Lee Teck Nam v Kang Hock Seng Paul
[2005] SGHC 136

Case Number : Suit 57/2002, RA 4/2005, 5/2005

Decision Date : 29 July 2005

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Chong Pik Wah (Lim Kia Tong and Partners) for the appellant; Kwok-Chern Yew Tee and Goh E Pei (Lawrence Chua and Partners) for the respondent

Parties : Lee Teck Nam — Kang Hock Seng Paul

Damages – Assessment – Loss of future earnings – Method of calculating loss of future earnings – Whether loss of salary increments and promotion opportunity to be included in such calculation

Damages – Assessment – Loss of pre-trial earnings – Possibility of plaintiff claiming part of damages awarded for loss of pre-trial earnings from employer under terms of employment contract – Whether defendant liable for such damages

Damages – Measure of damages – Personal injuries cases – Factors to consider when determining quantum of damages for non-pecuniary losses resulting from physical injury

29 July 2005

Andrew Ang J:

1 This was an appeal by the plaintiff and a cross-appeal by the defendant against distinct parts of the assessment of damages by the assistant registrar ("AR").

2 I gratefully adopt the succinct summary of the facts by the learned AR as follows:

> **Facts**
>
> 1. The plaintiff was involved in an accident on 22 June 1999. Judgment was granted for the plaintiff against the defendant after a trial. The assessment of damages came before me.
>
> 2 As a result of the accident, the plaintiff sustained the following injuries:
>
> (a) severe comminuted open fracture of the right tibia and fibula;
>
> (b) fracture dislocation of the right proximal tibia - fibula joint;
>
> (c) complete peroneal nerve injury of the right leg;
>
> (d) multiple wounds and bruising on the right lower leg;
>
> (e) bruising of the left leg;
>
> (f) bruises and cuts on the right arm;
>
> (g) bruises on the right hip.
>
> 3. Presently, the plaintiff suffers various disabilities as follows:

(a) shortening of the right leg by 1cm;

(b) Grade 1 valgus instability of the knee and knee crepitus;

(c) limitation of the right knee motion;

(d) swollen right ankle with limitation of ankle motion;

(e) partial peroneal nerve palsy with Grade I weakness of toes and Grade II weakness of right ankle, numbness of right foot and lateral aspect of leg and right drop foot;

(f) multiple scars;

(g) residual pain, swelling and a limp right leg;

(h) loss of calf muscle and weakness of the right leg;

(i) osteoarthritis of the right knee and right ankle.

4. At the time of the accident, the plaintiff was 49 years old and working as a front office manager with New Park Hotel. Following the accident, he underwent nine operations and was on medical leave for more than 15 months. His employment record since the date of the accident was as follows:

Date	**Employment record**
22 June 1999 – 31 August 2000	Medical leave.
1 September 2000 – 26 March 2001	Resumed work as assistant front office manager.
27 March 2001 – 17 May 2001	Medical leave.
18 May 2001 – 1 August 2001	Resumed work and resigned with effect from 2 August 2001.
2 August 2001 – to-date	Unemployed.

5. When the plaintiff was on medical leave from June 1999 to February 2000, he continued receiving his full salary. In March 2000, his employer started paying him two-thirds (2/3) of his salary until August 2000. In addition, his employer informed him that under his contract of employment, he was only entitled to two months of hospitalisation leave. As such, although he had been paid his salary throughout his medical leave from June 1999 till August 2000, the

employer was treating the sums paid to him in excess of two months as a loan, which he must repay to the company after he has obtained the judgment sum.

6. When the plaintiff resumed work on 1 August 2000, he was demoted in rank to an assistant front office manager and suffered a pay cut. When he was hospitalised for further medical treatment and was on leave from 27 March 2001 to 17 May 2001, he was paid his salary in full. However, his employer again informed him that it would treat this medical leave as "no pay" leave and the salaries that were paid would be treated as loans, which would have to be repaid by him when he succeeded in his claim.

7. After his second medical leave ended in May 2001, the plaintiff returned to work and was given light duties. Subsequently, in July 2001, he was asked to perform the full duties and responsibilities of an assistant front office manager. The plaintiff immediately tendered his resignation as he was of the view that he would not be able to carry out all the duties because of his physical injuries. His last day of work was 1 August 2001.

