claim that the medical conditions observed in her MRI on 16 September 2023 were sustained as a result of the accident.

44 As for whether it was possible for the Plaintiff to have sustained the medical conditions she did without a high-force and high-velocity impact – I find that the present state of evidence is insufficient for me to definitively resolve this issue. Dr Tan and Dr Ho have taken diametric positions on this issue and neither party have adduced clear evidence showing why the other's position is more unlikely or that theirs is to be preferred. As the burden ultimately rests with the Plaintiff to establish that the injuries she alleges to have suffered were the result of the accident, it is incumbent on her to prove that it is more probable than not that a low impact accident could have caused the full extent of her medical conditions. Given the state of the expert evidence, I find that she has not discharged her burden.

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51 NE dated 29 July 2024 at p 59 lines 24–29.

52 CB at p 149.

53 NE dated 1 August 2024 at p 15 lines 4–16 and p 26 lines 2–4.

45 More significantly, regarding the issue of whether there should be any observable oedema, I find that Dr Tan has been unable to satisfactorily address Dr Ho's position that, based on Dr Singh's observation and opinion, if it was the case that all of the abnormal observations in the MRI were caused by the accident, there *should* have been signs of oedema. Dr Tan had sought to explain the absence of any observed swelling, by stating that apart from direct trauma, the spinal cord or nerve could be injured by a tear of the disc annulus which results in prostaglandins leaking out into the epidural space, causing "severe pain, tingling, and numbness". [54] Even if I accept that such an explanation addresses how the Plaintiff may have experienced her subsequent symptoms of pain, it does not address Dr Ho's opinion that if the accident had caused the sudden and acute development of the Plaintiff's severe MRI findings, there should "almost certainly be associated signs of oedema (swelling) of the bone or the soft tissue".[55] Dr Ho's expert opinion that the expected signs of oedema are not present thus remains unchallenged. In contrast, Dr Tan's main reason for why he believes that the Plaintiff's foraminal narrowing is unlikely to be result of pre-existing cervical spondylosis, is because it is very unlikely that her spinal canal could be narrowed by 30%–40% while she remains asymptomatic.[56] However, I find that Dr Ho had explained this point satisfactorily by pointing out that "it is an established fact that severe radiographic findings in the cervical spine do not necessarily reflect severe clinical findings".[57]

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54 NE dated 29 July 2024 at p 32 lines 1–31.

55 CB at p 149.

56 CB at p 111.

57 CB at p 149.

46 It is also relevant to note that in Dr Tan's specialist report on 3 December 2019, as it pertained to radiological findings, one significant finding that he highlighted was "the *presence of bone spurs causing foraminal stenosis* at C4/5 and C5/6 levels worst on the right" [emphasis added].[58] In cross-examination, Dr Tan further explained that bone spurs (*ie*, osteophytes) tend to form to "aid in the stability of the spine … as the body's way of stabilising the spine", and that it generally takes months and even maybe years for such bone spurs to form.[59] He further explained that such bone spurs are unlikely to "come out of nowhere" and instead "points to the presence of degeneration".[60] Given that bone spurs tend to point toward a degenerative condition,[61] and that such bone spurs have been attributed, even by Dr Tan, to be the cause of the foraminal stenosis observed in the Plaintiff – this collectively points towards a finding that the foraminal stenosis was *not* a result of the accident but rather was pre-existing.

47 I make a final point on the two parties' experts' evidence. The Plaintiff makes the argument that more weight should be given to Dr Tan's evidence as, unlike Dr Ho, he is a specialist in neurosurgery and has been attending to the Plaintiff for the past ten years.[62] However, as Dr Ho explained in his evidence before the court, his experience "as a general neurologist would not differ significantly from the practice of any other general neurologist", and that in his practice, he would see "a very wide mix of cases of different types, ranging from

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58 CB at p 105.

59 NE dated 29 July 2024 at p 22 lines 1–13.

60 NE dated 29 July 2024 at p 22 lines 14–16.

61 NE dated 29 July 2024 at p 22 lines 26–30.

62 PWS at para 24.

cervical spine issues to peripheral nerve issues, stroke, Parkinson's [and] Alzheimer's".[63] Moreover, when it comes to the veracity of his opinion, Dr Ho explained that if a finding can be supported or evidenced from "published data or general medical practice … it does not require subspeciality competence [for an expert] to be able to make well-reasoned, logical comments".[64] I agree with Dr Ho's explanations in this regard. In fact, I find his medical report to be well-reasoned and logical, with his conclusions substantiated by thorough explanations for why he arrived at the opinions which he did. In contrast, I found Dr Tan's reports to lack that same degree of elaboration on the reasoning and rationale for his various conclusions (see above at [45]). Finally, Dr Ho's evidence stood up well to scrutiny in cross examination (see above at [40]). As such, noting that Dr Ho's experience is ultimately still in neurology, I do not find that less weight ought to be ascribed to his opinion merely because he is not a neurosurgeon like Dr Tan. To the contrary, I found Dr Ho's expert opinion and report to be more persuasive and cogent than that of Dr Tan's (see above at [43] and [45]).

48 Dr Tan also claims that, unlike Dr Ho, he had extensive interactions with the Plaintiff. While I do accept that such interactions may lend greater credibility to Dr Tan's reports, it is also important to note that Dr Ho's medical report was not written in a vacuum. It had the benefit of various medical and specialist reports, including reports by Dr Tan himself as well as other doctors.[65] I thus find that the availability of such documents for Dr Ho's reference and consideration lends credence to the opinion contained in his report. It does not

63 NE dated 1 August 2024 at p 23 lines 10–19.

64 NE dated 1 August 2024 at p 23 lines 25–28.

65 CB at p 143.

make his report any less credible than that of Dr Tan, particularly bearing in mind that Dr Ho had seen the Plaintiff immediately after the accident on 31 August 2013, pursuant to a referral from Dr Chan Beng Kuen (*ie*, the Plaintiff's attending physician at Gleneagles on 31 August 2013) ("Dr Chan").[66]

49 In light of the above, I agree with Dr Ho that the three categories of medical conditions observed in the MRI report on 16 September 2013 were likely not caused by the accident. Rather, they were more likely than not, the result of the Plaintiff's pre-existing cervical spondylosis. However, as her various neck conditions were asymptomatic *prior* to the accident, it was only after the accident, which triggered the manifestation of the symptoms of the Plaintiff's cervical spondylosis, that the Plaintiff was alerted (due to her feeling pain) to the need to seek medical attention. The Plaintiff has thus not made out her case that the Defendant caused these three categories of medical conditions.

(2) The Plaintiff's fall on 27 June 2014 did not break the chain of causation

50 Having concluded that the Plaintiff has not made out her case (as at [49] above), there is no need for me to consider whether there was a potential break in the chain of causation caused by the Plaintiff's fall on 27 June 2014. However, I make some observations on this point.

