Poh Huat Heng Corp Pte Ltd and others *v* Hafizul Islam Kofil Uddin [2012] SGCA 31

Case Number	: Civil Appeal No 28 of 2011
Decision Date	: 25 June 2012
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Eu Hai Meng (United Legal Alliance LLC) for the appellants; Mohamed Mohideen and Cheah Saing Chong (Yeo Perumal Mohideen Law Corporation) for the respondent.
Parties	: Poh Huat Heng Corp Pte Ltd and others — Hafizul Islam Kofil Uddin

Civil Procedure – Judgments and Orders – Consent Orders

Damages – Assessment

25 June 2012 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 This is an appeal against the decision of the High Court in Registrar's Appeal No 260 of 2010 ("RA 260/2010"), where the judge ("the Judge") dismissed the appeal by the appellants ("the Appellants") against the award made by an assistant registrar ("the AR") following an assessment of damages for the injuries sustained by the respondent ("the Respondent") as a result of an industrial accident which occurred on 21 August 2008 ("the Accident"). For convenience, the assessment of damages before the AR will hereafter be referred to as "the assessment hearing".

Background

2 The Respondent, Hafizul Islam Kofil Uddin, is a Bangladeshi national. [note: 0] The first appellant, Poh Huat Heng Corporation Pte Ltd, is the Respondent's employer. [note: 1] Although the exact relationship between the Respondent and the second and third appellants (Hua Liong Machinery & Trading Pte Ltd and Viscas Engineering Singapore Pte Ltd respectively) is far from clear, it is not material and nothing turns on it as the Appellants consented to an interlocutory judgment in favour of the Respondent for damages to be assessed with liability apportioned at 90% against the Appellants and 10% against the Respondent. Furthermore, the consent interlocutory judgment ordered that the liability of the Appellants was to be joint and several. [note: 2]

3 On 21 August 2008, the Respondent was laying cables at a Mass Rapid Transit worksite at Woodlands Avenue 3, Singapore, when a bag of cement fell on his back. As a result, he suffered an injury to his spine which resulted in paraplegia. [note: 3] At the time of the Accident, the Respondent was 27 years of age (having been born on 2 June 1981).

4 The Respondent now suffers from the following permanent disabilities: [note: 4]

(a) paralysis of his lower limbs, with the effect that he is permanently wheelchair-bound;

(b) absence of sensation below the groin and absence of control over his bowels and bladder (which necessitates catheterisation several times a day for urination);

(c) erectile dysfunction; and

(d) infertility.

5 After a period of hospitalisation and treatment in Singapore, on 17 January 2009, the Respondent returned to Bangladesh. [note: 5] He remained home-bound until 2 November 2009, when he enrolled himself in a nursing home in Dhaka, Bangladesh. [note: 6]

The Respondent's pleaded claims in damages

6 On 19 March 2009, the Respondent commenced an action against the Appellants claiming damages on account of the injuries which he had suffered. In the action, he claimed the following: [note: 7]

(a) Special damages:

(i) loss of earnings at $874 per month from 21 August 2008 to 20 December 2008 and continuing thereafter at $874 per month up to the date of the trial;

(ii) cost of wheelchairs and various aids and appliances up to the date of the trial; and

(iii) medical and transport expenses up to the date of the trial. [note: 8]

(b) General damages:

(i) damages for pain and suffering and loss of amenities;

(ii) loss of future earnings and/or future earning capacity;

(iii) cost of future medical expenses; and

(iv) cost of future transport expenses.

The award made by the AR

7 As liability was agreed and interlocutory judgment entered (see [2] above), an assessment of damages (*viz*, the assessment hearing as defined at [1] above) was carried out by the AR, who rendered a total award of $1,001,750.80 (based on 100% liability before apportionment), consisting of the following: [note: 9]

(a) Special damages (by consent) of $26,268.30 (comprising $10,868.95 for pre-trial medical expenses and $15,399.35 for pre-trial loss of income).

(b) General damages for the following:

(i) $166,000 for pain and suffering and loss of amenities (comprising $160,000 for pain

and suffering, and $6,000 for loss of marriage prospects);

(ii) $127,200 for loss of future income;

(iii) $32,400 for future transport costs;

(iv) $212,150.88 for future nursing care and nursing home expenses;

(v) $47,731.68 for future expenses on diapers and catheters; and

(vi) $390,000 for future medical expenses.

We should add here that the AR's award for future medical expenses was in respect of the Respondent's future medical expenses in Bangladesh as the Respondent has returned to that country and is now living there. The references hereafter to the Respondent's claim for future medical expenses and the award for this item should thus be understood in this light.

8 Both the Appellants and the Respondent appealed against the AR's award (via RA 260/2010 and Registrar's Appeal No 263 of 2010 ("RA 263/2010") respectively). [note: 10] The Judge dismissed both appeals and did not issue any written grounds.

The arguments raised on appeal

9 Before us now is an appeal by the Appellants against the Judge's decision in RA 260/2010. The Appellants have essentially raised two main lines of argument. First, they contend that the Judge erred in taking the view that he could only intervene if the AR was shown to have erred in law. [note: 11] Second, the Appellants challenge the general damages assessed by the AR in respect of the following heads of claim ("the disputed heads of claim"): [note: 12]

(a) pain and suffering and loss of amenities;

(b) loss of future earnings;

(c) future medical expenses; and

(d) future transport expenses, future nursing care and nursing home expenses as well as future expenses on diapers and catheters (referred to hereafter as "future transport and care expenses" for short).

10 The Respondent submits that the Judge did not err in his approach. [note: 13] He also seeks to support each of the awards made by the AR in respect of the disputed heads of claim. In this regard, the Respondent has highlighted the fact that some of these awards were premised on an agreement between the parties following concessions or suggestions made by the Appellants' counsel at the assessment hearing.

11 We heard oral arguments for the appeal on 28 July 2011. The hearing was then adjourned for the parties to file further submissions on various issues.

12 On 19 September 2011, the Respondent filed Summons No 4149 of 2011 ("SUM 4149/2011") for leave to bring a cross-appeal out of time against the award made in respect of special damages,

which (as noted at [7(a)] above) had been made *by consent*, and the award made in respect of general damages. We heard SUM 4149/2011 on 16 January 2012 and dismissed it with costs fixed at $500 to be paid by the Respondent to the Appellants.

The issues before this court

13 In the present appeal, the following issues arise for this court's consideration:

(a) Did the Judge err in the approach which he adopted in dealing with the Appellants' appeal in RA 260/2010 ("Issue 1")?

(b) Can the Appellants make submissions which are inconsistent with an agreement reached before the AR on certain facts which were to be used as the basis for assessing damages ("Issue 2")?

(c) Should any of the awards made by the AR in respect of the disputed heads of claim (as set out above at [9]) be varied ("Issue 3")?

We will address each of these issues in turn in the discussion which follows.

Our decision

Issue 1: Did the Judge err in the approach which he adopted in RA 260/2010?

14 With regard to Issue 1, the applicable law was pronounced by this court in *Chang Ah Lek and others v Lim Ah Koon* [1998] 3 SLR(R) 551 at [14] and [20]–[21], where it held that a High Court judge hearing an appeal against an assistant registrar's decision on an assessment of damages:

(a) was not limited by the rule that appellate interference was only warranted where the assistant registrar had erred on a matter of principle, had misapprehended the facts or had, for other reasons, made a wholly erroneous estimate of the damages; and

(b) was entitled to vary the assistant registrar's award as he deemed fair and just.

Reference may also be made to *Ho Yeow Kim v Lai Hai Kuen* [1999] 1 SLR(R) 1068 (where this court held that the position of a High Court judge hearing an appeal against an assistant registrar's award of damages "[was] *not* like that of an appellate court hearing an appeal from a decision of a trial judge" [emphasis added] (at [14]), in that the High Court judge "deal[t] with [the] appeal from the [assistant] registrar 'as though the matter came before him for the first time'" (at [15])) and *Singapore Airlines Ltd v Tan Shwu Leng* [2001] 3 SLR(R) 439 at [24] (where this court held that the High Court judge was entitled to enhance the assistant registrar's award for pre-trial loss of earnings).

15 As noted above at [8], the Judge did not issue any written grounds of decision in respect of RA 260/2010 and RA 263/2010. We note that in the certified transcript of the hearing notes for these two appeals, the Judge merely recorded the Appellants' counsel as having submitted on two occasions that he was not arguing that the AR had erred in law. [note: 14] On the face of the certified transcript, the Judge did not indicate that the reason for his dismissal of both appeals was his belief that the AR had not erred in law. The certified transcript only attributes the Judge as having said: [note: 15]

CT: Both appeals dismissed.

No order as to costs.

Nothing was indicated as to the approach which the Judge took. In the circumstances, it is not possible for this court to determine whether the Judge did in fact adopt an incorrect approach in reaching his decision. Therefore, we are unable to agree with the Appellants that a wrong approach had in fact been taken by the Judge in RA 260/2010.

16 We note that this court in *Thong Ah Fat v Public Prosecutor* [2012] 1 SLR 676 expounded on the judicial duty to give reasons (reference may also be made to *Loh Sioh Hon (administratrix of the estate of Chiam Heok Yong, deceased) v Loh Siok Moey* [2012] SGCA 14 at [15]). The Appellants did not, however, argue that the Judge's decision in RA 260/2010 should be set aside on the ground that the Judge did not provide his reasons for dismissing the appeal.

Issue 2: Can the Appellants make submissions which are inconsistent with an agreement reached before the AR on certain facts which were to be used as the basis for assessing damages?