Claim

8. The plaintiff claimed damages for the following –

(a) pain and suffering;

(b) pre-trial medical expenses;

(c) future medical expenses;

(d) future cost of orthotics;

(e) pre-trial loss of earning;

(f) loss of future earning;

(g) loss of earning capacity, increments and promotion opportunities;

(h) pre-trial transport expenses;

(i) future transport expenses;

(j) damaged items;

(k) wife's loss of earning (for taking no pay leave to look after the plaintiff).

3 The appeals before me concerned items (a), (e), (f), (g) and (h). However, my Grounds of Decision will deal only with the items in my assessment against which the defendant appealed (there being no appeal by the plaintiff). In the defendant's Notice of Appeal, they are identified as follows:

(1) The award of pain and suffering and loss of amenities in respect of the leg injury assessed at $55,000.00;

(2) The award of loss of pre-trial earnings assessed at $264,681.23;

(3) The award of loss of future earnings assessed at $178,793.16; and

(4) The award of loss of salary increments assessed at $14,400.00.

4 I shall deal with them in the same order.

Pain and suffering

5 The learned AR had made a global award of $50,000 for pain and suffering and loss of amenities in respect of the plaintiff's right leg and $2,000 with respect to the bruises and cuts on the left leg and right arm. Upon hearing the plaintiff's appeal against this assessment, I increased the global award in respect of the right leg by $5,000 but left untouched the award of $2,000.

6 The principle behind damages for personal injury is no different from the general law as to damages; the injured party should be paid full compensation for all losses, past and future, pecuniary and otherwise. The principle has been expressed by Lord Blackburn in *Livingstone v The Rawyards Coal Co* (1880) 5 AC 25 at 39 as follows:

> I do not think there is any difference of opinion as to its being a general rule that, where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

However, the principle is more easily formulated than applied. There is no obviously correct amount to be awarded with respect to non-pecuniary losses suffered as a result of physical injury. As was pithily put by a writer, "there is no 'market' for pain or lost limbs": Peter Cane, *Atiyah's Accidents, Compensation and the Law* (Butterworths, 6th Ed, 1999) at p 135.

7 Be that as it may, awards have had to be made and over time numerous decisions covering various parts of the human anatomy have been rendered. Whilst judges have striven to achieve some consistency in the awards handed down, their decisions have not always been easily reconcilable. It is important, though, to bear in mind that no two cases are identical. The nature of the injury, its severity, the duration of any disability and its prognosis, the impact of the injury and any continuing disability on the claimant and the awareness of the claimant of his disability are some of the more important factors that may be taken into account in an assessment of general damages: see *The Law of Damages* (Andrew Tettenborn gen ed) (LexisNexis, 2003) at para 29.10. Apart from the variance in the factors mentioned above, there is also the need to take inflation into account. As we are all too painfully aware, the same sum of money even a few years ago will not have the same purchasing power today.

8 In England, the Judicial Studies Board Guidelines for the Assessment of Damages in Personal Injury Cases ("JSB Guidelines") provides a structured approach to the assessment of damages for the guidance of judges. These are brought up to date by revisions from time to time. In the absence of anything similar in Singapore, judges have perforce to resort to past cases for guidance. Important though it is to strive for consistency in assessing damages, there is a need to guard against superficial analogies.

9 I now return to the facts of the case. Before the learned AR, the plaintiff claimed $90,000 under the head of pain and suffering and (presumably) loss of amenities. The figure was arrived at by aggregating the claims in respect of the various injuries sustained by the right leg and applying a discount of ten per cent to the total to compensate for overlapping.

10 The defendant's counsel, on the other hand, submitted that the appropriate damages should be $40,000, taking a global approach. In the result, the AR agreed with the defendant's counsel that where the injuries affect the same part or function of the body, a global award should be made to avoid the risk of overlapping.

11 With regard to the quantum, the AR declined to follow *Goh Eng Hong v Management Corporation of Textile Centre* [2003] 1 SLR 209 which was cited by the defendant's counsel on the basis that the injuries allowed by the court were not as severe as in the case before her. She formed the view that the fractures suffered by the plaintiff were as serious as those of the claimant in *Vittorio Luigi Roveda v Singapore Bus Service (1978) Ltd* ("*Vittorio*"), a High Court decision in 1997 where Lim Tiong Qwee JC awarded $45,000 for "open fracture of the right tibia and fibula with deformity, limitation of right knee, scars and osteoarthritis of right knee".