51 It is undisputed between parties that the Plaintiff fell in her home on 27 June 2014 and that she suffered injuries to her ribs as well as to her right knee.[67] The Defendant took the position that the Plaintiff's cervical spine had

66 CB at p 144.

67 CB at p 84; PWS at para 17 S/N 13; DWS at para 67.

degenerated to such a state that the fall in 2014 "could have rendered her paralysed had [she] not undergone the 2013 Surgery", and that had more information about the fall been provided, the Defendant could have argued that the fall constituted a *novus actus interveniens*.[68] In contrast, the Plaintiff argued that the Defendant had failed to raise this point in its pleadings, and that it was, in any regard, "merely speculative and not borne out by any objective evidence".[69]

52 On the point concerning the Defendant's pleadings, the Plaintiff took the position that the Defendant should not be allowed to argue that the fall in 2014 was an intervening event which caused a break in causation as this argument had not been pleaded and was only raised for the first time in cross-examination, which took the Plaintiff by surprise.[70] In *Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd and other appeals and another matter* [2020] 1 SLR 606, the Court of Appeal made it clear that where the specific facts and circumstances germane to an argument were within one party's exclusive knowledge, then that party cannot be said to be taken by surprise (at [16]). Here, given that the Plaintiff's own fall in 2014 would have been within her exclusive knowledge, it would not be open to her to argue that she was surprised by the Defendant's decision to raise it.

53 That said, while I accept that the Defendant is entitled to *raise* the fall as an issue, the Defendant has not shown that the fall acted as a break in the chain of causation. In *Foo Chee Boon Edward v Seto Wei Meng (suing as the*

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68 DWS at paras 67 and 108(b).

69 PWS at paras 36–37.

70 PWS at para 36.

administrator of the estate and on behalf of the dependants of Yeong Soek Mun, deceased) and another [2021] 2 SLR 1239, the Court of Appeal affirmed that although "[i]t is normally incumbent on the plaintiff to prove causation", where a defendant "mounts an affirmative case" that there is no causation, it would be "incumbent on [that defendant] to make good this assertion because it is his positive case that this was so" (at [25]). Hence, it is incumbent on the Defendant in this case to establish that there was a break in causation. The Defendant has not done so.

54 The Defendant had not led any evidence in support of this point, save for Dr Tan's acceptance that the Plaintiff's fall could have possibly rendered her paralysed if not for the 2013 Surgery. It further submits that an adverse inference should be drawn for the Plaintiff's failure to produce any medical reports on this fall in 2014.[71] Regarding Dr Tan's purported acceptance, I do not find his acceptance of the *possibility* that the Plaintiff could have been paralysed to be *strongly* supportive of the Defendant's claim. Dr Tan had not provided any further explanations on the likelihood or probability of such a consequence apart from a mere acceptance that it was technically possible.[72] In fact, Dr Tan had opined, in his report on 29 August 2021, that the fall in 2014 "is unlikely to have affected her cervical spine significantly".[73] I also decline to draw any adverse inference from the Plaintiff's alleged failure to adduce medical reports relating to the fall. As the Plaintiff points out, she *had* adduced an MRI report (dated

71 DWS at paras 67 and 108(b).

72 NE dated 29 July 2024 at p 48 lines 18–23.

73 CB at p 112.

27 June 2014) of her left knee and the Defendant had not made any further requests for any medical reports.[74]

(3) What is the appropriate quantum of damages?

55 Having found that the Plaintiff's medical conditions were caused by her pre-existing cervical spondylosis, and not the accident, the only issue left to resolve is the appropriate quantum of damages to award the Plaintiff for her pain and suffering arising from the accident.

56 The Defendant's position is that the Plaintiff's pain and suffering was, at worst, a Grade 2 Whiplash Associated Disorder. Hence, damages ought to be limited to $8,000.[75] The Plaintiff does not appear to have addressed what would be the appropriate damages if I were to find against her on the point that the accident neither caused nor aggravated her various neck conditions. However, she objects to the Defendant's characterisation of her whiplash injury as being a Grade 2 Whiplash injury and relies on Dr Tan's characterisation of it as a Grade 3 Whiplash injury.[76]

57 With regard to the severity of the whiplash injury, Dr Ho's opinion was that the Plaintiff's whiplash injury was only a Grade 2 Whiplash injury as the sensory deficits she reported experiencing "are very distant from the areas affected by the accident … [and i]t is unlikely that the sensory deficits represent true damage to the relevant nerve roots".[77] In contrast, despite his

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74 PRS at para 45; citing CB at p 75.

75 DWS at para 59.

76 PWS at paras 20(a) and 49(a).

77 CB at p 150.

characterisation of the Plaintiff's whiplash injury as being a Grade 3 Whiplash injury based on the Quebec Classification of Whiplash Associated Disorders, Dr Tan has not provided any explanation or reasoning for such a classification.[78] Consequently, I prefer Dr Ho's evidence to Dr Tan's in respect of the severity of the Plaintiff's whiplash injury, given that the former's analysis is more detailed and logical.

58 Under the *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) (the "AD Guidelines"), a sum of $7,000 to $8,000 is recommended for a Grade 2 Whiplash injury (at p 20).[79] I thus find the Defendant's proposed sum of $8,000 to be fair and reasonable and adopt it accordingly.

59 Additionally, I accept that some damages are appropriate given that the accident did cause the Plaintiff's previously asymptomatic medical conditions to become symptomatic. However, such an award would be circumscribed by my determination (see below at [70]) that, given the state of the Plaintiff's pre-existing condition, it was likely that these symptoms of pain would have manifested shortly after the date of the accident, even if the accident had not occurred. Since parties have not presented any evidence on the appropriate quantum in this regard, I will make a rough and ready estimate. In the circumstances, I find that an uplift of $3,000 would be appropriate. Such an uplift, when combined with the award of $8,000 for the Plaintiff's Grade 2 Whiplash injury, would place her in the lower range of awards for moderately severe neck injuries. According to the AD Guidelines, moderately severe neck

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78 CB at pp 86–87.

79 Plaintiff's Bundle of Authorities Volume I ("PBOA-1") at p 365.

injuries include those with symptoms, such as "considerable pain and restriction of neck movement with neurological deficits" (at p 20). Such symptoms are consistent with the symptoms which the Plaintiff had reported experiencing after the accident.

60 In sum, the Plaintiff's cumulative damages for pain and suffering as a result of her neck injuries, resulting from the accident, is $11,000.

Major Depressive Disorder

61 The next head of claim for pain and suffering is the aggravation of the Plaintiff's pre-existing MDD. In particular, the Plaintiff clarifies that it is not her case that the accident caused her MDD, but rather that the constant pain caused by her alleged neck injuries, which she ascribes to the accident, had aggravated her MDD.[80]

(1) The pain resulting from the accident contributed to the aggravation of the Plaintiff's MDD

62 While the Plaintiff accepts that her MDD was pre-existing, her position is that the pain brought about by the accident aggravated her MDD.[81] She relies chiefly on the expert evidence of Dr Lim Boon Leng ("Dr Lim") and Dr Calvin Fones ("Dr Fones"). In Dr Lim's report, dated 28 February 2022, he observed that the accident constituted "a major stressful life event which would likely have played a significant contributory role in exacerbating her condition even though [the Plaintiff] had not explicitly expressed so at that time". Subsequent to the accident, the Plaintiff experienced a "wax and wane of her low mood and

80 PWS at para 40.

81 PWS at para 40.

anxiety … in the context of worrying about her surgery, the pain and discomfort arising from her injury and the frustration over the legal proceedings for the said accident".[82] Similarly, in Dr Fones's report on 25 March 2022, he opined that the "ongoing physical discomfort, psychomotor retardation and negative impact on [the Plaintiff's] lifestyle are also major sources of stress for [her] and is likely to be a perpetuating factor for her emotional symptoms".[83] Dr Fones was also of the opinion that the Plaintiff "was not malingering over the repeated occasions that [he has seen] her [as s]he seemed genuine in her accounts; there was no suggestion of feigned or exaggerated symptoms in his [*sic*] presentation".[84]

