Lai Wai Keong Eugene *v* Loo Wei Yen
[2014] SGCA 31

Case Number	: Civil Appeal No 170 of 2012
Decision Date	: 29 May 2014
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Anthony Wee and Pak Waltan (United Legal Alliance LLC) for the appellant; Desmond Tan Yen Hau (Lee & Lee) for the respondent; Teo Weng Kie and Charlene Chee (Tan Kok Quan Partnership) for the General Insurance Association of Singapore; Michael Low Wan Kwong (Crossbows LLP) and Linus Ng Siew Hoong (Robert Wang & Woo LLP) for the Consumers Association of Singapore.
Parties	: Lai Wai Keong Eugene — Loo Wei Yen

Damages

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2013] 3 SLR 1113.]

29 May 2014 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 273 of 2012, where the judge ("the Judge") dismissed the appellant's appeal against an award of damages made by an assistant registrar ("the AR"). The Judge's decision is reported in *Lai Wai Keong Eugene v Loo Wei Yen* [2013] 3 SLR 1113 ("the GD"), and the AR's decision, in *Lai Wai Keong Eugene v Loo Wei Yen* [2012] SGHCR 8.

2 The case concerns the assessment of damages for the loss of future earnings ("LFE") and future medical expenses ("FME") of a tort victim who is injured in an accident. The conventional approach in assessing damages in such cases involves the selection of:

(a) an appropriate multiplicand representing the plaintiff's projected annual future earnings or medical expenses (depending on whether it is LFE or FME that is being assessed); and

(b) an appropriate multiplier representing the plaintiff's remaining working life or life expectancy (again, depending on whether it is LFE or FME that is being assessed), discounted for accelerated receipt and the vicissitudes of life.

The central issue in this appeal is whether the conventional approach should be departed from or otherwise reviewed in the light of changes to the statutory minimum retirement age ("the minimum retirement age") and the prevailing real interest rates.

3 We first heard the appeal on 5 November 2013. At that hearing, counsel for the appellant, Mr Anthony Wee ("Mr Wee"), averred (among other things) that the multiplier used for the calculation of LFE had traditionally been capped at 16 years, even for young plaintiffs. As the reason for this

purported cap was unclear, we adjourned the hearing for further submissions on:

(a) the historical origins of the multiplier which has been applied in comparable cases and the rationale for the cap of 16 years on the multiplier; and

(b) whether the multiplier should be reviewed in the light of the increase in the minimum retirement age or otherwise.

4 In addition, as the appellant was advocating a radical departure from the usual method of assessing damages in personal injury cases, we considered it necessary to hear the views of other stakeholders before making a decision. We therefore invited the Consumers Association of Singapore ("CASE") and the General Insurance Association of Singapore ("GIA") to tender written submissions and attend a hearing before us. After hearing the parties again on 24 April 2014, we now give our decision.

The facts

5 The appellant was born in July 1972. [note: 1] On 12 April 2007, the appellant, while riding a motorcycle, collided with a car which the respondent was driving. The appellant suffered catastrophic injuries as a result of the accident, and is now a paraplegic with no sensation or motor control from his upper chest downwards. He requires a wheelchair to move about and drives himself around using a modified vehicle.

6 Following the accident, the respondent pleaded guilty to a charge under s 65 of the Road Traffic Act (Cap 276, 2004 Rev Ed) of driving without due care or reasonable consideration. He was fined $1,000 and disqualified from driving for four months.

The proceedings below

7 On 25 August 2009, the appellant sued the respondent, seeking damages for negligence. The respondent consented to interlocutory judgment, accepting 90% liability for the accident, with damages to be assessed.

8 The hearing for the assessment of damages commenced on 21 November 2011, by which time the appellant was 39 years old. At the hearing, the appellant produced a report [note: 2] by an accounting expert, Mr Foong Daw Ching. The report contained a present value table setting out the capital sum required to compensate the appellant for LFE based on his expected future earnings over a remaining working lifespan of 27 years, at interest rates varying between 0% and 5%. Using this table, the appellant argued that a 1% interest rate should be adopted together with a 10% discount for vicissitudes, resulting in an LFE award of $1,823,034.60. [note: 3] Alternatively, the appellant submitted, if the conventional approach were to be used, a multiplier of 21 should be applied. The appellant further argued that a multiplier of 23 should be used for the calculation of FME.