12 After considering the damages awarded in all the cases cited by both counsel and taking into account that most of the cases were decided some years ago, the learned AR arrived at the view that a reasonable sum of damages for pain and suffering for the injuries and disabilities suffered by the plaintiff on his right leg was $50,000.

13 I agree with the global approach adopted by the learned AR. With regard to the quantum, however, I am of the view that a higher award should be given in this case than was handed down in *Vittorio* ([11] *supra*). My reasons are as follows:

(a) Despite their apparent similarity, the injuries suffered by the plaintiff in the present case were more severe than those suffered by the claimant in *Vittorio's* case. Whereas the claimant in *Vittorio* suffered an open fracture of the right tibia and fibula, the plaintiff suffered severe comminuted open fracture of the same two bones. As I understand it, a comminuted fracture is one where the bone is broken into multiple fragments. In this case, the bones were severely comminuted. Besides, the plaintiff also suffered a fracture dislocation of the right proximal tibia-fibula joint.

The plaintiff further suffered a complete peroneal nerve injury of the same leg as a result of which he suffered foot drop, *ie*, an inability to lift his foot.

That the plaintiff's injuries were more severe than the claimant's in *Vittorio* is perhaps also borne out by the fact that the plaintiff was on medical leave for more than 15 months as compared to 271 days in *Vittorio*.

(b) When making a comparison with *Vittorio*, the learned AR had omitted to take into account an additional $7,000 awarded to the claimant in that case.

In para 21 of her Grounds of Decision, the learned AR had stated that the global award would cover the "severe comminuted fracture of the right tibia and fibula, fracture dislocation of the right proximal tibia-fibula joint and complete peroneal nerve injury of the right leg, which resulted in the shortening of the right leg by 1cm, right foot drop and the weakening, limitation in motion, and osteoarthritis of the right knee and ankle" together with the multiple wounds and bruising of the right leg.

That being so, the figure in *Vittorio* for comparison should have been $52,000 and not $45,000 as she indicated. This is because in *Vittorio*, there was a separate sum of $7,000 awarded for the permanent limitation and swelling of the foot and ankle of the same leg with osteoarthritis of the ankle.

(c) The plaintiff was a younger man than the claimant in *Vittorio*. There the claimant was 64 years old at the time of the accident and 67 years old at the time of the assessment. The plaintiff on the other hand was only 49 years old at the time of the injury and 54 years old at the time of the assessment.

Age is relevant when considering the impact on the claimant of his injuries and disabilities. Generally speaking, other things being equal, a younger claimant will get more as he is likely to suffer longer.

For the above reasons, and factoring in inflation since the 1997 award in *Vittorio*, I considered the figure of $55,000 a reasonable sum in all the circumstances.

Loss of pre-trial earnings

14 The learned AR assessed the plaintiff's loss of earnings from 22 June 1999 to 1 August 2001 ("the first period") at $99,624.69 and from 2 August 2001 (when plaintiff resigned from his job) to August 2004 ("the second period") at $133,211.38. Before me, whereas the defendant's appeal was against the AR's assessment of loss of earnings for the first period, the plaintiff's appeal (save for one item, *ie*, a disputed $200 increment in the first period) was against her assessment in respect of the second period.

The first period

15 In respect of the first period, after concessions by both parties, the points remaining in contention before me were in regard to the following:

(a) the bonus and "Pref. (*sic*) Bonus";

(b) the sum of $7,471.73 which the learned AR had allowed on the basis that although it had been paid to the plaintiffs, it could be recovered by the plaintiff's employer as a loan to the plaintiff; and

(c) an increment of $200 to the plaintiff's monthly salary commencing from 1 January 2001 which the plaintiff said he would have got but for the accident caused by the defendant.

16 With regard to the bonus and performance bonus, it is important to note that the plaintiff's claim was not for the entirety of each of them. His claim was only for the difference between the bonus and performance bonus he would have got (had he not been downgraded from front office manager to assistant front office manager and had worked a full year) and what he actually received (as such assistant front office manager having served only four months in the year from 1 September to 31 December 2000).