63 Conversely, the Defendant emphasises the undisputed fact that the Plaintiff was already suffering from MDD *prior* to the accident, and that she had reported her main stressor for her depressive mood to have been her marital discords.[85] The Defendant further argues that the Plaintiff's experience of pain could have been the result of compensation neurosis.[86] In support of this point, the Defendant chiefly relies on various purported inconsistencies in the Plaintiff's evidence, such as: her ability to perform in a Cantonese Opera show in 2017; the fact that she went out late at night to "catch Pokémon", "mov[e] house by taxi" and to celebrate the coming of the new year despite her complaints of pain; and the fact that she had previously explained that she stopped helping with her husband's business towards the end of 2019 to avoid

82 PWS at para 41(a); citing CB at p 123.

83 PWS at para 41(b); citing CB at p 133.

84 CB at p 134.

85 DWS at paras 99–102; citing CB at pp 122–123.

86 DWS at paras 72–76.

marital conflicts.[87] Finally, the Defendant also argued that an adverse inference should be drawn from the Plaintiff's claim that she had no recollection of being treated by a Dr Tan Chue Tin (in Dr Brian Yeo Kah Loke's medical report), despite informing Dr Lim that she was seeing him as her private psychiatrist.[88] It thus contends that given that the Plaintiff was already suffering from MDD and that her evidence was impaired by compensation neurosis, the court should infer that there was no qualitative difference between the severity of her MDD condition before and after the accident. Thus, no damages are in order as the Defendant should not be saddled with the Plaintiff's claim for MDD.[89]

64 I accept the Plaintiff's claim that she did suffer pain as a result of the accident and that such pain had exacerbated her pre-existing MDD. As a preliminary point, it is significant that even the Defendant's expert, Dr Ho, accepted that the Plaintiff was likely suffering from chronic whiplash disorder which "manifest[ed] as myofascial pain".[90] Hence, even from the Defendant's own expert evidence, the Plaintiff had been suffering from pain *as a result* of the accident. Apart from the pain that arose from her Grade 2 Whiplash injury, the accident also caused the Plaintiff's previously asymptomatic conditions to become symptomatic (as I have accepted above), which would also have caused her to experience pain. I am thus of the view that the Plaintiff's pain, which arose as a result of the onset of symptoms of her pre-existing conditions as well as her Grade 2 Whiplash injury, would likely have had an aggravating effect on her MDD.

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87 DWS at para 77.

88 DWS at paras 103–104 and 108(c); citing CB at p 122.

89 DWS at paras 105–106.

90 CB at p 150.

65 To this end, I reject the Defendant's assertion that the Plaintiff's claim was a result of compensation neurosis which clouded her better judgment, leading her to misattribute her MDD conditions to the accident. It is significant to note that the Defendant has not adduced *any* expert evidence to support its claim that the Plaintiff was suffering from compensation neurosis. The Defendant instead sought to rely on Dr Lim's alleged acceptance that the inconsistencies in the Plaintiff's testimony and reports to her doctors could theoretically be due to compensation neurosis.[91] However, I find that Dr Lim's evidence does not, in fact, aid the Defendant's case. When examined by the Defendant's counsel on the apparent inconsistency between what the Plaintiff had informed him and her court testimony, Dr Lim accepted that it was *possible* for her inconsistency to be explained by compensation neurosis.[92] However, a mere possibility is insufficient to suggest that compensation neurosis is the likely reason for her purported inconsistencies. This is especially so given that the more reasonable and plausible reason for her inconsistencies is that she had simply misremembered certain details. The accident took place in 2013, it is now 2024. Given the passage of time, it is reasonable that certain inconsistencies in the Plaintiff's evidence are the result of lapses of memory. Indeed, in my assessment of the Plaintiff from her oral testimony, I did not find her to be an untruthful witness. Section 103 of the Evidence Act 1893 (2020 Rev Ed) provides that "[w]hoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which the person asserts, must prove that those facts exist". Given the complete dearth of any evidence showing that the plaintiff suffered from compensation neurosis, the

91 DWS at para 76.

92 NE dated 30 July 2024 at p 36 line 15 to p 37 line 7.

Defendant has failed to prove its case on compensation neurosis. I am thus unable to draw the conclusions raised by the Defendant.

66 I also decline to draw the adverse inference that the Plaintiff's non-disclosure of any report from Dr Tan Chue Tin must mean that the status of her MDD pre-accident would have been similar to its present, post-accident, state and that there was thus no aggravation of her MDD.[93] As the Plaintiff points out, the Defendant had not made any requests for Dr Tan Chue Tin's medical report, and any report by him would have limited probative value as he was not her treating doctor at the material time.[94] In *Thio Keng Poon v Thio Syn Pyn and others and another appeal* [2010] 3 SLR 143, the Court of Appeal affirmed that "a 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" [emphasis in original] (at [43]). Here, I do not find that any report of Dr Tan Chue Tin would have been so material as to warrant drawing an adverse inference from its non-disclosure. As stated above (at [62]–[63]), parties are in agreement that the Plaintiff was suffering from MDD prior to the accident. Regarding the *impact* of the accident on her MDD, I find that Dr Lim's evidence and reports would have been the most relevant and probative, given that he had been attending to the Plaintiff since 7 December 2013.[95] Therefore, as Dr Lim's evidence *has* been adduced and it would provide sufficiently temporal evidence as to the Plaintiff's MDD condition, I refuse to draw any adverse inference against her.

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93 DWS at para 108(c).

94 PRS at para 46.

95 CB at p 121.

(2) The aggravation of the Plaintiff's MDD is not entirely attributable to the accident

67 Having said that, it cannot be said that the Plaintiff's pain and suffering arising from her MDD was solely and singly attributable to the accident. Dr Lim had accepted that the "main stressor that had triggered [the Plaintiff's] depressive mood had been her marital discords". Moreover, Dr Lim further noted that the Plaintiff's condition had stabilised with treatment up until early 2019, but that her depressive mood recurred in April 2019 "due to the pain arising from the injuries sustained from the said road traffic accident and the stress of needing further surgeries for her spinal injuries". Significantly, during the consultation on 26 June 2019, the Plaintiff had informed Dr Lim that "her mood had been low as she had to undergo a surgery from the injury sustained from the said accident [and that] she had been having frequent tearfulness and catastrophised about dying during surgery".[96]

68 In my judgment, although the pain the Plaintiff experienced as a result of the accident (arising both from her pre-existing conditions, and her Grade 2 Whiplash injury) did exacerbate her MDD, it appears to be only one of various other causes for why her mood had worsened. There are two other main reasons, namely her tumultuous marriage and her worries over the 2019 Surgery, neither of which can be attributed to the Defendant. Moreover, while the accident had caused her to experience pain by causing her asymptomatic conditions to become symptomatic, this pain ultimately still emanated from her pre-existing condition. As I have determined above, I do not conclude that the accident caused the Plaintiff's various neck conditions. Thus, it was not the accident, but the Plaintiff's pre-existing cervical spondylosis which necessitated the 2019

[96] CB at pp 122–124.

Surgery. Hence, the resultant depressive mood and anxiety that she experienced from fretting about the 2019 Surgery cannot be said to have resulted from the accident either.