17 We turn now to Issue 2. The point which the Respondent seeks to make in this regard is that the Appellants should not be allowed, in this appeal, to take a stand which is inconsistent with their position before the AR. The Respondent has alluded in his written case to the existence of an agreement reached before the AR on certain facts which were to be used as the basis for assessing damages. [note: 16] The certified transcript of the assessment hearing appears to support the Respondent's contention that in some areas, the parties reached or seemed to have reached an agreement which formed the basis upon which the AR was to assess damages in respect of these heads of claim:

(a) the cost of future medical expenses;

(b) loss of future income, in terms of the multiplicand to be used for determining the appropriate amount to award; and

(c) loss of marriage prospects.

The applicable law

18 There are two possible bases upon which the Appellants can be precluded from opening up an issue which they consented or agreed to before the AR. Much would necessarily depend on what exactly was consented to or agreed upon, and its context. *First*, the agreement between the parties could constitute a consent order. It is well established that a judgment or order obtained by consent is final and can form the basis for the application of the doctrine of *res judicata* (see K R Handley, *Spencer Bower and Handley: Res Judicata* (LexisNexis, 4th Ed, 2009) at para 2.16). A consent judgment or consent order is binding and cannot be set aside save for exceptional reasons (see the High Court decision of *Wiltopps (Asia) Ltd v Drew & Napier and another* [1999] 1 SLR(R) 252 ("*Wiltopps*") at [27] (an appeal to the Court of Appeal against the High Court's decision was dismissed without any written grounds being issued (see the editorial note to *Wiltopps*)) and *Bakery Mart Pte Ltd v Ng Wei Teck Michael and others* [2005] 1 SLR(R) 28 ("*Bakery Mart*") at [11]). In this regard, we would make one further observation. To constitute a consent order, there must be a real agreement between the parties, which is to be contrasted with the scenario where a party merely does not object to a course of action (see *Siebe Gorman & Co Ltd v Pneupac Ltd* [1982] 1 WLR 185 at 189F–

189G, which was followed in *Wiltopps* at [18] and *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117 ("*Wellmix*") at [29], and distinguished in *Bakery Mart* at [13]).

19 The *second* basis on which the Appellants can be precluded from opening up an issue which they consented or agreed to before the AR is the principle that even if the parties to an action are found not to have reached an agreement, a statement by counsel of one of the parties can constitute an admission. This is provided for in s 18 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the Act"), which reads as follows:

> **Admission by party to proceeding or his agent, by suitor in representative character, etc.**
>
> **18.**—(1) Statements made by a party to the proceeding *or by an agent to any such party whom the court regards under the circumstances of the case as expressly or impliedly authorised by him to make them* are admissions.
>
> (2) Statements made by parties to suits, suing or sued in a representative character, are not admissions unless they were made while the party making them held that character.
>
> (3) Statements made by —
>
> (*a*) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested; or
>
> (*b*) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,
>
> are admissions if they are made during the continuance of the interest of the persons making the statements.
>
> [emphasis added]

Admissions made by counsel on questions of fact in the course of a trial would clearly fall within s 18(1) of the Act (see Sudipto Sarkar & V R Manohar, *Sarkar's Law of Evidence in India, Pakistan, Bangladesh, Burma & Ceylon* (Wadhwa and Company, 16th Ed, 2007) at pp 450–451).

Our analysis

(1) The cost of future medical expenses

20 We now turn to the three areas (see [17] above) in respect of which the Respondent alleges that there was an agreement between the parties as to the basis on which the AR was to assess the quantum of damages. The first area relates to the cost of future medical expenses. In their submissions to this court, the Appellants have not referred to any agreement on this head of claim. Instead, they argue that the award for this head of claim, which the AR assessed at $390,000, ought to be assessed based on a multiplicand of $466.33 per month with a multiplier of 14 years. [note: 17] On the Appellants' submission, the award for future medical expenses would be fixed at a much lower sum of $78,343.44.

21 It is critical to consider what exactly the Appellants agreed to at the assessment hearing. The Respondent was not able to call a doctor from the hospital in Bangladesh at which he had been receiving treatment ("Apollo Hospital") to testify at the assessment hearing due to the policy

considerations of the hospital (apparently, Apollo Hospital has a policy of not permitting its specialists to involve themselves in any legal proceedings concerning its patients). [note: 18] Instead, two Singapore specialist doctors, Dr Adela Tow ("Dr Tow") and Dr I Swaminathan ("Dr Swami"), were called to testify. Dr Tow estimated that if the Respondent were to receive treatment in Singapore, his future medical expenses would cost between $500,000 and $600,000. The certified transcript of the assessment hearing shows that the parties agreed that the award for future medical expenses was to be computed based on the estimated figures provided by Dr Tow ("Dr Tow's Rates"), with a 35% discount (as suggested by Dr Swami) applied to those figures. The following extract of the certified transcript is germane in this regard: [note: 19]

(6) Future medical expenses

D/C: …

> Looking at the evidence adduced, in terms of the medical care rates used in Bangladesh, the hospital in question is Apollo [H]ospital. The evidence from Dr Swami is that Apollo [H]ospital was [a] premier hospital in Bangladesh. It does not approximate to B1 rates. Also, we do not have enough evidence on the rates chargeable in Bangladesh. The main evidence we have in this case is the evidence of Dr Tow and Dr Swami – Dr Tow's estimation is $500,000–$600,000, and Dr Swami's evidence for Bangladesh overall, is that a discount of 35% should be given from Singapore rates, generally speaking.

P/C:We are accepting that part of Dr Swami's evidence.

D/C:*We are therefore submitting that for this head, it should [be] what Dr Tow has stated, minus the 35% discount as given by Dr Swami.*

Ct: *But the Plaintiffs* [*ie*, the Respondent] *are prepared to go along with this approach?*

P/C:*Yes*.

D/C:*So the figure is $320–$390,000 in total, for future medical expenses.*

[emphasis added]

This extract shows that the Appellants' counsel (denoted as "D/C" above) proposed to use the evidence of the Singapore doctors (*ie*, Dr Tow and Dr Swami) to arrive at the figure for the cost of the Respondent's future medical expenses in view of the lack of evidence on the future medical costs likely to be incurred by the Respondent in Bangladesh. The AR asked the Respondent's counsel (denoted as "P/C" above) if she agreed, to which she replied in the affirmative. The Respondent's counsel then stated the range of discounted figures within which the court was to make its decision (incidentally, the Respondent's counsel made an error in calculating the lower end of the range: the relevant figure should have been $325,000). More importantly, when the AR delivered her oral judgment, she recorded that both the Appellants' counsel and the Respondent's counsel were "prepared to go along with Dr Tow['s] and Dr Swami's evidence". [note: 20] The AR then selected the upper end of Dr Tow's Rates (*ie*, $600,000) and applied a discount of 35% to that figure. [note: 21]

22 As we see it, the exchange between counsel quoted at [21] above was, in substance, an agreement between the parties to rely on the Singapore doctors' evidence instead of having a Bangladeshi doctor testify on the Respondent's likely future medical expenses. This agreement was

recorded by the AR, and therefore amounted to a consent order. It is not open to the Appellants to now challenge that agreement in this appeal. Admittedly, a consent order may be set aside on ordinary contract law principles such as mistake (see *Wellmix* at [10]). However, on the basis of the above extract, there is nothing to suggest that the Appellants' counsel made a mistake in submitting that the award for future medical expenses should be based on "what Dr Tow … stated, minus the 35% discount as given by Dr Swami". [note: 22] In their further submissions dated 3 January 2012 for this appeal, the Appellants have argued that they agreed to Dr Tow's Rates under a mistake in that those rates had not been discounted to account for accelerated receipt of a lump sum and contingencies. [note: 23] This seems to us to be clearly an afterthought.

23 In any event, even without relying on the admission made by the Appellants' counsel at the assessment hearing or the fact of the consent order mentioned at [22] above, if this court were to examine the AR's award for future medical expenses in the light of the evidence presented, we do not think that the award can be considered to be wrong or manifestly excessive. This will be addressed later at [63]–[68] below.

(2) The multiplicand to be used for determining the award for loss of future earnings

24 In respect of his claim for loss of future earnings, the Respondent testified before the AR that if not for the Accident, he would have continued to work in Singapore as a skilled worker. [note: 24] He further testified that if he could not work in Singapore, he would have gone to work in Saudi Arabia where, he claimed, there was a high demand for skilled workers. [note: 25] In the worst-case scenario, the Respondent testified, he would have returned home to Bangladesh to work. [note: 26] On the basis of this evidence, the Respondent submitted before the AR that the award for loss of future earnings should be divided into two portions, a Singapore portion and a Bangladesh/Saudi Arabia portion. [note: 27]

25 In this appeal, the Appellants are arguing that in determining the appropriate multiplicand in respect of each of the above two portions, the expenses which the Respondent would likely have incurred to earn his future income should be subtracted. [note: 28] On this basis, they submit that the multiplicand for the Singapore portion should be the sum of $650 per month and that for the Bangladesh/Saudi Arabia portion should be the sum of $350 per month. [note: 29]

26 However, we note that before the AR, the Appellants' counsel was recorded as having submitted that he "w[ould] not be disput[ing]" [note: 30] the multiplicands put forth by the Respondent's counsel for the loss of future earnings award (*viz*, $800 per month for the Singapore portion and $500 per month for the Bangladesh/Saudi Arabia portion). [note: 31] Similar to the situation in regard to the cost of future medical expenses, in her oral judgment, the AR stated that "[t]he [Appellants] accepts [*sic*] the multiplicand[s] submitted by the [Respondent]". [note: 32]

27 What should be the correct view of the above statement by the Appellants' counsel before the AR that the Appellants would "not be disput[ing]" [note: 33] the multiplicands put forth by the Respondent? While the phrase "not … disput[ing]" [note: 34] is not as positive as "agree" or "accept", we find that in the present context, its true sense amounts to the Appellants agreeing to the multiplicands proposed by the Respondent, bearing in mind that the Appellants did not adduce any evidence to counter the figures put forth by the Respondent. That was also the understanding of the AR as she recorded that the Appellants *accepted* the multiplicands submitted by the Respondent. In

any event, even assuming that we do not construe the phrase "not … disput[ing]" [note: 35] as amounting to an agreement, we do not see how the AR's acceptance of the Respondent's evidence on the applicable multiplicands can be challenged and held to be wrong when there was no evidence which showed that a different finding should have been made.