17 The defendant contended that there was no evidence that a bonus and performance bonus had been paid. However, the learned AR allowed the plaintiff's claim, presumably because she was satisfied that the plaintiff had indeed been paid the reduced bonuses. I saw no reason to disturb the learned AR's findings. If no reduced bonuses had been paid to the plaintiff, short of a total fabrication, he would not have been able to furnish precise figures thereof as he did.

18 With regard to the sum of $7,471.75 which the learned AR had allowed, the defendant contended that the employer was entitled to recover only $3,179.75. The defendant took the position that the plaintiff was entitled, under the contract of employment, to 30 days' paid medical leave for

year 2001 and therefore was obliged to return only $3,179.75. Accordingly, the defendant contended that only this amount was allowable as a loss.

19 The learned AR disagreed. She first observed that the employer had not been summoned to court to submit on the proper construction of the contractual clause. She then went on to say that even if she were to accept the defendant's interpretation of the contract, that would not assist the defendant. Relying on the authority of *Khoo Ih Chu v Chong Hoe Siong Jeremy* [1989] SLR 855 ("*Khoo Ih Chu*"), she held that the plaintiff could not be expected to pursue a claim against the employer when the defendant would also be liable for the damages otherwise.

20 In *Khoo Ih Chu* ([19] *supra*), the plaintiff dentist sued the defendant for personal injuries suffered in a motor accident. The learned AR awarded the plaintiff damages, *inter alia*, for loss of earnings at $230 per day for 56 days. The defendant appealed against the whole of the learned AR's assessment. In regard to the award for pre-trial loss of earnings, the defendant contended that the plaintiff's partnership agreement entitled him to draw from the firm notwithstanding his incapacity by reason of the injuries and that he had waived such entitlement of his own volition.

21 It was held by Chao Hick Tin JC (as he then was) that there was no rule that a defendant tortfeasor could insist on a plaintiff exercising his contractual rights in order to reduce the damages which the tortfeasor was obliged to pay under the general law. The defendant as the party responsible for causing the injuries, was not entitled to insist that the plaintiff exercised his contractual rights against a third party to enable the defendant to enjoy the benefit of a reduction in the quantum of damages. It would be useful to examine developments in English law in this connection.

22 Before the House of Lords' decision in *British Transport Commission v Gourley* [1956] AC 185 ("*British Transport Commission*"), no deductions were made at common law by the courts from the damages to be awarded to a physically injured plaintiff for his loss of earnings because part of his loss had been or would be compensated by reason of benefits conferred upon him by third parties unconnected with the defendant. *British Transport Commission* held that an award of damages for loss of earning capacity had to take into account the savings of income tax that the plaintiff would enjoy given that the award itself was not exigible to tax. This started a trend in favour of deductions for collateral benefits. However, not all benefits gave rise to deductions. Thus moneys received by the plaintiff under a policy of insurance taken out by him were not to be deducted in assessing damages for the injury in respect of which he had been paid the insurance moneys: *Bradburn v The Great Western Railway Co* (1874) LR 10 Ex 1. This was endorsed by the House of Lords in *Parry v Cleaver* [1970] AC 1 which, in holding that a pension should not be deducted in the computation of a claim for damages in respect of loss of earnings, treated a pension as similar to an insurance. However, in regard to wages, whether under the name of sick pay, sick leave or otherwise, it is now settled law in England that where the claimant continues to be paid these sums, they fall to be deducted from damages for loss of earnings: *Browning v The War Office* [1963] 1 QB 750; *Receiver For The Metropolitan Police District v Croydon Corporation* [1957] 2 QB 154; *Husain v New Taplow Paper Mills Ltd* [1988] AC 514.

23 Counsel for the defendant in the present case argued that of the $7,471.75 allowed by the learned AR, only $3,179.75 ought to have been allowed, the balance being an entitlement of the plaintiff to paid medical leave which ought to have been deducted. I upheld the learned AR's assessment on the basis that the employer had not been given an opportunity to submit on the proper construction of the relevant clause in the employment contract. In those circumstances, it would not have been right to allow the deduction contended for by the defendant and to leave the plaintiff with the prospect of a claim by the employer for repayment of the advance. In the event

that the employer prevailed, the plaintiff would be left with neither compensation by the defendant nor sick pay borne by the employer. It is one thing to say a claimant should not be doubly compensated; it is altogether a different proposition to say that he should be exposed to the possibility of receiving none.