69 More significantly, according to Dr Lim's evidence, the Plaintiff's MDD had stabilised up until early 2019, but had deteriorated due to her need to undergo a second surgery, which caused her to have "frequent tearfulness and [to catastrophise] about dying during surgery" (see above at [67]). This suggests that it was only when the Plaintiff's condition worsened yet again in 2019 (which I have determined above to be a result of her pre-existing cervical spondylosis), causing her to require another surgery, that there was a recurrence of her depressive mood and MDD.[97] In support of this, there also appears to be a consensus amongst the Plaintiff's own psychiatric experts (*ie*, Dr Lim and Dr Fones), that the key reason for her relapse in 2019 was her fears regarding the 2019 Surgery. For instance, Dr Lim had observed that the Plaintiff's mood on 26 June 2019 was low as she had to undergo the 2019 Surgery which led her to catastrophising about dying during the surgery.[98] Similarly, Dr Fones opined that the Plaintiff was "most concerned about having to undergo a third surgery, which she catastrophises would likely render her paralysed" and which contributed to her depressive and suicidal tendencies.[99] In fact, by the Plaintiff's own telling, she had been fearful of the 2019 Surgery as she was concerned that it would affect her ability to partake in family activities and would render her unable to partake in her grandchildren's education and upbringing. This

97 CB at p 123.

98 CB at p 124.

99 CB at pp 131–132.

realisation "was devastating and [she] had to seek psychiatric help as [she] was feeling suicidal and worthless".[100]

70 Not only did the Plaintiff's pre-existing condition necessitate the 2019 Surgery, but it was also the likely cause for a significant amount of the pain and discomfort that she experienced as well. As I have determined above (at [49]), the accident had simply caused the Plaintiff's pre-existing cervical spondylosis to become symptomatic. However, according to Dr Tan's own evidence, the Plaintiff's spinal condition (as of the MRI on 16 September 2013) was in such "bad shape … [that] even a sneeze could cause the disc to bounce" and that activities like golfing could cause her to suffer a slipped disc.[101] According to Dr Tan's reports, the Plaintiff's state post-accident (as seen in the MRI on 16 September 2013), was so perilous that any small accident could have triggered her symptoms and caused her pre-existing asymptomatic cervical spondylosis to become symptomatic. Having found that her pre-existing cervical spondylosis was the reason for her severe MRI findings, it is evident that even if the accident had not happened, it was more likely than not that her pre-existing condition would have become symptomatic soon after.

71 In *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587, the Court of Appeal affirmed the proposition in *Livingstone v The Rawyards Coal Co* (1880) 5 App Cas 25 that a "party who has been injured, or who has suffered, [should be placed] in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation" (at [29]). Here, it appears that, based on the available evidence, the

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100 Plaintiff's Affidavit of Evidence in Chief dated 6 July 2022 ("LSL") at paras 13–16.

101 NE dated 29 July 2024 at p 50 line 24 to p 51 line 7.

Plaintiff would have experienced the same pain and discomfort she experienced in the immediate aftermath of the accident at some point in the near future, given the severity of her pre-existing condition. Thus, it would be in line with the compensatory principle of damages to take into account the fact that the accident merely accelerated the Plaintiff's experience of pain and discomfort that would have manifested, in any regard, even without the accident.

72 To this end, while all the available medical evidence points to a finding that, even without the accident, the Plaintiff would likely have experienced pain and discomfort at some point due to her pre-existing cervical spondylosis – there is insufficient evidence to allow me to arrive at a definitive conclusion on when such a date would be. Apart from a one-off mention by Dr Tan in cross-examination that the Plaintiff would have needed some treatment within 20 years to alleviate her spinal degeneration had the accident not occurred,[102] little expert evidence has been tendered in this respect. The Defendant submitted that after the 2013 Surgery, the Plaintiff had been restored to her pre-accident position as it was performed to, *inter alia*, address some of the consequences of the accident, such as the symptoms that the accident had triggered.[103] This position appears to be in line with Dr Tan's report on 28 June 2016, wherein he reported that in the follow up sessions after the 2013 Surgery, the Plaintiff had reported feeling relatively well, apart from the occasional neck ache on the right side.[104] In a subsequent report, on 3 December 2019, Dr Tan reiterated his position that "[t]he initial numbness and tingling resolved with the [2013 Surgery]" but that "over the years, she gradually developed increased pain

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102 NE dated 29 July 2024 at p 61 lines 17–32.

103 DWS at paras 62–63.

104 CB at p 84.

shooting down the arm as well as axial neck pain".[105] This is corroborated by the Plaintiff's own account that the 2013 Surgery "brought some temporary relief".[106] Hence, although the Plaintiff continued to experience pain and discomfort after the 2013 Surgery, the above evidence suggests that it is likely that this pain was the result of her pre-existing condition and not the accident. Therefore, I am inclined to agree with the Respondent that any pain that arose because of the accident, that could potentially have exacerbated the Plaintiff's MDD, would have been addressed and resolved by the 2013 Surgery.

73 In light of the above – in the absence of sufficient evidence to clearly establish *when* she would have started experiencing the symptoms of her cervical spondylosis had the accident not occurred – I conclude that the available evidence points to a finding that the 2013 Surgery resolved any pain that arose as a result of the accident and which could have exacerbated the Plaintiff's MDD. Such a finding is supported, in part, by the fact that the Plaintiff's MDD had stabilised from 2016 to early 2019, up until she discovered that she needed to undergo the 2019 Surgery (see above at [69]). Even if I were to assume that the 2013 Surgery did not resolve all of the Plaintiff's pain from the accident, any resultant deterioration in the Plaintiff's MDD, from 2019 onwards, cannot be attributed to the Defendant. This is so, as any such deterioration arose chiefly because of the Plaintiff needing the 2019 Surgery, which in turn, was only necessitated by her pre-existing conditions.

74 Therefore, I find that the Plaintiff's damages for pain and suffering for MDD must be discounted due to the other existing reasons for the deterioration

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105 CB at p 104.

106 LSL at para 13.

in her psychiatric condition from the date of the accident to the present (*ie*, her marital discord, worries over the 2019 Surgery and the pain resulting from her pre-existing condition).

(3) What is the appropriate quantum of damages?

75 In *Lee Mui Yeng v Ng Tong Yoo* [2016] SGHC 46, Kannan Ramesh JC (as he then was) provided the following helpful guidelines to take into consideration when assessing the damages for pain and suffering arising from a psychiatric condition (at [79]):

> … it would be incorrect to take a granular approach to ascertaining the impact of psychiatric illness on a plaintiff. That would not be justifiable as a matter of principle. In my view, a more broad-brushed and holistic application of the factors and categories is appropriate with any attempt to pigeonhole studiously avoided. Assessing the impact of psychiatric illness on an individual cannot be measured with exactitude given the nature of the illness and the assessment that is being undertaken. The court is, in substance, assessing the impact of the manifestations of the illness on the life and relationships of an individual. The factors and categories in the Guidelines are merely tools that are deployed to facilitate the court's efforts to come to the right assessment and attempts to shoehorn a condition into a category should be assiduously avoided. While there is much medical science in that assessment process, ultimately it is a question of judgment and not science. The cases are replete with statements to this effect, albeit in the context of assessment of the appropriate multiplier to be applied in calculating damages for loss of earnings or future medical expenses. The principle is equally applicable to the present exercise. It is a call to eschew granularity and espouse broad and considered judgment.

Here, I have determined that the extent to which Plaintiff's pain and discomfort (that was caused by the accident) would have exacerbated her MDD would likely be limited to the 2013 Surgery (see above at [72]). However, I find that limiting myself to a consideration of what the state of her MDD would have

been from the time of the accident to the 2013 Surgery would be too restrictive. Rather than adopt such a granular approach, I find that a more holistic approach, of considering the medical evidence and reports pertaining to the Plaintiff's MDD from the date of the accident up to the latest available report, would be more helpful in arriving at a fair and reasonable assessment of the severity of the Plaintiff's MDD.