(3) Loss of marriage prospects

28 With regard to the Respondent's claim for loss of marriage prospects (which the AR dealt with as part of the claim for loss of amenities), the Appellants' argument in this appeal is that the award of $6,000 for this head of claim should be disallowed because "there is an even chance as to the [Respondent]'s marriage prospect[s]". [note: 36] We note, however, that before the AR, the Appellants' counsel had said that it was "fair to have such an award [*ie*, an award for loss of marriage prospects]" [note: 37] and had proceeded to submit a figure of $6,000 for this head of claim. [note: 38]

29 As the Appellants' counsel had said at the assessment hearing that it was "fair" [note: 39] to make an award for loss of marriage prospects and as the figure of $6,000 for this head of claim came from the Appellants, it would be reasonable to infer that as far as the Appellants were concerned, in the circumstances, it was justifiable for the Respondent to claim for this item and $6,000 was a fair quantum to award for it. In the light of these admissions by the Appellants, we do not think they should now be allowed to re-open issues relating to this head of claim. In passing, we would also add that even if we do not interpret the statement "fair to have such an award" [note: 40] to mean what we have just held, on the evidence, it is clear that the AR was correct to have made an award for loss of marriage prospects (see [37] below).

Summary of our ruling on Issue 2

30 In summary, in relation to Issue (2), we hold that the Appellants are precluded from challenging: (a) the award for future medical expenses; (b) the multiplicands applied by the AR in determining the award for loss of future income; and (c) the award for loss of marriage prospects. However, *vis-à-vis* the quantum awarded by the AR for loss of future income, the Appellants are not precluded from arguing how the *multiplier* should be divided between the Singapore portion and the Bangladesh/Saudi Arabia portion of what would have been the remainder of the Respondent's working life if not for the Accident.

Issue 3: Should any of the awards for the disputed heads of claim be varied?

31 Turning now to Issue 3, as stated at [9] above, the Appellants are challenging the awards made by the AR in respect of the following heads of claim (*viz*, the disputed heads of claim as defined at [9] above):

(a) pain and suffering and loss of amenities;

(b) loss of future earnings;

(c) future medical expenses; and

(d) future transport and care expenses (as defined at [9(d)] above).

Where the claim for future medical expenses is concerned, although the Appellants are precluded, in the light of our ruling at [22] above, from re-opening the award made for this item, in the interests of

completeness, we will still examine the award (at [63]–[68] below) to show that on the evidence, it is not excessive.

Pain and suffering and loss of amenities

(1) Pain and suffering

32 In its recent decision in *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] 3 SLR 610 ("*Koh Chai Kwang*"), this court accepted that there are two approaches to assessing what is a fair and reasonable award for pain and suffering, namely:

(a) a global approach, which involves making a global award for all the injuries and disabilities suffered by the plaintiff (as in *Koh Chai Kwang*, where a global award was given for the plaintiff's head injuries); and

(b) a component approach, which involves making separate awards for different heads of injuries and disabilities (see, for example, *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 ("*Shaw Linda Gillian (CA)*") at [44]–[50], where a component approach was adopted in assessing the damages to be awarded for the plaintiff's head injuries).

33 In the present case, the AR adopted the global approach in assessing damages for pain and suffering because of the nature of the Respondent's injuries. [note: 41] The Appellants are not arguing that the AR was wrong in adopting that approach. Instead, their contention is that the award of $160,000 for this head of claim is excessive and should be reduced to $130,000. [note: 42] The Respondent, on the other hand, points out that the award of $160,000 was in fact on the low side when compared with awards made in other similar cases. [note: 43]

34 In our view, the Appellants' arguments against the AR's award for pain and suffering have no merit. Apart from the authorities referred to by the Respondent, the figure of $160,000 does not appear to be excessive when compared with the awards made in cases adopting the global approach where severe injuries were sustained by the plaintiff. The following extract from *Practitioners' Library – Assessment of Damages: Personal Injuries and Fatal Accidents* (LexisNexis, 2nd Ed, 2005) ("*Practitioners' Library*") at para 5-23 is pertinent in this regard:

> The global approach is sometimes used in cases where the accumulated effects of the injuries to the plaintiff are extremely severe, even though the injuries are to different parts or functions of the body. The cases below illustrate this point:
>
> (a) *Ng Song Leng v Soh Kim Seng Engineering & Trading Pte Ltd & Anor* [1997] SGHC 289. A global award of *$160,000* was made by Lai Kew Chai J in respect of injuries to the 5th and 6th cervical vertebrae and a head injury, which left the plaintiff with tetraplegia and bowel dysfunction.
>
> (b) *Cheng Chay Choo v Wong Meng Tuck & Anor* [1992] SGHC 133. K S Rajah JC awarded *$120,000* for injuries to the vertebra, neck and ribs (which left the plaintiff a paraplegic), and loss of expectation of life.
>
> (c) *Lim Yee Ming v Ubin Lagoon Resort Pte Ltd & Ors* [2003] SGHC 134. Lai Kew Chai J made a global award of *$130,000* for the plaintiff who suffered fractures of the 4th to 9th ribs, a fracture dislocation of the T8 vertebra and a burst fracture of the T12 vertebra, which resulted in lower limb paralysis with loss of sexual function, bladder and bowel

dysfunction.

(d) *Koh Soon Pheng v Tan Kah Eng* [2003] 2 SLR 538. Judith Prakash J did not vary the award of *$108,000* in respect of serious injuries to the wrists, left clavicle, right humerus, one rib, deep lacerations and abrasions in right shin and right forearm, and one foot. The plaintiff also suffered from a concussion.

[emphasis added]

Comparatively, the injuries suffered by the plaintiffs in *Cheng Chay Choo v Wong Meng Tuck & Anor* [1992] SGHC 133 and *Koh Soon Pheng v Tan Kah Eng* [2003] 2 SLR(R) 538 were certainly less severe than those suffered by the Respondent here. Closer to the present case are the other two precedents referred to in the extract above, where the awards were $160,000 and $130,000 respectively. We thus affirm the AR's award of $160,000 for pain and suffering.

(2) Loss of amenities in terms of loss of marriage prospects

3 5 *Vis-à-vis* the award for loss of marriage prospects, which (as mentioned at [28] above) was dealt with by the AR as part of the claim for loss of amenities, we stated earlier (at [29] above) that even if this court were to find that there was no admission on the part of the Appellants that it was "fair" [note: 44] to make an award for loss of marriage prospects, the AR was justified to award $6,000 for this item.

36 In his affidavit of evidence-in-chief dated 19 January 2010, the Respondent deposed that prior to the Accident, he had been engaged to be married. After the Accident, his fiancée's parents decided to call off the marriage even though his fiancée was keen to proceed with the marriage. [note: 45] The Respondent, however, expressed a "hope" [note: 46] that his fiancée's parents would permit the marriage "one day". [note: 47] During cross-examination, the Respondent was questioned on the chances of his former fiancée marrying him. He answered that he estimated his chances at 50:50. [note: 48] The AR, having heard his testimony, held that she was "satisfied" [note: 49] that the Respondent had proved, on the evidence, that he had lost his marriage prospects. [note: 50]

37 It is true that the Respondent estimated that there was a 50% chance that his ex-fiancée's parents might well change their minds and agree to his marrying his ex-fiancée. We must bear in mind that the Respondent had been engaged to be married prior to the Accident. Marriage was clearly on the cards and it was just a matter of time. However, according to the Respondent, after the Accident, he heard from his friends that his former fiancée's parents were adamant that the marriage was not to take place. [note: 51] Having regard to the Respondent's physical state after the Accident, it is not difficult to understand the position taken by the parents of his ex-fiancée. If the Respondent's ex-fiancée were to proceed to marry the Respondent, she would, to all intents and purposes, be not a wife, but a lifetime maid to him. In our view, the Respondent's estimate of a 50% chance of eventually being able to marry his ex-fiancée is no more than wishful thinking on his part. Objectively, we are unable to disagree with the AR's finding that the Respondent has lost his marriage prospects. In this regard, we draw attention to the Respondent's uncontradicted oral evidence that his marriage had been well in sight prior to the Accident, but that prospect was lost as a result of the Accident. What the Respondent now has is no more than a hope of eventually marrying his ex-fiancée. To award him nothing for the loss of his marriage prospects just because of the dimness of his hope would be harsh and unreasonable.