24 The final item in respect of the loss of earnings in the first period was the lost increment of $200 which the plaintiff claimed he would have got with effect from 1 January 2001 but for the accident caused by the defendant. The learned AR disallowed this claim as she understood the employer's representative to have said in cross-examination that the $200 increment that had been given to the plaintiff's peers (but not to him) was in reality a re-packaging of the three-quarter-month bonus which had already been incorporated in the plaintiff's salary of $5,459.80.

25 Counsel for the plaintiff showed, from the notes of evidence taken on 8 June 2004, that the learned AR was mistaken. Relevant excerpts from the notes of evidence are as follows:

At p 14:

> At the time of accident, the Plaintiff is likely to get $200 increment if not for the accident.
>
> …
>
> If the Plaintiff had stayed on as FOM and worked till 65, at the age of 65 years, it is likely that the Plaintiff would be paid $5,500, assuming the increment is $200 per year on alternate years (one does not get it every year), $5,500 would be just about right.

At p 19:

> Q: When Jason Ho got increment in 2001, it was across the board?
>
> A: Yes.
>
> Q: But not for Plaintiff.
>
> A: No, because Plaintiff only worked 4 months so we didn't pay him the increment.
>
> Q: Letter on page 68 – when Jason Ho received increment in July 2001, it is referring to the same revised gross monthly salary as when Plaintiff got?
>
> A: Yes.
>
> Q: This is not an increment but a re-packaging of bonus payment?
>
> A: Agreed.

At p 31:

> Q: The Plaintiff claims in paragraph 48 of his AEIC?
>
> A: Para 48 is correct. He should have received it if not for the accident.
>
> Q: That will not mean that he will get increment for the rest of his working life?

A: There is no reason why he should not get when others get it.

26 From the above, it seems clear that the questions asked of the employer's representative at p 19 of the notes of evidence in relation to the "letter on page 68" referred only to the revised gross monthly salary which the witness confirmed was not an increment but a re-packaging of bonus payment. As counsel for the plaintiff pointed out, like Jason Ho, the plaintiff also had an adjustment in pay on account of the bonus. That was in July 2001. However, what the plaintiff claimed was an increment effective from 1 January 2001 which his peers received but he did not because the "plaintiff only worked 4 months …". It seems clear the "4 months" referred to the period from 1 September 2000 (when he returned to work) to 31 December 2000 before the increment given to his peers on 1 January 2001. I therefore allowed the $200 increment claimed by the plaintiff.

The second period

27 In respect of the loss of pre-trial earnings for the second period, only the plaintiff appealed against the learned AR's assessment. Although the learned AR held that the plaintiff had not acted unreasonably when he tendered his resignation in July 2001, she found that he had not mitigated his loss, in that his letters seeking employment were written in such a manner that they would dissuade a prospective employer from considering him. (In his letters, he had highlighted his "serious traffic accident" and "right leg badly fractured" and that he "was on hospitalisation leave for 14 months", was "unable to stand or walk for long", *etc*.) She also held that had he mitigated his loss, he would have found employment in September 200[2] at an all-in salary (inclusive of employer's Central Provident Fund contribution and 13th month) of $3,200.

28 The plaintiff contended that the learned AR erred in finding that the plaintiff had failed to mitigate his losses. It was submitted on his behalf that he acted reasonably in disclosing the truth in his application letters as it would have been futile to hide the facts. It was further submitted that it was reasonable for the plaintiff to disclose the accident in June 1999 to explain to prospective employers why he was then unemployed after having been gainfully employed for the previous 25 years.

29 According to the plaintiff's counsel, apart from sending out the application letters, the plaintiff had also registered himself with the Central Singapore Community Development Council (Bishan), the Toa Payoh Town Council, NTUC Income and various agencies through the internet, seeking the assistance of these organisations to obtain employment. Although no details of his injuries were disclosed, the plaintiff did not secure a single interview through these organisations.