76 The Plaintiff submits that, according to the AD Guidelines, her damages ought to be in the range of $25,000 to $55,000 as her psychiatric disorder is severe. She argues that, taking into account the fact that her MDD predated the accident, a sum of $50,000 would be reasonable.[107] The Defendant maintains that no damages ought to be awarded for her MDD.[108]

77 Under the AD Guidelines, there are nine factors which the court should take into account when assessing the severity of a claimant's psychiatric disorder, and thus valuing the appropriate award of damages. These factors are: (i) the person's ability to cope with life and work in general as compared to his or her pre-trauma state; (ii) the effect on the person's relationships with family, friends and those with whom he or she comes in contact with; (iii) whether the person is suicidal as a result of his or her psychiatric condition; (iv) whether medical help has been sought; (v) the extent to which treatment would be successful; (vi) the extent to which medication affects the person's work and social life; (vii) whether the person adheres faithfully to counselling session and

107 PWS at para 66.

108 DWS at para 104.

takes his or her medication; (viii) the risk of relapse in the future; and (ix) the chances of full recovery.[109]

78 In assessing the Plaintiff's psychiatric condition in totality, it is clear that the Plaintiff had been actively seeking medical help and that the treatment was relatively successful, given that Dr Lim had observed that the Plaintiff's MDD had stabilised with treatment up until early 2019. The fact that her condition was improving since the date of the accident till 2019 is further supported by the fact that her salary had increased from 2013 to 2019. I reproduce a table of her salary, per her IRAS statements of account, for ease of reference:[110]

FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2020**
$75,413	$111,903	$109,201	$118,601	$199,500	$87,501

It is clear that up until 2019, the Plaintiff's salary had been steadily increasing, which supports a finding that she had been able to cope with her life and work in general and was functioning close to her pre-accident state. As for the Plaintiff's ability to cope with daily affairs, Dr Lim had opined that, based on her history, the Plaintiff "was able to attend to her activities of daily living independently and had not reported any need for help in her [activities of daily living] due to her depression".[111]

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109 PBOA-1 at pp 370–371.

110 CB at pp 848–857; FY 2019 has been omitted as there is no financial record of her total income for that financial year.

111 CB at p 124.

79 On the other hand, I accept that the Plaintiff's MDD did, in fact, relapse. Having said that, as I had addressed above, I find that the chief reason for her relapse was her worries regarding the 2019 Surgery as opposed to her pain from the accident – the former of which cannot be attributed to the accident (see above at [68]). Relatedly, on the likelihood of recovery, it is notable that in Dr Fones's report dated 25 March 2022, he had observed that the "chronicity and persistence of [the Plaintiff's] symptoms … makes it likely that her symptoms are likely to persist for another 1–2 years at least".[112] While I note that Dr Lim had taken the view that the Plaintiff would require long term medication and treatment, and that she is unlikely to fully recover from her depression, he did admit that "[h]er current psychiatrist [*ie*, Dr Fones], … will be able to better address her current treatment needs".[113]

80 Given the foregoing, I find that the Plaintiff has failed to show that her psychiatric condition, as of 2019, fell within the scale of severe. Rather, I find the moderately severe range to be more appropriate. While she continues to experience emotional difficulties and requires frequent medication, she had experienced "marked improvement in her treatment" up until early 2019. Her prognosis for recovery was also quite decent, given Dr Fones's opinion that her symptoms are not likely to be permanent, although they do reflect a degree of chronicity.[114] That said, it would go too far to say that the Plaintiff's condition was minor given that "full recovery [has not been] achieved within a short period of time".[115] Her MDD is also evidently chronic and persistent, as she

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112 CB at p 133.

113 CB at pp 123–124.

114 PBOA-1 at p 372.

115 PBOA-1 at 372.

continues to show symptoms nearly 11 years after the accident. Conversely, a categorisation of severe would be too high given that it was clear that the Plaintiff was able to "return to employment permanently [and] even take charge of [her] daily affairs"[116] This is evidenced by her increasing income and Dr Lim's observation that she can attend to her activities of daily living independently. Since the Plaintiff's MDD fell within the moderately severe category, according to the AD Guidelines, this places an appropriate award of damages at around $8,000 to $25,000.

81 I further rely on two cases, which involve similar motor accidents, to derive the appropriate figure of damages:

(a) In *Chang Mui Hoon v Lim Bee Leng* [2013] SGHCR 17 ("*Chang Mui Hoon*"), the plaintiff was a passenger in a car which was involved in a road traffic accident (at [3]). The assistant registrar found that she had sustained a Grade 1 Whiplash injury, post-traumatic stress disorder and depression (at [67]). One of the medical experts assessed the plaintiff' depression as being moderate and not likely to be permanently disabling, such that recovery "could span 2–3 years" (at [20]). The AR ordered a sum of $10,000 for depression (at [26]). Although I note that *Chang Mui Hoon* has been partially overruled by the Court of Appeal in *Yap Boon Fong Yvonne v Wong Kok Mun Alvin and another and another appeal* [2019] 1 SLR 230, it was in relation to the AR's award of pre-trial loss of earning capacity and not the AR's reasoning and findings relating to the claimant's psychiatric condition.

116 PBOA-1 at p 371.

(b) In *Ng Lay Peng v Gain City Engineering & Consultancy Pte Ltd (Ng Peng Boon, third party) (AXA Insurance Singapore Pte Ltd, intervener)* [2020] 3 SLR 271 ("*Ng Lay Peng*"), the claimant was a passenger in her husband's car which was involved in a relatively minor accident. Apart from her psychiatric condition, the accident exacerbated the claimant's lumbar injury (with cauda equina syndrome) and cervical injury (at [35], [41], [63] and [240(a)(i)]). Andrew Ang SJ found that an award of $12,000 would suffice given that the damages arose from a low-speed, low impact collision that resulted in a less severe physical injury, which then led to traumatic depression (at [103]–[104]).

I found the present case quite comparable to the above two cases. The Plaintiff's injury, arising from the accident, was quite similar to that sustained by the claimant in *Chang Mui Hoon* (*ie*, whiplash). The nature of her accident, being a relatively minor accident, also bears resemblance to that of *Ng Lay Peng*. That being said, in comparing the relative severity of the injuries suffered, the Plaintiff's injuries were more severe than that suffered by the claimant in *Chang Mui Hoon* as she had suffered a Grade 2 Whiplash injury (see above at [57]), as opposed to a Grade 1 injury. However, her injuries were evidently less severe than that suffered by the claimant in *Ng Lay Peng*, who sustained serious lumbar and cervical injuries as a result of the accident.

82 I find a sum in between those granted in *Chang Mui Hoon* and *Ng Lay Peng* to be appropriate, and thus award a sum of $11,000 for the Plaintiff's MDD. Given that the pain that the Plaintiff experienced is but one of at least four other reasons for her worsening MDD, the remaining three being her marital discord, her worries over the 2019 Surgery and the pain arising from her pre-existing condition, I find that a discount of 75% should be applied such that

the Defendant should only be liable for a quarter of this sum. Thus, the final quantum should be $2,750 (rounding up).

Loss of earning capacity, future medical and transport expenses and additional future expenses

83 As a result of her alleged injuries, the Plaintiff sought damages for: (a) loss of earning capacity; (b) the future cost of treatment; (c) transport expenses (including the cost of hiring a driver); and (d) the increase in flight expenses and future increase in travel insurance premium. Having determined that the accident did not cause the Plaintiff's deteriorating neck conditions and only caused a Grade 2 Whiplash injury as well as her asymptomatic pre-existing conditions to become symptomatic (see above at [49]), no award of damages is made for these heads of claim as causation has not been established. I explain my reasons for each in turn.