9 The AR did not agree with the appellant's submissions. Holding that it was inappropriate to use present value tables (also known as annuity tables) to assess damages for LFE, he instead looked at past cases involving plaintiffs of similar ages to determine the appropriate multiplier. He accordingly applied a multiplier of 13 for LFE and 15 for FME, and assessed the appellant's damages as follows:

(a) Special damages:

(i) Pre-trial medical expenses agreed at $51,934.87

(ii) Pre-trial transport expenses agreed at $2,000.00

(iii) Paraplegic equipment and toiletries agreed at $15,865.03

(iv) Cost of maid/nursing care agreed at $15,275.35

(v) Pre-trial loss of earnings assessed at $162,349.20

(vi) Pre-trial loss of employer's CPF agreed at $24,976.80

(vii) Pre-trial loss of allowances agreed at $6,978.24

(viii) Loss of motorcycle agreed at $9,617.00

(ix) Cost of purchasing Suzuki Swift assessed at $45,653.00

(x) Cost of modifying Suzuki Swift assessed at $750.00

Total: **$335,399.49**

(b) General damages:

(i) Pain and suffering and loss of amenities assessed at $200,000.00

(ii) FME assessed at $486,000.00

(iii) Other future expenses (not including (ii)) assessed at $171,770.00

(iv) LFE assessed at $880,262.93

Total: **$1,738,032.93**

10 Dissatisfied with the AR's award for LFE and FME, the appellant appealed to the High Court. Relying on this court's decision in *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 ("*Hafizul*"), he argued that the court could and should depart from the conventional approach in assessing damages for LFE, and should instead use present value calculations to determine the LFE award. He further contended that the multiplier used by the AR for calculating his FME was too low.

11 The Judge dismissed the appellant's appeal. Rejecting the appellant's reliance on present value tables, he held that the conventional approach ought to be applied for reasons of precedent, principle and policy, which may be summarised as follows:

(a) The Judge considered himself bound by the decisions in *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1983–1984] SLR(R) 388 ("*Lai Wee Lian*") and *Tay Cheng Yan v Tock Hua Bin and another* [1992] 1 SLR(R) 779 ("*Tay Cheng Yan*") to apply the conventional approach, and did not read *Hafizul* as undermining the binding authority of either case (see the GD at [61]). The Judge was concerned that discounting separately for the vicissitudes of life and accelerated receipt would require each plaintiff to adduce expert evidence from actuaries and economists, thereby greatly increasing the costs and complexity of litigation without necessarily improving the accuracy of assessments (see the GD at [63]).

(b) The Judge acknowledged (at [67] of the GD) that lump sum awards were bound to be inaccurate. He pointed out, however, that the discounts embedded in the multiplier used under the conventional approach reflected the common law's allocation of the risk of inaccurate compensation as between tort plaintiffs as a class and tort defendants as a class. The Judge stated (at [69] of the GD) that the issue of "[w]hether to unpack and alter that embedded assessment of reasonable risk, and where to set that level of risk, [was] a very difficult question of policy" that a court of first instance could not and should not engage in.

(c) The Judge observed that the overall effect of adopting the present value approach proposed by the appellant was to effect an across-the-board increase in the level of awards for LFE. That too, he noted, raised difficult questions of policy, and such change (if it was to be implemented) was something to be effected by either the Court of Appeal or the Legislature, and not by the High Court (see the GD at [72]).

12 Applying the conventional approach, the Judge found that the multipliers used by the AR were consistent with the multipliers used in past cases.

The issues before this court

13 The present appeal raises the following issues:

(a) Should we depart from the conventional approach in assessing damages for personal injury?

(b) Assuming the conventional approach is retained, should the multipliers used thereunder be revised in the light of changes in social and economic conditions?

(c) In any event, should the AR's award be disturbed?

Our decision

Whether we should depart from the conventional approach

14 From the 1940s to the 1970s, Malaysian and Singapore courts generally awarded damages for future losses by way of a lump sum award. The assessment of the appropriate lump sum appeared to be a matter of gut feeling; the courts did not usually calculate – at least not explicitly – the victim's projected LFE over his remaining working life. An example is the case of *Katijah Binti Abdullah v Lee Leong Toh & Another* [1940] MLJ 87, where the court explained its decision for awarding $2,000 in damages for LFE and pain and suffering in the following terms (at 89):

> As to damages claimed by the plaintiff, I take into account the fact that her special aptitude for bangsawan work has been destroyed: it is obvious that the lack of an arm would reduce her value as a dancer and singer of the type [which] she was to nothing. In addition she has suffered the loss of a right arm and considerable shock and pain and disfigurement: she is incapacitated as a wife from working and even clothing herself with any comfort and her loss is one that will go with her to her grave. While it is impossible to make good the loss of her arm it is I think reasonable to assume that she should be put into a position where she would not in case of her husband's death or divorce be plunged into complete poverty more hampered to meet it than most of her sisters and should be recompensed for the pain and shock she has endured and the awkwardness and discomfort she will have to endure for the rest of her life. *In my estimation the*

sum of $2,000 properly invested would ensure this and would not be a sum which the defendants should not be called upon to pay. [emphasis added]

15 An early case where the conventional approach was explicitly applied is *Pahang Lin Siong Motor Co Ltd & Anor v Cheong Swee Khai & Anor* [1962] MLJ 29. In that case, the victim, who was about 20 years old at the time of the accident, lost one arm in the accident, which was caused by the defendants' negligence, and could no longer continue his former occupation as a rubber tapper. The trial judge awarded him $13,500 for LFE by multiplying his monthly salary of $80 (*ie*, $960 a year) by 14 years. The multiplier of 14 was adopted after discounting the plaintiff's expected remaining lifespan of 40 years to allow for "the accidents of life and other elements" (at 30). It is apparent from the substantial discount that the court also took into account accelerated receipt.