Loss of future earnings

Loss of future earnings

38 We now move on to consider the claim relating to loss of future earnings. The method of assessing damages for such loss was recently enunciated by this court in the following manner (see *Koh Chai Kwang* at [37]):

> Normally, damages on the basis of LFE [loss of future earnings] are awarded when the injured party is unable to go back to his pre-accident employment and has to take on a lower paying job. *In such a case, the loss will be calculated based on a multiplier and a multiplicand, the multiplicand being the monthly loss in pay and the multiplier being the appropriate period over which to compute the loss.* In contrast, where the injured party does not suffered [*sic*] an immediate wage reduction (*eg*, due to the compassion of the then employer: see [*Smith v Manchester Corporation* (1974) 17 KIR 1]) but there is a risk that he may lose that employment at some point in the future and he may, as a result of his injury, be at a disadvantage in getting another job or getting an equally well-paid job in the open market, then the LEC [loss of earning capacity] would be the correct basis to compensate him for the loss. [emphasis added]

39 In this case, as the Respondent, due to his injuries, is no longer employable, his loss of future earnings is total. The issues which need to be addressed are the appropriate quantum to adopt as the multiplicand and the appropriate number of years to use as the multiplier. In relation to the multiplicand, as alluded to earlier (see [25] above), the Appellants' contention is that the Respondent's expenses should be deducted from his likely future income (if not for the Accident) in determining the multiplicand. [note: 52] As regards the multiplier, the Appellants say that the appropriate number of years is 14 and not 17 as applied by the AR. [note: 53]

40 In their further written submissions dated 3 January 2012, the Appellants, after an extensive discussion of various local authorities, submit that the Singapore courts should determine the multiplier for a loss of future earnings award based on the remainder of the plaintiff's *working life* (taking into account, *inter alia*, his age, nationality, nature of occupation, the retirement age and medical evidence), with an appropriate discount for accelerated receipt of a lump sum and the vicissitudes of life. [note: 54] The Appellants also argue that based on local case law, other considerations which may be generally relevant in determining the multiplier include the plaintiff's health and education, the rates of return on investments and employment patterns. [note: 55] The court may also consider "splitting" the multiplier in the case of plaintiffs who are foreign workers. This involves using one multiplier for the foreign worker's future income from working in Singapore and another multiplier for his future income from working in his home country. [note: 56]

41 As far as the multiplicand is concerned, we have at [27] above highlighted the fact that the Appellants had, at the assessment hearing, agreed to the multiplicands put forward by the Respondent, namely, $800 per month and $500 per month in respect of the Singapore portion and the Bangladesh/Saudi Arabia portion respectively of what would have been the Respondent's remaining working life if not for the Accident (see [26] above). In view of that agreement, we do not think that the Appellants should now be permitted to re-open this issue. In any case, as the Respondent has pointed out, the certified transcript of the assessment hearing reveals that the aforesaid multiplicands were derived *after* taking into consideration the Respondent's expenses in addition to the food and transport provided for separately by his employer (*viz*, the first appellant). [note: 57] What remains to be considered is therefore the appropriate multiplier, and how that multiplier should be split between the Singapore portion and the Bangladesh/Saudi Arabia portion respectively of the loss of future earnings award.

(1) Principles for determining the multiplier

(1) Principles for determining the multiplier

42 Pursuant to the request of this court, the parties did further research on the approaches taken in other common law jurisdictions (namely, England and Wales, Canada, Australia, New Zealand, Hong Kong and Malaysia) in determining the multiplier to be used for assessing damages in personal injury cases, and have helpfully described these approaches. A comparative analysis of these approaches will be made below (at [48]–[52]). In summary, the Appellants submit that although the Commonwealth courts take different approaches in determining the appropriate multiplier, they all invariably take into account "the [plaintiff's] age, health/mortality, education, nature of occupation, retirement ages, rates of return, medical evidence and whether the plaintiff is a local or [a] foreign worker". [note: 58]

43 The Respondent, on his part, submits that the high inflation rate in Bangladesh should also be taken into account in determining the multiplier because inflation affects the real rate of return on investments. [note: 59]

44 The Respondent also refers to the approach in the UK, where actuarial tables are used in determining multipliers (see below at [49]–[51]). [note: 60] He submits, however, that it is not practical to adopt those tables because they were formulated in the light of the circumstances prevailing in the UK. [note: 61]

45 The Respondent has further referred to the multipliers used in various foreign cases. [note: 62] In the light of these foreign precedents as well as local precedents, [note: 63] the Respondent submits that the multiplier of 17 years adopted by the AR and approved by the Judge (who dismissed the Appellants' appeal in RA 260/2010) cannot be regarded as excessive, and that in fact, a multiplier higher than 18 years would be warranted.

(A) Relevant factors in determining the multiplier

46 It is common ground between the parties that the task of the court in assessing damages in personal injury cases is to arrive at a lump sum which represents as nearly as possible full compensation for the injuries which the plaintiff has suffered. This means that an award for loss of future income should, as far as reasonably possible, provide the plaintiff with the income that he would have earned but for the accident which caused his injuries (referred to hereafter as "the accident" for short). Therefore, the starting point for determining the appropriate multiplier must be the likely duration, after the trial, for which the plaintiff would have been expected to earn an income but for the accident (see the decision of the Privy Council in *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1983–1984] SLR(R) 388 ("*Lai Wee Lian*") at [20]). The underlying objective in fixing the multiplier is to derive a final award that provides the plaintiff with *full compensation* to the nearest extent possible (see the House of Lords decision of *Wells v Wells and other appeals* [1999] 1 AC 345 ("*Wells*") at 363).

47 The duration for which the plaintiff would have been expected to earn an income if not for the accident must, however, be discounted to account for three contingent factors so that the plaintiff will not be over-compensated (see *Wells* at 364–365 and 372):

(a) *First*, the plaintiff might well have stopped working for reasons other than the accident (see also *Lai Wee Lian* at [20]). Admittedly, where there is an *agreed* life expectancy, that in itself would take into account some contingencies such as premature death (see *Wells* at 378–379). But, that is not all. A discount may also be appropriate, even in the context of an agreed

life expectancy, if there is a need to account for other contingencies such as the possibility that the plaintiff might not have been able to find work despite being physically able to work.

(b) *Second*, the plaintiff will be receiving a lump sum award in advance of the dates when he would have actually received his future income but for the accident (see *Lai Wee Lian* at [20] and *Wells* at 364–365). Therefore, the multiplier must be discounted to account for the possible investment gains that the plaintiff would be expected to attain as a result of the accelerated receipt of his future earnings.

(c) *Third*, the plaintiff should be protected against the effects of future inflation (see *Wells* at 372–373). The real value of the lump sum awarded to the plaintiff will be reduced with time as a result of inflation.

(B) Possible approaches for determining the multiplier

48 A variety of approaches may be applied to determine the appropriate multiplier (see Wai-Sum Chan & Felix W H Chan, "*Lai Wee Lian* Revisited – Should actuarial tables be used for the assessment of damages in personal injury litigation in Singapore?" [2000] SJLS 364 ("*Lai Wee Lian Revisited*"), especially at pp 367–371, for a summary of some of the possibilities). The possible approaches include the following:

(a) One approach is to fix the multiplier by looking at the multipliers used in comparable cases. This is the approach adopted in some Singapore cases (see, for example, *Loh Chia Mei v Koh Kok Han* [2009] SGHC 181 at [41]). As the Appellants have pointed out, [note: 64] this is also the approach taken by the Hong Kong courts (see, *eg*, the decision of the Hong Kong Court of Appeal in *Chan Pui-ki v Leung On and Another* [1996] 2 HKLR 401 at 421C–421I).

(b) Another approach is to apply a pure arithmetical discount. The multiplier may be determined by discounting the plaintiff's stream of income over his expected working life by an appropriate rate (see *Lai Wee Lian Revisited* at pp 368–370). A further discount may be applied to account for contingencies, which was the approach taken in the Singapore High Court decision of *Shaw Linda Gillian v Chai Kang Wei Samuel* [2009] SGHC 187 ("*Shaw Linda Gillian (HC)*") at [31]. In that case, the High Court judge applied a further discount for "the vicissitudes of life" (at [31]). The defendant's appeal against the High Court's decision was allowed in part, but the High Court's decision on the loss of future earnings award was not disturbed (see *Shaw Linda Gillian (CA)* at [32]).

(c) A third approach is to apply a fixed formula. This is the approach adopted in Malaysia by statute (see s 28A of the Civil Law Act 1956 (Act 67) (M'sia)). The Malaysian courts have held that [note: 65] the statutory formula is mandatory due to the imperative language of the statute (see *Ibrahim bin Ismail & Anor v Hasnah bte Puteh Imat (as beneficiary and legal mother of Bakri bin Yahya and substituting Yahaya bin Ibrahim) & Anor and another appeal* [2004] 1 MLJ 525 at [12]).

(d) Yet another approach is to use actuarial tables, as in the UK. This approach merits further explanation.

49 The English courts use actuarial tables published by the UK Government Actuary's Department, commonly known as "the Ogden Tables", to determine the appropriate multiplier (see *Wells* at 379F and *Lai Wee Lian Revisited* at p 371). The latest version of these tables are the *Actuarial Tables with explanatory notes for use in Personal Injury and Fatal Accident Cases* (7th Ed, 2011) ("the Ogden

Tables (7th Ed)"). The Ogden Tables are "based on a reasonable estimate of the future mortality likely to be experienced by average members of the population alive and are based on projected mortality rates for the United Kingdom as a whole" (see the explanatory notes to the Ogden Tables (7th Ed) at Section A, para 4). The multipliers in the Ogden Tables are also based on the assumption that the lump sum award given to the plaintiff will be invested at an annual rate of return of 2.5% net of tax (see the explanatory notes to the Ogden Tables (7th Ed) at Section A, paras 8–9). This rate is fixed by the Lord Chancellor pursuant to s 1 of the Damages Act 1996 (c 48) (UK) based on an assumed rate of inflation of 3% (see Lord Irvine of Lairg LC, "Setting the Discount Rate: Lord Chancellor's Reason" (27 July 2001)).

50 It should be noted that the Ogden Tables do not take into account risks other than mortality. However, as the Appellants have pointed out, [note: 66] the Ogden Tables have, since the sixth edition of these tables, provided a methodology for reducing the multiplier to take into account other contingencies (see the explanatory notes to the Ogden Tables (7th Ed) at Section B, as well as *Kemp & Kemp: The Quantum of Damages in Personal Injury and Fatal Accident Claims* (William Norris QC gen ed) (Sweet & Maxwell, Looseleaf Ed, 2009, Release 120 (August 2011)) at para 10-014).