Loss of earning capacity

84 First, as regards the Plaintiff's purported loss of earning capacity, the Plaintiff's position was that her deteriorating condition causes her to be in constant pain and limits her to no more than one to two hours of work a day. The pain also exacerbates her MDD, which further impedes her ability to work. As a result of these disabilities, *ie*, her chronic pain and MDD, the Plaintiff has been unable to help out at her husband's business.[117]

85 In Dr Tan's report on 3 December 2019, he noted that although the 2013 Surgery addressed the "spinal cord compression caused by the protruding discs [thereby resolving the] initial numbness and tingling", over the years, the

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117 PWS at paras 69 and 72.

Plaintiff continued to develop "increased pain shooting down the arm as well as axial neck pain". These subsequent bouts of pain were a result of radiculopathy (*ie*, injury or damage to nerve roots) "caused by the accelerated degeneration of the uncovertebral joints (on the sides of the vertebral disc) causing bone spurs to grow and compress the nerve roots" which persist despite "maximal therapy".[118] As I have explained above (at [31] and [38]), I did not find the accelerated degeneration of the Plaintiff's spine, which resulted from the fusing of her spine in the 2019 Surgery, to be a consequence of the accident. Rather, such a surgery would have been necessary in any event owing to the pre-existing disc protrusions, buckling of her ligamentum flavum, and foraminal stenosis. Accordingly, since the Plaintiff's disabilities and chronic pain were not caused by the accident, the corresponding loss of earning capacity resulting from them also cannot be attributable to the Defendant.

86 Regarding any loss of earning capacity arising from her MDD, as I have determined above (at [70]), the Plaintiff would have, in any case, eventually experienced the pain and discomfort that she experienced in the immediate aftermath of the accident. Moreover, I further found that the 2013 Surgery likely resolved all of the Plaintiff's pain, arising from the accident, in light of the available evidence (at [72] above). Further, and in the alternative, as can be seen from the Plaintiff's income from 2014 to 2020, her income only started decreasing from 2018 onwards. However, I have accepted that the main reason for the worsening of her MDD from early 2019 onwards was the 2019 Surgery, which cannot be attributed to the Defendant (at [73] above). Hence, the extent to which the accident aggravated her pre-existing MDD, and thus could have potentially impaired her ability to work, would be limited up to the 2013

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118 CB at pp 104 and 112.

Surgery, and definitely no later than early 2019. In *Teo Seng Kiat v Goh Hwa Teck* [2003] 1 SLR(R) 333, G P Selvam J affirmed that the date of trial provides the dividing line between past and prospective earnings, hence "[c]alculation of the future loss of earnings is computed from the date of assessment" (at [8]). Since the date of commencement of trial was in 2024, that puts the date of assessment (for loss of future earnings) far after the cut-off date by which any loss of income could be attributable to the Plaintiff's MDD (*ie*, early 2019 at the latest). Consequently, as of the date of assessment, it is clear that the Plaintiff's pain from the accident was no longer exacerbating her MDD. Hence, to the extent that the Plaintiff's working prospects were hampered by her MDD, I similarly did not find it to be the result of the pain arising from the accident.

87 I thus make no award as to loss of earning capacity.

Future medical and transport expenses and additional future expenses

88 On future medical expenses, the Plaintiff is claiming for the cost of "treatment of her neck injuries and major depressive disorder". These treatments are necessary to relieve the Plaintiff's neck pain and MDD.[119] Similar to my analysis for the loss of earning capacity (see above at [85]–[86]), since I have determined that the Plaintiff's neck conditions and the resultant pain, were not caused by the accident – the Defendant should not be made to bear the Plaintiff's future medical costs in this regard. I also find that the Plaintiff's future treatment costs for MDD should not be borne by the Defendant since, as canvassed in the prior paragraph, the latest date for which any exacerbation of the Plaintiff's MDD can be attributed to the Defendant would have been up to early 2019. After that date, the key reason for the worsening of the Plaintiff's depressive

119 PWS at paras 78–80.

condition was the 2019 Surgery, which was necessitated by her pre-existing conditions and not the accident.

89 As for future transport expenses, the Plaintiff requests compensation in the form of a dedicated chauffeur as she "can no longer drive due to the accident as she cannot turn her neck to check on blind spots". Alternatively, the Plaintiff submits that a reasonable sum for future transport to medical appointments can be estimated at $50 per trip and 3,000 trips, totalling $150,000.00.[120] Having found that the Plaintiff is not entitled to future medical costs, it naturally follows that she would not be entitled to claim for future transport costs for travelling to her medical appointments.

Additional future miscellaneous expenses

90 Finally, the Plaintiff seeks damages for an increase in her future flight expenses. This is because she would need to take business class for future flights due to her inability to sit for prolonged periods of time without feeling pain and discomfort. She formed her estimate of the increase in flight expenses based on the number of times she is likely to travel overseas.[121] The Plaintiff further submits that she should be compensated for an increase in her travel insurance premiums as she requires an insurance plan that would specifically cover her neck condition.[122]

91 These claims run into the same issue with causation as the former two claims for loss of earning capacity and future medical and transport expenses. I

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120 PWS at paras 82–84.

121 PWS at paras 85–89.

122 PWS at paras 91–92.

also raise a further difficulty with the Plaintiff's claim – I do not find an award of future flight expenses for the Plaintiff's future travels for leisure to be reasonable. The Plaintiff is seeking flight expenses to cover her overseas trips for vacation as well as to visit her sons.[123] In *Pollmann, Christian Joachim v Ye Xianrong* [2021] 5 SLR 1111, Vinodh Coomaraswamy J declined to allow the claimant to recover flight expenses incurred "for reasons unrelated to his treatment and therefore unrelated to the injuries he suffered in the accident" (at [268]). Here, the flight expenses sought by the Plaintiff do not relate to any need for medical treatment, even assuming that she needed treatment as a result of the accident. Rather, they pertain to the Plaintiff's own recreational travel. Hence, the Defendant is not liable for those costs.

92 Evidentially, I also have difficulties accepting the Plaintiff's claim that business class seats are medically necessary. When examined by the Defendant's counsel, Dr Tan conceded that he had recommended that the Plaintiff use business class seats based on the Plaintiff's self-reporting that relief can only be achieved if she is able to lie down.[124] Since this recommendation is based on the Plaintiff's self-reporting, it casts doubt on the strict medical necessity for such an accommodation. In order to satisfy me that this claim should be allowed, the Plaintiff would have to prove on a balance of probabilities that business class travel is a medical necessity. She has not done so.

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123 PWS at para 87.

124 NE dated 29 July 2024 at p 54 lines 2–5.

Inflationary pressures

93 Before I address special damages, I note that the Plaintiff had submitted that regard must be had for inflationary pressures – particularly given that the AD Guidelines are more than a decade old.[125] Indeed, in *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2022] 1 SLR 689, the Court of Appeal affirmed that where dated precedents are "to be relied upon, significant allowances for inflation and the corresponding decreases in the value of money will have to made" (at [136]).