30 It was submitted by the plaintiff's counsel that the real reasons for the plaintiff's failure to obtain employment were his age, his physical disabilities and the poor economic and employment situation in Singapore then. The plaintiff's counsel referred to the Ministry of Manpower's third quarter report for 2002 (reported in the Straits Times on 14 December 2002) to show that as at September 2002, an estimated 84,300 Singaporeans were unemployed, out of which 12,900 were graduates. It was further reported that the unemployment rate peaked at a 15-year high in September 2002 at 4.8 per cent (the corresponding figure in June 2002 being 4.1 per cent). Counsel also referred to a further quarterly report by the Ministry of Manpower released in June 2003 (reported in the Straits Times on 14 June 2003) in which it was reported that 89,400 Singaporeans were jobless and that the job market was expected to hit rock bottom in the coming months. In September 2003, the Ministry of Manpower reported that Singapore lost a record 25,963 jobs between April and June 2003, more than for the whole of the previous year. The number of jobless Singaporeans was 85,100 and the weakness in the labour market was expected to persist with unemployment which stood at 4.5 per cent in June 2003 "potentially rising before improving later next year": *The Straits Times* (13 September 2003).

Finally, the 29 January 2004 edition of *The Straits Times* carried a disclosure by Mr Lim Boon Heng, Minister in the Prime Minister's Office, that an estimated 16,000 workers were retrenched in 2003 compared to 19,086 layoffs in 2002. *The Straits Times* also reported that according to the Ministry of Manpower figures, 13,616 employees were laid off in the first nine months of 2003.

31 It seemed clear to me that in view of the dire unemployment situation in Singapore in 2002 and 2003, the plaintiff – at age 52/53 years with the physical disabilities – stood little chance of gaining employment against younger and able-bodied competitors. Nevertheless, I was of the view that as a matter of policy, it was necessary to factor in the fact that the plaintiff's letters of application were unduly negative in tone. For that reason, instead of allowing full recovery for loss of income during the period of three years that he was unemployed, I allowed only the first two years. In respect of the last year (starting from August 2003), I allowed a reduced monthly figure representing the difference between the monthly salary he would have earned in his old position as front office manager and the putative mitigation salary of $3,200 which the learned AR held he ought to have been able to earn (see [27] above). In other words, unlike the learned AR who held that he ought, in mitigation, to have been able to secure a job in one year, I held that it would have taken two years for him to do so.

32 I realise that my holding could be viewed as being somewhat optimistic as regards the plaintiff's prospects of employment, given that in August 2003 Singapore was in the midst of the SARS crisis. However, as explained, I felt it was necessary as a matter of policy to register the court's disapproval of the negative tone of his application letters. One would, of course, never know if he would have found a job if he had not written the letters in the way he did.

Loss of future earnings

33 At the assessment before the learned AR, the plaintiff claimed the following:

(a) Loss of future earnings at $5,459.80 per month	
for eight years x 13 months.	$567,819.20
(b) Loss of increment of $200 per month	
for eight years x 13 months.	$ 20,800.00
(c) Loss of earning capacity/further increment	
in earnings/promotion opportunity	$ 50,000.00

34 The basis of the above claims were as follows:

(a) But for the accident, the plaintiff would have continued to be employed by New Park Hotel until the age of 65 years as the hotel had a practice of re-employing executive officers after their retirement. At the time of trial he was 54 years old and a multiplier of eight years was therefore manifestly reasonable;

(b) The plaintiff had been receiving increments regularly and he was likely to continue receiving further increments;

(c) A colleague who held the same rank as the plaintiff had just been promoted and if the plaintiff had not resigned because of the accident, he would have stood a chance of getting

promoted;

35 The defendant objected to the plaintiff's claim for both loss of future earnings and loss of earning capacity. Relying on *Low Swee Tong v Liew Machinery (Pte) Ltd* [1993] 3 SLR 89, counsel pointed out that if the plaintiff's loss of future income could be quantified, he should claim loss of future earning and not loss of earning capacity, which represented the diminution of a person's earning capacity. The defendant also challenged the likelihood of increments being paid and the plaintiff's employment being extended given the tough times the hotel industry was facing. Finally, counsel questioned the promotion prospects of the plaintiff given his educational qualifications.

36 The learned AR disallowed the claim for loss of earning capacity, future increments and promotion opportunity and assessed loss of future earnings based on a multiplier of five years. Only the plaintiff appealed against the learned AR's decision.