51 The Ogden Tables have identified three key factors which affect the determination of the discount for contingencies: the plaintiff's employment status, disability status and educational attainment (see the explanatory notes to the Ogden Tables (7th Ed) at Section B, para 34). [note: 67] There may well be other factors which may affect the discount for contingencies. For example, there may be reason to believe that the plaintiff may not have remained employed until the prevailing retirement age due to the nature of his occupation (see *Heil v Rankin* [2001] PIQR Q3 (reported at (2001) 10 PIQR Q16), where the court applied a discount to account for the fact that the plaintiff police officer might not have remained in the police force until the normal retirement age of 50). The sex of the plaintiff may also require a discount to be applied (see *M (A Child) v Leeds Health Authority* [2002] PIQR Q4 (reported at (2001) 11 PIQR Q46) at [59]–[62], where a 22.5% discount was applied to account, *inter alia*, for the prospect that the plaintiff, a young girl, might have had to take time off to raise a family; see also *Ingrid van Wees v Z Karkour and A Walsh* [2007] EWHC 165 at [139], where the court took into account the fact that the plaintiff, being a woman, was "*at present*" [emphasis added] less likely to earn the same amount as a man, but that her salary was likely to become equal in the future because the prevailing trends suggested that the gap between the salaries of male employees and those of female employees was narrowing).

52 At this juncture, we would briefly refer, by way of comparison, to the Canadian, Australian and New Zealand approaches to assessing loss of future earnings. These jurisdictions either do not apply the multiplier/multiplicand approach or apply a variant of that approach:

(a) The approach in Canada: The Appellants have submitted that the Canadian courts do not apply the multiplier/multiplicand method to assess loss of future earnings. [note: 68] This is not strictly accurate. In substance, the Canadian approach to assessing loss of future earnings is similar to the multiplier/multiplicand method, except that the discount is not applied to the multiplier. The approach which the Canadian courts take is to estimate the plaintiff's level of earnings and the length of his working life. Adjustments are then made to these figures to account for contingencies (see *J A Andrews, Dorothy Andrews, Ivan Stefanyk v Grand & Toy Alberta Ltd and Robert G Anderson* [1978] 2 SCR 229 ("*Andrews*") at 251–253; see also S M Waddams, *The Law of Damages* (Canada Law Book, Looseleaf Ed, November 2011 release) at para 3.720). The following are relevant points when considering the adjustment to be made for contingencies (see *Andrews* at 253): (i) care must be taken not to adjust for contingencies that have already been taken into consideration in estimating the plaintiff's projected average level of

earnings; (ii) not all contingencies will result in an adjustment adverse to the plaintiff; and (iii) there may be public and private schemes which cushion the plaintiff against adverse contingencies. The extent of the adjustment will depend on the circumstances of the case, in particular, on the nature of the plaintiff's occupation (see *Andrews* at 253).

(b) The approach in Australia: The Australian approach is also a variant of the multiplier/multiplicand method. As the Appellants have submitted, that approach may be represented by the formula "[(M x T) – V] *x* n%" [note: 69] [emphasis in original], where "M" is the multiplicand, "T" is the plaintiff's expected working life but for the accident, "V" is the factor by which the award should be reduced to account for contingencies and "*x*" represents the function of discounting the resulting figure by "n", which is the discount rate to account for accelerated receipt of a lump sum (see Francis Trindade, Peter Cane & Mark Lunney, *The Law of Torts in Australia* (Oxford University Press, 4th Ed, 2007) ("*Trindade, Cane & Lunney*") at pp 715–716). The discount for contingencies (*ie*, "V" in the aforesaid formula) is typically applied in the form of a percentage reduction (see *Trindade, Cane & Lunney* at p 716). The typical discount applied by the courts varies from State to State (see *Trindade, Cane & Lunney* at p 716, note 40, which gives the example of the 15% discount typically applied in New South Wales). As the Appellants have stated, [note: 70] for the discount to account for accelerated receipt of a lump sum (*ie*, "n" in the above formula), the High Court of Australia has stipulated that in States where a discount rate is not fixed by statute, a fixed rate of 3% should be used (see *Todorovic and another v Waller* (1981) 150 CLR 402 at 423–424 (*per* Gibbs CJ and Wilson J), 451 (*per* Mason J), 460 (*per* Aickin J) and 480–481 (*per* Brennan J)). Most States have fixed a higher rate (see *Trindade, Cane & Lunney* at p 717).

(c) The approach in New Zealand: New Zealand has adopted a no-fault accident compensation scheme which is "markedly different from the way in which damages are awarded in the other [Commonwealth] jurisdictions" [note: 71] (see Peter H Schuck, "Tort Reform, Kiwi-Style" (2008) Yale Law & Policy Review 187 at pp 188–191 for a concise description of the scheme and its origins).

(C) The approach that should be adopted in Singapore

53 In a sense, it may be more objective to use actuarial tables because they are based on projections of the mortality rate of the general population. They provide a more scientific basis for discounting a lump sum award to account for premature death. Adjustments may also be made for contingencies by using actuarial data. However, such actuarial tables are not generally available in Singapore. Requiring the preparation of such tables as a matter of practice for every case might inordinately raise costs and prolong the resolution of disputes. What is clear is that it would not be appropriate for our courts to adopt the Ogden Tables because the latter are based on projected mortality rates in the UK.

54 In the absence of actuarial tables, it seems to us that the approaches alluded to above at [48(a)]–[48(b)], with adjustments for contingencies (where appropriate) and inflation, are the next most appropriate approaches. A pure arithmetical discount will adjust the lump sum award to account for accelerated receipt. Inflation can be taken into account by using *real* interest rates (*ie*, interest rates adjusted for inflation) in the arithmetical discount. Further adjustment may be necessary to account for other contingencies. Any further adjustment of this nature will necessarily be based on the particular facts and circumstances of the case. In order to ensure that awards are consistent, the courts should also consider the multipliers used in comparable cases. That said, a blind adherence to the multipliers in previous cases is not desirable. The court should consider in each case whether

the previous cases are truly comparable, and should not hesitate to depart from the multipliers used in previous cases if the circumstances call for it.

55 In this regard, we note that the considerations which feature in the Ogden Tables and/or which are taken into account in Commonwealth cases are not unique to the situations in those jurisdictions and could well, in particular circumstances, be relevant to the Singapore courts. After all, ultimately, the objective of the court in each case is to make an award to the plaintiff which would fairly compensate him for the losses which he has suffered on account of the injuries sustained by him. The considerations which feature in the Ogden Tables and/or in Commonwealth cases include (see generally [51] above and *Andrews* at 253):

(a) the plaintiff's employment status;

(b) the plaintiff's pre-existing illnesses or disabilities;

(c) the plaintiff's educational attainment;

(d) the plaintiff's sex; and

(e) the possibility of a depression in the economy, "changes in industrial emphasis" (*per* the High Court of Australia in *Wynn v NSW Insurance Ministerial Corporation* (1995) 184 CLR 485 at 497) and industrial disputes.

56 Of course, the above considerations are not exhaustive. For example, the need to discount an award to account for accelerated receipt of a lump sum might assume added significance where the plaintiff is a foreigner. This factor was given consideration in *Shaw Linda Gillian (HC)* at [31], where the court took cognisance of the fact that higher interest rates were available in Australia as compared to Singapore.

(2) Application to the present appeal

57 It was common ground at the assessment hearing that the Respondent would have worked for a further period of 38 years but for the Accident. This figure was arrived at on the basis that the Appellants accepted that the Respondent, who was aged 27 at the time of the Accident (see [3] above), would have worked up to the age of 65. [note: 72] This means that at the time of the assessment hearing, the Respondent would have worked for a further 36 years if not for the Accident. An appropriate discount must be made to account for possible investment gains that the Respondent would be expected to make as a result of the accelerated receipt of his lifetime income.

58 Unfortunately, there is no evidence on the record of the deposit interest rates and inflation rates in Bangladesh. Hence, we are unable to assess the correctness of the AR's choice of the multiplier against the approach of applying an arithmetical discount with further adjustments for other contingencies as well as with reference to comparable case precedents (see [54] above).

59 In passing, we would observe that assuming we had evidence of the real interest rates in Bangladesh, we would have applied a further discount to account for other contingencies, even though the parties have agreed that the Respondent would, but for the Accident, have worked for a further 36 years at the time of the assessment hearing. Such further discount is appropriate in order to account for other contingencies. In our opinion, those relevant to the present case would have included the following:

(a) *First*, the nature of the Respondent's job at the time of the Accident should have been considered. As the Respondent was a foreign construction worker, it is not likely that he would have worked as a construction worker in Singapore for the remainder of his working life. As this court stated in *Tan Woei Jinn v Thapjang Amorthap and another* [2005] 2 SLR(R) 553 at [21]:

> … Foreign workers like the plaintiff may not spend their entire working lives in Singapore. They may return home to be with, or start, their families. They may return with their savings from their earnings to start their own businesses. They may also be replaced by cheaper and younger workers, or their work permits may not be renewed. When they leave, they will not continue to get earnings at Singapore levels, and any award for lost future earnings should take this into account.

(b) *Second*, the possibility that the Respondent might have lost his job due to changing economic conditions should have been taken into account. For example, the Respondent's employment could have been terminated due to a downturn in the construction sector. Of course, this is not to say that the Respondent could not, in that scenario, have obtained a lower paying job in another area of work.

60 Given the state of the evidence, we are left with the approach of considering the multipliers used in comparable cases (see [48(a)] above). In this regard, we note that the multiplier of 17 years adopted by the AR is consistent with the multipliers used in the comparable cases outlined below:

(a) In *Teo Seng Kiat v Goh Hwa Teck* [2003] 1 SLR(R) 333 at [14], a multiplier of 18 years was applied in respect of the plaintiff, who was injured at the age of 28.