94 To account for inflation, the Plaintiff suggests using the Goods & Services Inflation Calculator on the Monetary Authority of Singapore's website (the "MAS Inflation Calculator") to determine the appropriate uplift (citing *Asher David De Laure v Norhazlina Binte Md Yusop* [2023] SGDC 72 at [8]).[126] I note that, recently, in *Poongothai Kuppusamy v Huationg Contractor Pte Ltd & Other* [2023] SGHC 215, Kwek Mean Luck J similarly relied on the MAS Inflation Calculator to account for inflationary pressures. I thus accept that the MAS Inflation Calculator would be a helpful and reliable tool for estimating the uplift that should be awarded to the award for the Plaintiff's general damages arising from pain and suffering.

95 In this case, I award $11,000 in damages for the Plaintiff's neck injuries (see above at [60]), and $2,750 for her MDD (see above at [82]). This comes up to a total of $13,750 for general damages. According to the MAS Inflation Calculator, in order to account for inflation and derive the present-day value of an award in 2010, there should a percentage increase of approximately 8.82%

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125 PWS at paras 43–44.

126 PWS at para 44.

in its value (based on the MAS Inflation Calculator's latest inflation numbers, as of the date of this judgment, up to 2023). Thus, I would adjust and round up the award for general damages to the Plaintiff from $13,750 to $15,000.

Special Damages

96 The Plaintiff seeks special damages for the following items which she claims to have incurred as a result of the accident: (a) pre-trial medical expenses; (b) pre-trial transport expenses; (c) pre-trial loss of income; (d) pre-trial increase in flight expenses; (e) pre-trial increase in travel insurance; and (f) cost of repair of the Car and rental sums.

97 On pre-trial increase in flight expenses and travel insurance, my analysis above (at [90]–[91]) applies with equal force.

Cost of the Car's repairs and rental

98 The Plaintiff seeks $18,599.17 for repairs for damage to the Car. Although she concedes that her husband is the owner of the Car, she argues that she should be entitled to recover repair costs on behalf of her husband. She further argues that she should be given $1,587.57 for car rental costs whilst the Car was undergoing repairs.[127] In oral submissions, the Plaintiff's counsel reiterated that it does not matter who the vehicle belongs to and that she should be entitled to claim the costs of repair. The fact that the Car is registered in her husband's name is a mere technicality. Conversely, the Defendant argues that since the Car is owned by the Plaintiff's husband, he is the proper claimant and

[127] PWS at paras 102–103.

she has no standing to claim for repairs to the Car or for the rental of a replacement vehicle.[128]

99 In *The "MARA"*, the Court of Appeal affirmed that the "basic rule is that damages in negligence are purely compensatory", and that in assessing damages, the court is concerned with the loss the *injured claimant* has sustained (at [26]). I do not agree with the Plaintiff that the distinction which the Defendant sought to draw was a "mere technicality". Given that the Plaintiff must have been the one to suffer the alleged damage in order to claim for it in an action for the tort of negligence, I do not find that she has satisfied the court that she did in fact suffer such harm. It is insufficient for her to simply claim that as the costs of repairs were between a husband and wife, she ought to be able to claim on his behalf – particularly since he is not enjoined as a party to the present suit. The burden is ultimately on the Plaintiff to show that the cost of repair and rental were losses that *she* suffered as a result of the accident. There is no evidence that any sum is being demanded from the Plaintiff's husband such that she has suffered or will suffer any current or prospective loss. To this end, it is also significant to note that both the rental of the vehicle and the payment of the repairs were done under the Plaintiff's husband's name.[129]

Pre-trial medical expenses

100 For the Plaintiff's pre-trial medical expenses, as I found that the Plaintiff did suffer a Grade 2 Whiplash injury as a result of the accident, I accept that some award for medical expenses is necessary. Additionally, I have accepted that the Plaintiff's MDD was exacerbated by the pain she experienced because

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128 DWS at paras 110–112.

129 CB at pp 1002–1007.

of the accident, but that the cut-off date for any such claim should be temporally limited to the 2013 Surgery (see above at [72]).

101 The Plaintiff submits that she had incurred a total sum of $452,658.89 in medical expenses. It is pertinent to note that this sum was calculated on the basis that she would be entitled to recover all medical expenses relating to her various alleged neck injuries.[130] Conversely, the Defendant submits that an award of $1,277.28 would be sufficient for the Plaintiff's Grade 2 Whiplash injury.[131] Its position is that it should only be liable to incur the following medical expenses:

(a) $691.13 for a consultation at the 24hr Walk-In Clinic and Accident & Emergency (Gleneagles Hospital) at Parkway Shenton Pte Ltd incurred on 27 August 2013;[132]

(b) $385.20 for a consultation at K H Ho Neurology & Medical Clinic incurred on 31 August 2013;[133] and

(c) $200.95 for a consultation and prescriptions for pain relief at Orthopaedics/Neurosurgery International (Gleneagles) incurred on 31 August 2013.[134]

These three expenses would appear to be the first few medical expenses incurred by the Plaintiff, immediately following her accident on 26 August 2013.

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130 PWS at para 94.

131 DWS at para 59.

132 CB at pp 246–247.

133 CB at p 254.

134 CB at p 255.

102 I broadly agree with the Defendant's computation of the Plaintiff's pre-trial medical expenses. However, I find that the Defendant was wrong to not include two of the Plaintiff's medical expenses – namely, the additional medical expenses the Plaintiff incurred pursuant to a consultation with Dr Tan as well as expenses incurred for her treatment for MDD.

103 I will thus allow for recovery of two further expenses incurred by the Plaintiff. The first is the consultation and additional medical fees incurred by the Plaintiff when she was referred by Dr Chan to Dr Ho and Dr Tan (see [101(b)]–[101(c)] above, respectively).[135] Since this referral was likely done pursuant to the Plaintiff's reports of pain, which I accepted arose partly as a result of the accident (see above at [64]), I find that a causative link can be drawn. I also allow the fees incurred for the MRI done by Dr Tan pursuant to the consultation on 14 September 2013.[136] I do not think that it would be logical to isolate and disallow this expense, given that such an examination and investigation was likely a necessary and routine part of a medical consultation. That said, since this 16 September MRI was what had brought the Plaintiff's various neck conditions (*ie*, compression of the spinal cord, buckling of the ligamentum flavum and foraminal stenosis) to Dr Tan's attention, I find that any further expenses incurred subsequently – to treat the Plaintiff's various neck conditions (such as the 2013 Surgery) – to not be attributable to the Defendant. This is because those expenses were incurred in the course of attempting to treat and alleviate the symptoms of the Plaintiff's pre-existing condition.

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135 CB at pp 83 and 144.

136 CB at p 83.

104 In reviewing the medical receipts tendered by the Plaintiff, the aforementioned consultation and MRI on 14 and 16 September, respectively, would total $945.88, as follows:

(a) $196.88 for a consultation and prescriptions for pain relief at Orthopaedics/Neurosurgery International (Gleneagles) incurred on 14 September 2013;[137] and

(b) $749 for a cervical spine MRI at Orchard Imaging Centre Pte Ltd incurred on 16 September 2013.[138]

105 Second, regarding the Plaintiff's psychiatry treatments, as I have accepted above, the Plaintiff is, in theory, entitled to the expenses she incurred pursuant to such treatments for the period from the date of the accident to the 2013 Surgery (see above at [86] and [88]). However, from the available invoices tendered by the Plaintiff, the earliest invoice which she has produced was on 20 May 2014 for what appears to be a consultation with Dr Lim and some prescription medication.[139] Since this is past the cut-off date of the 2013 Surgery, no award with respect to medical expenses incurred for the Plaintiff's MDD is thus in order.

106 Thus, I allow a total sum of $2,223.16 for pre-trial medical expenses.

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137 CB at p 256.