The multiplier

37 In the defendant's written submissions before the learned AR, the defendant had submitted (at para 5.5) that "an appropriate multiplier to adopt would be 6, based on past awards given by the courts". Paragraph 5.6 of the same submissions, however, stated that "a reasonable multiplier to adopt is 4". In the event, the learned AR allowed a multiplier of five years.

38 It is obvious that in computing loss of future earnings there is a need to discount for future contingencies ("the vicissitudes of life") and for the investment value of receiving a lump sum award in advance. In each case, this is achieved by reducing the multiplier. Where one is looking at a working life remaining of, say 30 years, it is quite understandable that a significant discount is applied to factor in the vicissitudes of life over such a long period. Where, however, the remaining working life is short, it would be unduly pessimistic to apply a similar percentage discount. For example, if a claimant had only one year remaining of his working life, it would seem unjust to apply, say, a one-third or even a one-quarter discount.

39 Similar reasoning applies to the process of "discounting to present value". Here, the multiplier is reduced so that when it is multiplied by the loss of future earnings each year, a lump sum is arrived at which, assuming it is invested to fetch an annual return, will be exhausted at the end of the period when the claimant's earnings would have ceased. Where the remaining working life is short, little investment income can be earned from a lump sum paid in advance. This is especially so in view of the fact that rates of return for investment have been significantly lower in recent years as compared with the years before. This observation is particularly apposite with respect to interest on fixed deposits although I am not suggesting that to place the lump sum on fixed deposit is the only way to earn a return. In my view, therefore, when reviewing the multipliers used in the earlier cases, one needs to bear in mind the current lower rates of investment return and therefore not discount as much as in the past. The aim should be to achieve *restitutio in integrum* to the extent that this is possible. It may be that one should consult discount or actuarial tables rather than apply any rule of thumb.

40 Returning to the case before me, I was inclined to agree with the learned AR that there was no evidence that the plaintiff's employment would be extended till he reached 65 years. Therefore, I took the remaining working life to be eight years. Given the considerations I expressed above, I applied a discount of 25% and arrived at a multiplier of six years. The multiplier of five years allowed by the learned AR would have involved a discount of 37.5%.

Loss of salary increments and promotion opportunity

41 I go on now to consider the claim for loss of future increments and promotion opportunity. In disallowing the plaintiff's claim for these items, the learned AR did not need to rule on the question whether they properly fell within a claim for loss of future earning capacity as distinct from loss of future earnings. A further word may perhaps be helpful for future guidance. Without undue elaboration, suffice it to say that on the authority of *Chang Ah Lek v Lim Ah Koon* [1999] 1 SLR 82 (which cited with approval Scarman LJ's judgment in *Smith v Manchester Corporation* (1974) 17 KIR 1), the plaintiff's claim properly fell within loss of future earnings.

42 I disagree with the finding of the learned AR that the evidence tendered by the plaintiff did not show that increments were given with the regularity that the plaintiff suggested. She might have been persuaded by newspaper reports in April 2003 about the dire straits the hotel industry was in by reason of the World Trade Centre attack and SARS and therefore took a pessimistic outlook of the future of the hotel industry. The dark clouds of economic gloom have since been dispersed by a more sanguine outlook so that, with the benefit of hindsight, it would appear the learned AR was perhaps a little overly pessimistic. More importantly, there is clear evidence from the plaintiff's employment record that, with the exception of 1998 and 1999 (during the economic crisis), he had been given increments each year from 1991 to 2000.

43 There was also evidence given by the group human resource manager of the hotel owner that if the plaintiff had stayed on, he would probably have got an increment every alternate year. I took a middle course and allowed only two increments of $200 at the beginning of the third and fifth years after the trial. This gave an increase of $14,400 in the loss of future earnings.

44 Finally, I should add that in the course of writing the Grounds of Decision, it occurred to me that neither counsel mentioned the need to reduce the said sum of $14,400 to take into account income tax which would be payable if the plaintiff were to receive the same in the course of employment. Accordingly, the same percentage reduction should be made to it as was applied to the award for loss of future earnings given by the learned AR.

45 I allowed the plaintiff the costs of his appeal, such costs to be taxed unless agreed.