(b) In *Teo Sing Keng and another v Sim Ban Kiat* [1994] 1 SLR(R) 340 (cited in *Practitioners' Library* at p 651), a multiplier of 15 years was applied in respect of the plaintiff, who was injured at the age of 25 and, as a result, permanently disabled (the plaintiff became tetraparetic, and also had bowel as well as urinary problems). It should be noted that the multiplier of 15 years was agreed to by the parties before the assistant registrar hearing the assessment of damages (at [8(d)]).

(c) In *Lim Yee Ming v Ubin Lagoon Resort Pte Ltd and Others (Adventure Training Systems Pty Ltd, Third Party)* [2003] SGHC 134 at [80] (cited in *Practitioners' Library* at p 653), a multiplier of 15 years was applied in respect of the plaintiff, a female, who was injured at the age of 26 and, consequently, permanently disabled (the plaintiff suffered from paralysis from the waist down, bowel and urinary problems as well as loss of sexual function).

(d) In the unreported case of *Maung Tun Aung v Goh Beng Hwee* Suit No 284 of 2000 (Registrar's Appeal No 175 of 2001) (cited in *Practitioners' Library* at p 675), a multiplier of 17 years was applied (broken down into nine years for the multiplicand of $2,000 per month, six years for the multiplicand of $3,000 per month and two years for the multiplicand of $2,000 per month) in respect of the plaintiff, who was injured at the age of 24 and became permanently paralysed, resulting in inability to control his urinary and bowel functions.

Of course, in considering precedents for the purposes of obtaining assistance to determine the appropriate multiplier in a specific case, noting the age of the plaintiff alone may not be enough. What is perhaps more important is the likely number of remaining working years which the plaintiff would have had but for the accident. In the present case, as mentioned at [57] above, the Appellants agreed before the AR that if not for the Accident, the Respondent would have worked until the age of 65, [note: 73] not unlike the age up to which a Singaporean would normally work. Thus, precedents

involving Singaporeans (including permanent residents) would be appropriate comparisons. Accordingly, the multiplier of 17 years adopted by the AR in the present case is clearly not out of line with the relevant precedents.

61 There remains one consequential issue on this head of claim which we ought to address. On their contention that the appropriate multiplier should only be 14 years, the Appellants have submitted that the multiplier should be split into four years and ten years in respect of the Singapore portion and the Bangladesh/Saudi Arabia portion respectively of the loss of future earnings award. Since we have rejected the Appellants' argument that the multiplier should only be 14 years, what remains for us to decide is whether the apportionment made by the AR – *viz*, seven years for the Singapore portion and ten years for the Bangladesh/Saudi Arabia portion [note: 74] – is fair. Here, we would quote what the AR stated to be her basis for making this apportionment: [note: 75]

> … I am mindful that the Plaintiff [*viz*, the Respondent] has worked without any complaints from his Singapore employers so far. The Plaintiff's evidence is that he came to work in Singapore because the pay was better here, than in Saudi Arabia where he last worked. The Defendant [*viz*, the Appellants] has not led any evidence showing any complaint against the Plaintiff's work performance. In the circumstances, I am prepared to accept that the Plaintiff has satisfied me, on a balance of probabilities, that he would have worked in Singapore for the full 15 years and he would have been allowed to under our employment regulations, had the [A]ccident not happened.
>
> Accepting that the Plaintiff would have lost 38 years of working life as a result of the [A]ccident, and if the Plaintiff would have been able to work [for] another 14 years in Singapore if not for the [A]ccident, a fair apportionment in this case will be – 7 years at the Singapore rate … and 10 years at the Bangladesh/Saudi Arabia rate …

No argument has been advanced by the Appellants to show that the above apportionment by the AR of the multiplier of 17 years is in any way improper or unjust. Accordingly, there is no ground for us to interfere with this apportionment.

(3) Our ruling on the loss of future earnings award

62 As the Appellants have accepted that the multiplicands for the Singapore portion and the Bangladesh/Saudi Arabia portion of the loss of future earnings award should be $800 per month and $500 per month respectively, and as the Appellants' objections to the AR's award for loss of future earnings relate solely to the appropriate multiplier, which objections we have found to be without merit, we likewise uphold the AR's award for this head of claim.

Future medical expenses

63 With regard to the award for future medical expenses, we have at [22] above stated that the Appellants are precluded from challenging this award because they agreed at the assessment hearing to use the evidence of the Singapore doctors (*ie*, Dr Tow and Dr Swami) as the basis for calculating the appropriate quantum to award the Respondent. However, for completeness and on the basis that the Appellants are not so precluded, we will proceed to examine whether, on the evidence, the award made by the AR for this head of claim is justified. In this regard, for the purposes of determining whether a particular medical expense is reasonable, the court will consider a range of circumstances including, *inter alia*, whether or not the particular treatment in question is necessary and whether or not it was taken pursuant to a doctor's advice (see UK Law Commission, *Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits* (Law Com No 262, 1999) (Chairman: Robert Carnwath) at para 2.2).

64 In the present case, the Respondent is a Bangladeshi national who has returned to his home country and is receiving medical treatment there. It follows, as a matter of logic and common sense, that the cost of medical care in his home country should be the basis upon which to calculate the multiplicand to be used in determining the amount to be awarded for future medical expenses. This follows from the principle that a defendant is liable to a plaintiff as he finds the latter (see, for example, *Ho Soo Fong and another v Standard Chartered Bank* [2007] 2 SLR(R) 181 at [65], where this court referred to "the general tort principle that the tortfeasor must take his victim as he is"). Admittedly, the cost of medical care in the home country of a foreign plaintiff could be either higher or lower than that in Singapore. However, it is clear that a foreign plaintiff would be adequately compensated, and not over- or under-compensated, only when the multiplicand for future medical expenses is calculated on the basis of the likely actual cost of medical care in his own country.

65 As in the case where the cost of medical treatment in Singapore is being determined, the cost of medical treatment in a foreign country will have to be established by evidence and, in all likelihood, expert evidence may be necessary. Where expert evidence is adduced, the court must not "blindly accept" such evidence simply because it is not contradicted (see *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 ("*Poh Soon Kiat*") at [22]). The court must evaluate the expert's evidence in the light of the objective facts and by reference to the usual criteria for assessing evidence. As the High Court stated in *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [76] (cited by this court in *Poh Soon Kiat* at [22]):

> What is axiomatic is that a judge is not entitled to substitute his own views for those of an uncontradicted expert's: *Saeng-Un Udom v PP* [2001] 2 SLR(R) 1. Be that as it may, a *court must not on the other hand unquestioningly accept unchallenged evidence*. Evidence must invariably be sifted, weighed and evaluated in the context of the factual matrix and in particular, the objective facts. An expert's opinion *"should not fly in the face of proven extrinsic facts relevant to the matter" per* Yong Pung How CJ in *Khoo James v Gunapathy d/o Muniandy* [2002] 2 SLR(R) 414 at [65]. In reality, substantially the same rules apply to the evaluation of expert testimony a s they would to other categories of witness testimony. *Content credibility*, *evidence of partiality*, *coherence* and a need to analyse the evidence *in the context of established facts* remain vital considerations; *demeanour, however, more often than not recedes into the background* as a yardstick. [emphasis added]

66 The Appellants have made the following points in relation to the award for future medical expenses:

(a) The best available evidence of the cost of the Respondent's future medical care is the cost of obtaining such care from medical facilities in Bangladesh.

(b) At the assessment hearing, the Respondent provided evidence of the rates of medical fees in Bangladesh [note: 76] based on the rates of Apollo Hospital ("the Apollo Hospital Rates"), which, according to the evidence of Dr Swami, is a premier hospital. [note: 77]

(c) Since there is evidence of the rates of medical fees in Bangladesh (*ie*, the Apollo Hospital Rates), there is no need to rely on the rates of medical fees in Singapore. [note: 78]

(d) Alternatively, the court should apply a 35% discount to Dr Tow's Rates (which represent the estimated cost of future medical treatment in Singapore (see [21] above)) *after* those figures are first discounted by 50% to account for the vicissitudes of life and accelerated receipt of a

lump sum. [note: 79]

(e) At the assessment hearing, the Appellants "[had] not agree[d]" [note: 80] to Dr Tow's Rates. As the AR had ruled that the Apollo Hospital Rates were inadmissible, the Appellants had "merely submitted that … the only evidence available would be the estimates by Dr Adela Tow on the Singapore rates [*ie*, Dr Tow's Rates as defined at [21] above] and the [35%] discount recommended by Dr [Swami]". [note: 81] In RA 260/2010, the Appellants had submitted before the Judge that the Apollo Hospital Rates should be used instead of Dr Tow's Rates. [note: 82]

(f) In any event, even if the Appellants had agreed to Dr Tow's Rates, this court has the power under O 57 rr 9A and 13 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) and under its inherent jurisdiction to review the AR's award for future medical expenses because the award was "clearly erroneous" [note: 83] in that it did not take into account the vicissitudes of life and did not incorporate a discount for accelerated receipt of a lump sum.