138 CB at p 253.

139 CB at pp 8 and 307.

Pre-trial transport expenses

107 The Plaintiff asserts that her transport expenses over the years amounted to a total of $12,404.23, the majority of which were spent on her medical appointments.[140] The Defendant conversely submits that an award of $60.00 would be sufficient for her transport expenses.[141]

108 As I have explained above, transport expenses ought to be limited to expenses incurred for the purposes of treatment and cannot be unrelated to the injuries suffered in the accident (see above at [91]). Here, although the Plaintiff has provided an extensive tabulation and list of the taxi receipts from 7 December 2018 to 31 July 2021,[142] she has not explained what the various purposes of these travels were. Indeed, within the list of journeys tendered by the Plaintiff, not all of them were for the sake of medical treatment. This is evidenced by the Plaintiff's admission, in court while on the stand, that several of these trips were incurred for non-medical purposes.[143]

109 In *Tan Hun Boon v Rui Feng Travel Pte Ltd and another* [2018] 3 SLR 244 ("*Tan Hun Boon*"), Pang Khang Chau JC (as he then was) observed that where there is limited evidence concerning the modes of transport used and the expenses incurred for the trips to the hospital and clinics, the court will make a "reasonable estimate in order to arrive at an award for pre-trial transport expenses". However, "any such estimate should be a conservative one,

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140 PWS at para 95.

141 DWS at para 59.

142 CB at pp 661–663 and 671– 672.

143 See, *eg*, NE dated 26 July 2024 at p 107 line 8 to p 108 line 12 and NE dated 29 July 2024 at p 79 line 8 to p 80 line 2.

to avoid putting plaintiffs who fail to produce receipts in a better position than plaintiffs who conscientiously retain receipts and adduce them in evidence" (at [146]). Here the maximum number of trips the Plaintiff would have taken for medical appointments associated with the accident, in light of what I have found above (at [101] and [104]) for pre-trial medical expenses, would be five. I note that the Plaintiff had estimated that her per trip transport expense would be about $50 per trip.[144] In reviewing her past transport expenses, I find that sum to be excessive given that the average cost of a one way trip, calculated from the Plaintiff's various taxi invoices, was $13.78, which works out to around $27.56 for a round-trip.[145] Keeping in mind Pang JC's observation in *Tan Hun Boon* that estimates should be done conservatively, I find that an expense of $30 per trip would be more reasonable.

110 I thus award the Plaintiff $150 for pre-trial transport expenses (*ie*, $30 x 5 trips = $150).

Pre-trial loss of income

111 The Plaintiff claims for pre-trial loss of income for the period from May 2019 to the date of trial. The Plaintiff's case is that after May 2019, she was "in such pain that she could no longer work more than [one to two] hours a day". This meant that her productivity at work plummeted, resulting in a corresponding fall in a salary, and ultimately the complete cessation of her employment after the 2019 Surgery. The Plaintiff thus seeks the sum of

144 PWS at para 84.

145 CB at pp 661–663 and 671– 672; *ie*, a net sum of $2824 for 205 entries of taxi invoices.

$744,273.[146] The Defendant, on the other hand, takes the position that no award as to pre-trial income should be granted.[147]

112 As I have determined above (at [85]–[86]), the only possible reason for her loss in income which the Plaintiff can claim to be attributable to the accident, is the pain caused by the accident that exacerbated her condition of MDD, thereby potentially undermining her productivity at work. However, as I also explained (at [86]), the *furthest* date to which any pain arising from the accident could be causatively linked to her MDD is limited up to early 2019. Hence, since the Plaintiff had not suffered any loss of income from the date of the accident up until 2018 (see income changes at [78] above) – I decline to make any award for pre-trial loss of income.

Pre-judgment interest

113 In light of the foregoing, the total damages awarded to the Plaintiff are as follows: (a) $15,000 for general damages; and (b) $2,373.16 for special damages.

114 As to interest, the Plaintiff submits that the court should award an interest rate of 5.33% per annum from date of writ to the date of judgment and 2.67% per annum for special damages from the date of accident to the date of judgment (citing *Teo Sing Keng and another v Sim Ban Kiat* [1994] 1 SLR(R) 340 at [50]–[55]).[148] The Defendant made no submissions as to interest.

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146 PWS at paras 97–99.

147 DWS at para 10.

148 PWS at para 105.

115 In *Yip Kok Meng Calvin (a minor) v Lek Yong Han (Yip Ai Puay, third party)* [1993] 1 SLR(R) 147, Judith Prakash JC (as she then was) affirmed that interest will be awarded on the Plaintiff's damages from the date of the writ up to the date of judgment "almost as a matter of course", and that the burden is on the defendant to "show special circumstances, for example, unreasonable and unjustified delay on the part of the plaintiff in prosecuting the action" (at [32]). Here, the Defendant has not raised any reasons, much less convinced me as to why an award of interest should not be made in the Plaintiff's favour. I further found the interest rate of 5.33% per annum, as suggested by the Plaintiff, to be reasonable as this is in line with the pre-judgment non-contractual interest stipulated in the Supreme Court Practice Directions 2013 at paras 77(2) and 77(9). Here, the writ was filed on 8 August 2016[149], thus pre-judgment interest will run from 8 August 2016 to the date of this judgment.

116 Having said that, I did not find that any interest from the date of the accident to the date of the filing of the writ would be warranted. In *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* [2003] 3 SLR(R) 601, Kan Ting Chiu J observed that since the "basis for awarding interest is that the plaintiff has been kept out of his money", if "a plaintiff is slow to prosecute his case, his claim to pre-trial interest is diminished [not] because the defendant had not kept him out of his money[, but because he] has kept himself out of his money, and there is no reason for the defendant to compensate him for that" (at [48]–[49]). Here, the accident occurred in 26 August 2013, but the writ was only filed on 8 August 2016.[150] I find this delay to be entirely attributable to the Plaintiff since she was the one in full control of when to commence the suit. Hence, it cannot be said

149 BOP at pp 3–4.

150 BOP at pp 3–4.

that the Plaintiff has been kept out of her money by the Defendant, and thus no interest should be awarded from the date of the accident to the date of filing of the writ.

Conclusion

117 To conclude, for the reasons set out above, I grant the Plaintiff judgment in the total sum of $17,373.16, with the following breakdown:

Heads of claim	**Quantum of award**	**Reference paragraph**
General Damages		
Pain and suffering and loss of amenities	$15,000.00	[95]
Total General Damages	$15,000.00	
Special Damages		
Medical Expenses	$2,223.16	[106]
Transport Expenses	$150.00	[110]
Total Special Damages	$2,373.16	
Total (pre-interest): $17,373.16		

118 I did not find the Defendant's characterisation of the claimant as a liar and profiteer to be helpful or justified. The Plaintiff is clearly suffering from MDD and has been so suffering for decades before the accident. Whilst I disagree with the Plaintiff's position as to whether the accident was the cause of her neck conditions, I accept that she had genuinely believed this to be the case. I hope this decision will bring closure on this unpleasant chapter in her life and that she can move forward in a more positive light.

119 As determined above (at [115]), pre-judgment interest will run at the rate of 5.33% per annum from the date of the writ up to the date of judgment. I will hear the parties on costs and interest.

Wong Li Kok, Alex
Judicial Commissioner

Wee Jee Kin and Goh Chye Hock Joseph (JK Law Chambers) for the plaintiff;
Anthony Wee and Koh Keh Jang Fendrick (Titanium Law Chambers LLC) for the defendant.