67 The first observation we would make in relation to the above points raised by the Appellants is that it was the Appellants who objected, at a hearing prior to the assessment hearing proper, to the admission of the Apollo Hospital Rates because Dr Waheed Zaman ("Dr Zaman") of Apollo Hospital, who had provided those rates in a letter, could not testify due to Apollo Hospital's policy of not allowing its specialists to involve themselves in any legal proceedings concerning its patients (see [21] above). [note: 84] Now, the Appellants are changing their minds and singing a different tune. If the Appellants had not insisted on the personal attendance of Dr Zaman at the assessment hearing, the Apollo Hospital Rates would have been admitted into evidence, and those rates would have been relied upon by the AR to determine the quantum to be awarded for future medical expenses. It is too late now for the Appellants to ask this court to apply the Apollo Hospital Rates. Our second observation is that it was precisely because of the Appellants' objection to the admission of the Apollo Hospital Rates without Dr Zaman personally giving evidence at the assessment hearing that the Respondent called Dr Tow and Dr Swami to testify. Dr Tow gave evidence on what would be the likely medical costs if the Respondent were to be treated in Singapore. Dr Swami testified that in his view, if Dr Tow's Rates were reduced by two-thirds, that would represent the likely costs of medical treatment in Bangladesh. [note: 85] No contrary evidence was presented to the AR by the Appellants. To put it at the lowest, no objection was made by the Appellants to what Dr Tow and Dr Swami testified. We quote again the relevant portion of the evidence recorded by the AR (reproduced earlier at [21] above): [note: 86]

D/C:…

> Looking at the evidence adduced, in terms of the medical care rates used in Bangladesh, the hospital in question is Apollo [H]ospital. The evidence from Dr Swami is that Apollo [H]ospital was [a] premier hospital in Bangladesh. It does not approximate to B1 rates. Also, we do not have enough evidence on the rates chargeable in Bangladesh. The main evidence we have in this case is the evidence of Dr Tow and Dr Swami – Dr Tow's estimation is $500,000–$600,000, and Dr Swami's evidence for Bangladesh overall, is that a discount of 35% should be given from Singapore rates, generally speaking.

P/C:We are accepting that part of Dr Swami's evidence.

D/C:*We are therefore submitting that for this head, it should [be] what Dr Tow has stated, minus the 35% discount as given by Dr Swami.*

Ct: *But the Plaintiffs* [*ie*, the Respondent] *are prepared to go along with this approach?*

P/C:*Yes*.

D/C:*So the figure is $320–$390,000 in total, for future medical expenses.*

[emphasis added]

To reiterate what we pointed out at [21] above, the above extract shows that it was the *Appellants' counsel* (denoted as "D/C" above) who proposed to use the evidence of the Singapore doctors (*ie*, Dr Tow and Dr Swami) to arrive at the figure for the cost of future medical expenses in view of the lack of evidence of the future medical costs likely to be incurred by the Respondent in Bangladesh. The AR asked the Respondent's counsel (denoted as "P/C" above) if she agreed to this proposal. The Respondent's counsel replied in the affirmative. After ascertaining that both the Appellants' counsel and the Respondent's counsel were "prepared to go along with Dr Tow['s] and Dr Swami's evidence", [note: 87] the AR selected the upper end of Dr Tow's Rates (*ie*, $600,000) and applied the discount of 35% to that figure. [note: 88]

68 Now, what the Appellants are arguing (in their alternative argument set out at [66(d)] above) is that before applying the discount of 35% (as testified by Dr Swami) to Dr Tow's Rates, there should be a prior discount of Dr Tow's Rates by 50% to account for the vicissitudes of life and accelerated receipt of a lump sum. We note, however, that this prior discount of 50% was never put to either Dr Tow or Dr Swami. Moreover, it is unclear whether or not Dr Tow incorporated a discount for accelerated receipt of a lump sum and contingencies in coming up with her estimate of the Respondent's likely future medical costs if he were to be treated in Singapore. The fact is that Dr Tow was not asked specifically if her figures took into account accelerated receipt of a lump sum and contingencies. Thus, Dr Tow was never given an opportunity to explain how she had derived her figures. All we have on the record is that both the Appellants and the Respondent were comfortable with Dr Tow's Rates and the 35% discount suggested by Dr Swami. In the light of this state of the evidence, the AR was certainly entitled to rule in the way that she did and we are unable to say that the award which she made for future medical expenses is manifestly excessive or wrong in principle.

Future transport and care expenses

69 We now move on to consider the last of the disputed heads of claim, namely, the claim for future transport and care expenses (as defined at [9(d)] above). The only issue which the Appellants are raising on these items relates to the multiplier used by the AR, which was 18 years; there is no dispute as to the multiplicands.

70 The contention of the Appellants is that instead of 18 years, the multiplier should only be 14 years. [note: 89] The Respondent's answer to this is that a multiplier of 18 years is not inordinately high, given that the Respondent was only 29 years of age at the time of the assessment hearing and bearing in mind that the normal lifespan of a male is 70 years.

71 It might *prima facie* appear that the multiplier used to determine the appropriate award for future transport and care expenses should, as a matter of logic, be higher than the multiplier used to determine the appropriate award for loss of future earnings, given that the multiplier for the former award is based on the plaintiff's life expectancy (see *Ang Leng Hock v Leo Ee Ah* [2004] 2 SLR(R) 361 at [59]), whereas the multiplier for the latter award is based on the plaintiff's remaining working life if not for the accident. [note: 90] However, it should be noted that the multiplier for future transport and

care expenses is determined on the basis of the plaintiff's current life expectancy *in the light of his injuries*. In contrast, the multiplier for loss of future earnings is determined on the basis of the plaintiff's working life *before his injuries*. A plaintiff who has sustained serious injuries, such as the Respondent in the present appeal, may well have expected to have had a working life longer than his *current* life expectancy. In fact, as will be seen, the evidence at the assessment hearing was that the Respondent's life expectancy is now shorter than the duration of his expected remaining working life if not for the Accident. Before the AR, the Appellants agreed that the Respondent would have worked until the age of 65 if not for the Accident, giving the Respondent a remaining working life of 36 years at the time of the assessment hearing (see [57] above). Dr Tow's evidence was that an average Singaporean male would live until the age of 70, [note: 91] and that a paraplegic would have 90% of that life expectancy. [note: 92] The Appellants accepted Dr Tow's evidence. [note: 93] In doing so, they appeared to have assumed that an average Bangladeshi male has the same life expectancy as an average Singaporean male, and that the same 10% reduction in life expectancy as a result of paraplegia is applicable to a Bangladeshi male paraplegic. Applying a discount of 10% to 70 years, the Respondent would at present be expected to live to the age of 63. [note: 94] This means that at the time of the assessment hearing, the Respondent was expected to live for a further 34 years.

72 We note that it might appear to be incongruous for the AR to have used a multiplier of only 17 years for the loss of future earnings award, but a *higher* multiplier of 18 years for the future transport and care expenses award when, at the time of the assessment hearing, the Respondent's life expectancy (*viz*, 34 years) was *shorter* than the duration of his expected remaining working life if not for the Accident (*viz*, 36 years). One would have expected that a higher multiplier should have been used for the loss of future earnings award since the Respondent was expected to have worked for a longer duration (but for the Accident) than the duration for which he is now expected to live. However, nothing turns on the incongruity. At best, it would suggest that perhaps, an even higher multiplier should have been used for the loss of future earnings award.

73 As was the case *vis-à-vis* the loss of future earnings award, we are constrained by the evidence to adopt the approach of considering the multipliers used in comparable cases (see [60] above) as we do not have evidence of the real interest rates in Bangladesh.

74 In our view, the multiplier that the AR adopted (*viz*, 18 years) is in line with the multipliers used in comparable cases. This can be seen from, *inter alia*, *TV Media Pte Ltd v De Cruz Andrea Heidi and another appeal* [2004] 3 SLR(R) 543, where this court used a multiplier of 17 years for the future medical expenses to be awarded to a plaintiff who was 27 years old at the time of her injury. The court reached this decision by examining the multipliers used for awards for future medical expenses in analogous cases. In particular, the focus of the court appeared to be on the age of the plaintiff in each of the analogous cases, as can be seen from the following extract:

> 182 The [High Court] judge provided for a multiplier of 34 years in relation to Andrea's [*ie*, the plaintiff's] medical expenses. …
>
> 183 The appellants [*ie*, the defendants] challenged this and asked that a multiplier of 18 years be awarded. They referred us to several High Court cases in which similar multipliers were given. The first of these is a case which we have referred to earlier in this judgment, *Lim Yee Ming v Ubin Lagoon Resort Pte Ltd* ([[2003] SGHC 134]). The judge provided for a multiplier of *15 years* for the *26-year-old plaintiff*. In the second case, *Ng Song Leng v Soh Kim Seng Engineering & Trading Pte Ltd* [1997] SGHC 289, the judge awarded the *29-year-old* plaintiff a multiplier of *17 years*. In yet another case, *Teo Seng Kiat v Goh Hwa Teck* [2003] 1 SLR(R) 333, the judge determined that a multiplier of *18 years* was appropriate for the plaintiff, who was *28 years old* at

the time of the accident. We also had regard to the case of *Chen Qingrui v Phua Geok Leng* ([[2001] SGHC 64]), wherein the female plaintiff aged *18 years* was awarded a multiplier of *18 years* for nursing care.

184 We have not come across a case where a multiplier as high as 34 has been awarded, and Andrea was not able to cite even one instance of such a case. She attempted to argue that this present case presents a unique factual matrix, thus justifying the award of a particularly high multiplier. We are not in the least convinced by this argument since the injuries suffered by the plaintiffs in the cases mentioned above are, at the very least, comparable to Andrea's.

185 *Considering that Andrea was 27 years old when her liver failed, and that the plaintiffs in the cases we have just detailed were also in the same age range*, we think that a multiplier of 17 years is more appropriate and order accordingly.

[emphasis added]

75 There are also unreported cases which adopted similar multipliers for future medical expenses. In *Chin Swey Min (a patient suing by his wife and next friend Lim Siew Lee) v Nor Nizar Bin Mohamed* [2004] SGHC 27, where the plaintiff was 42 years of age at the time of the assessment of damages, a multiplier of 16 years was applied in respect of future medical expenses. Similarly, in *Ng Song Leng v Soh Kim Seng Engineering & Trading Pte Ltd and Bayer (Singapore) Private Limited* [1997] SGHC 289, where the plaintiff was 32 years of age at the time of the assessment of damages, a multiplier of 17 years was adopted for future medical expenses.

76 All said, the determination of the appropriate multiplier for future transport and care expenses (and, for that matter, the appropriate multiplier for future medical expenses) is not a science. It is not something that can be reflected in a mathematical formula. In a worst-case scenario where the plaintiff will require lifelong medical and/or nursing care, precedents show that there is a range as to the appropriate multiplier, depending on the age of the plaintiff at the time of the assessment of damages. In the present case, a multiplier of 18 years in respect of a plaintiff aged 29 at the time of the assessment of damages cannot be said to be excessive.

Conclusion

77 For the above reasons, *vis-à-vis* Issue 3, the Appellants have not persuaded us that any of the awards for the disputed heads of claim should be varied. As we have also ruled against the Appellants on Issue 1 and Issue 2, this appeal is therefore dismissed with costs and the usual consequential orders.

[note: 0] See the Appellants' Core Bundle ("ACB") vol II at p 4.

[note: 1] *Ibid*.

[note: 2] See the Record of Appeal ("RA") vol II at pp 36–37 (interlocutory judgment dated 29 June 2009).

[note: 3] See the Respondent's Supplementary Core Bundle ("RSCB") vol II at p 25 (medical report dated 9 October 2008 by Dr Adela Tow of Tan Tock Seng Hospital ("Dr Tow")).

[note: 4] See RSCB vol II at p 26 (Dr Tow's medical report dated 10 December 2008) and RSCB vol II at

p 5 (para 4 of the Respondent's affidavit of evidence-in-chief dated 19 January 2010 ("the Respondent's AEIC")).

[note: 5] See RSCB vol II at p 12 (para 24 of the Respondent's AEIC).

[note: 6] See RSCB vol II at p 11 (para 21 of the Respondent's AEIC).

[note: 7] See RA vol II at p 16 (p 4 of the Respondent's statement of claim dated 19 March 2009).

[note: 8] See RSCB vol II at pp 20–23 (paras 56–66 of the Respondent's AEIC).

[note: 9] RSCB vol I at p 42, line 26 to p 47, line 1 (certified transcript of the assessment hearing on 22 June 2010).

[note: 10] See RA vol II at pp 45–50.

[note: 11] See the Appellants' Case ("AC") at paras 9–12.

[note: 12] See AC at para 28.

[note: 13] See the Respondent's Case ("RC") at paras 38–39.

[note: 14] See ACB vol I at p 10, lines 7–9 and line 15 (certified transcript of the proceedings before the Judge on 11 February 2011 ("the Judge's certified transcript")).

[note: 15] See ACB vol I at p 10, lines 23–24 (the Judge's certified transcript).

[note: 16] See, *eg*, RC at paras 77–79.

[note: 17] See AC at paras 27 and 30(2)(x).

[note: 18] See RSCB vol II at p 285.

[note: 19] See RSCB vol I at p 10, line 15 to p 11, line 3 (certified transcript of the assessment hearing on 27 May 2010).

[note: 20] See RSCB vol I at p 45, lines 23–24 (certified transcript of the assessment hearing on 22 June 2010).

[note: 21] See RSCB vol I at p 45, line 31 to p 46, line 6 (certified transcript of the assessment hearing on 22 June 2010).

[note: 22] See RSCB vol I at p 10, lines 28–29 (certified transcript of the assessment hearing on 27 May 2010).

[note: 23] See the Appellants' Further Submissions dated 3 January 2012 ("the Appellants' Further Submissions") at para 19(3).

[note: 24] See RSCB vol II at p 19 (para 49 of the Respondent's AEIC).

[note: 25] See RSCB vol II at p 19 (para 50 of the Respondent's AEIC).

[note: 26] See RSCB vol II at p 19 (para 51 of the Respondent's AEIC).

[note: 27] See RA vol III, Part B at p 164 (para 89 of the Respondent's written submissions dated 26 May 2010 for the assessment hearing).

[note: 28] See AC at paras 17(3) and 28(4).

[note: 29] See AC at para 28(4).

[note: 30] See RSCB vol I at p 6, line 26 (certified transcript of the assessment hearing on 27 May 2010).

[note: 31] See RSCB vol I at p 6, lines 25–26 (certified transcript of the assessment hearing on 27 May 2010).

[note: 32] See RSCB vol I at p 42, line 37 (certified transcript of the assessment hearing on 22 June 2010).

[note: 33] See RSCB vol I at p 6, line 26 (certified transcript of the assessment hearing on 27 May 2010).

[note: 34] *Ibid*.

[note: 35] *Ibid*.

[note: 36] See AC at para 28(3)(b).

[note: 37] See RSCB vol I at p 11, line 7 (certified transcript of the assessment hearing on 27 May 2010).

[note: 38] See RSCB vol I at p 11, line 8 (certified transcript of the assessment hearing on 27 May 2010).

[note: 39] See RSCB vol I at p 11, line 7 (certified transcript of the assessment hearing on 27 May 2010)..

[note: 40] *Ibid*.

[note: 41] See RSCB vol I at p 46, lines 9–10 and lines 17–19 (certified transcript of the assessment hearing on 22 June 2010).

[note: 42] See AC at para 28(3)(a).

[note: 43] See RC at paras 141–143.

[note: 44] See RSCB vol I at p 11, line 7 (certified transcript of the assessment hearing on 27 May 2010).

[note: 45] See RSCB vol II at p 12 (para 24 of the Respondent's AEIC).

[note: 46] See RSCB vol II at p 12 (para 25 of the Respondent's AEIC).

[note: 47] *Ibid*.

[note: 48] See RSCB vol I at p 38, lines 16–21 (certified transcript of the assessment hearing on 19 April 2010).

[note: 49] See RSCB vol I at p 46, line 23 (certified transcript of the assessment hearing on 22 June 2010).

[note: 50] See RSCB vol I at p 46, lines 23–24 (certified transcript of the assessment hearing on 22 June 2010).

[note: 51] See RSCB vol II at p 12 (para 24 of the Respondent's AEIC).

[note: 52] See AC at paras 17(3) and 28(4).

[note: 53] See AC at para 28(4).

[note: 54] See the Appellants' Further Submissions at para 33(1).

[note: 55] See the Appellants' Further Submissions at p 34.

[note: 56] *Ibid*.

[note: 57] See RSCB vol I at p 5, lines 20–22 (certified transcript of the assessment hearing on 27 May 2010).

[note: 58] See the Appellants' Further Submissions at para 49.

[note: 59] See the Respondent's Skeletal Submissions (Part 3) dated 25 November 2011 ("the Respondent's Further Submissions") at para 8.

[note: 60] See the Respondent's Further Submissions at paras 7 and 9.

[note: 61] See the Respondent's Further Submissions at para 10.

[note: 62] See the Respondent's Further Submissions at paras 11–19.

[note: 63] See the Respondent's Further Submissions at paras 20–23.

[note: 64] See the Appellants' Further Submissions at para 42.

[note: 65] See the Appellants' Further Submissions at para 40.

[note: 66] See the Appellants' Further Submissions at p 40.

[note: 67] See also the Appellants' Further Submissions at p 40.

[note: 68] See the Appellants' Further Submissions at para 45.

[note: 69] See the Appellants' Further Submissions at para 47.

[note: 70] See the Appellants' Further Submissions at p 54.

[note: 71] See the Appellants' Further Submissions at p 57; see also pp 56–57 thereof generally.

[note: 72] See RSCB vol I at p 7, lines 7–8 (certified transcript of the assessment hearing on 27 May 2010); see also RSCB vol I at p 42, line 39 to p 43, line 3 (certified transcript of the assessment hearing on 22 June 2010).

[note: 73] See RSCB vol I at p 7, lines 7–8 (certified transcript of the assessment hearing on 27 May 2010).

[note: 74] See RSCB vol 1 at p 44, lines 4–6 (certified transcript of the assessment hearing on 22 June 2010).

[note: 75] See RSCB vol I at p 43, line 20 to p 44, line 6 (certified transcript of the assessment hearing on 22 June 2010).

[note: 76] See the Appellants' Further Submissions at para 14.

[note: 77] See the Appellants' Further Submissions at para 14(2); see also ACB vol II at p 43, lines 9–10 (certified transcript of the assessment hearing on 20 April 2010).

[note: 78] See the Appellants' Further Submissions at para 16.

[note: 79] See the Appellants' Further Submissions at para 22.

[note: 80] See the Appellants' Further Submissions at para 19(1).

[note: 81] *Ibid*.

[note: 82] See the Appellants' Further Submissions at para 19(2).

[note: 83] See the Appellants' Further Submissions at para 19(3).

[note: 84] See RSCB vol I at p 33, line 40 to p 34, line 10 (certified transcript of the assessment hearing on 19 April 2010).

[note: 85] See RSCB vol I at p 31, lines 5–17 (certified transcript of the assessment hearing on 20 April 2010).

[note: 86] See RSCB vol I at p 10, line 15 to p 11, line 3 (certified transcript of the assessment hearing on 27 May 2010).

[note: 87] See RSCB vol 1 at p 45, lines 23–24 (certified transcript of the assessment hearing on 22 June 2010).

[note: 88] See RSCB vol 1 at p 46, lines 4–6 (certified transcript of the assessment hearing on 22 June 2010).

[note: 89] See AC at para 28(5).

[note: 90] See the Respondent's Further Submissions at para 24.

[note: 91] RSCB vol I at p 19, lines 7–9 (certified transcript of the assessment hearing on 21 April 2010).

[note: 92] RSCB vol I at p 19, lines 13–14 (certified transcript of the assessment hearing on 21 April 2010).

[note: 93] See RSCB vol I at p 8, lines 23–26 (certified transcript of the assessment hearing on 27 May 2010).

[note: 94] RSCB vol I at p 19, lines 6–14 (certified transcript of the assessment hearing on 21 April 2010), read with RSCB vol I at p 8, lines 23–26 (certified transcript of the assessment hearing on 27 May 2010).