16 From the late 1960s to the early 1980s, local courts began using a mix of present value tables and the conventional approach to assess damages for LFE. However, this gave rise to some confusion as the courts sometimes discounted for accelerated receipt *twice* – once in the selection of an appropriate multiplier based on past cases (where the multipliers used already implicitly contained a discount for accelerated receipt), and again in the application of present value tables. An example is the case of *Lai Chi Kay and others v Lee Kuo Shin* [1981–1982] SLR(R) 71, where the court adopted a multiplicand of $5,000 per month (*ie*, $60,000 a year) and a multiplier of 15 years for a plaintiff (a medical student) aged 24 at the time of the accident, but derived a sum of only $622,800 (at [31]) instead of $900,000. The discrepancy appears to be due to the use of present value tables to discount for accelerated receipt.

17 This conceptual error was pointed out by the Privy Council in *Lai Wee Lian*, where the Board suggested that judges should stick to one system in order to avoid confusion (at [27]):

> While their Lordships are of opinion that there is nothing contrary to law in the use of the tables, or of any other accurate aid to calculation, it is apparent that there is a possibility (and more than the possibility) of confusion if the tables are used without their significance being fully appreciated. They enable the loss to be calculated more accurately than is possible by the direct application of a multiplier, and for that reason they may reasonably be preferred to the English system, provided that care is taken to avoid confusion between the two systems. Some judges may prefer to use the tables on the ground that a more accurate result can be obtained by using them than by direct application of a multiplier. But, if confusion is to be avoided, it seems desirable that a uniform practice should be followed by all courts in the same area. …

18 Although the Board did not say that local courts should use the conventional approach (and indeed opined that the present value approach was more accurate), our Court of Appeal in *Tay Cheng Yan* held (at [16]) that the conventional approach should be used by local courts as both the courts and local practitioners were more familiar with it. Thereafter, the conventional approach has held sway in local courts to this day.

19 Most recently, in *Hafizul*, we undertook a comprehensive review of the proper approach to be applied in assessing damages for LFE. In that case, the plaintiff, a Bangladeshi national, was rendered paraplegic after an industrial accident at a Mass Rapid Transit worksite. At that time, the plaintiff was 27 years of age. The plaintiff's employer admitted liability and interlocutory judgment was entered, following which the assistant registrar rendered an award totalling $1,001,750.80. After the High Court dismissed both parties' appeals against the award, the employer filed a further appeal to this court. We dismissed the appeal, and in the process, made the following observations (at [48] and [54]) regarding the proper approach to be adopted in assessing damages for LFE:

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 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, 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* [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 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 [*Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587] 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 the statutory formula is mandatory due to the imperative language of the statute (see *Ibrahim bin Ismail v Hasnah bte Puteh Imat (as beneficiary and legal mother of Bakri bin Yahya and substituting Yahaya bin Ibrahim)* [2004] 1 MLJ 525 at [12]).

(d) Yet another approach is to use actuarial tables, as in the UK. …

…

5 4 ***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 <u>real</u> 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.*

[original emphasis in underlined italics; emphasis added in italics and bold italics]

20 Against this backdrop, we turn to consider the issue at hand. Mr Wee submits that our decision in *Hafizul* (which was issued only four days before the AR made his award) has paved the way for

local courts to jettison the conventional approach in favour of the present value approach, which is presented as a more accurate method of calculating future losses. We disagree. As can be seen from the text in bold italics at [48] of *Hafizul* as quoted above, both the approach described at [48(a)] of that case ("the first approach") and the approach described at [48(b)] thereof ("the second approach") deal with *the selection of the multiplier* to be used under *the conventional approach*. Under the first approach, the multiplier is selected by reference to the multipliers used in comparable cases; under the second approach, the multiplier is derived by taking the plaintiff's expected working life (expressed as a number of years) and then discounting that figure for accelerated receipt and the vicissitudes of life. It would therefore be incorrect to read *Hafizul* as endorsing an approach that dispenses with the use of multipliers altogether and relies entirely on present value calculations. We accept that in practice, the second approach would require the court to make present value calculations to determine the appropriate discount to be applied for accelerated receipt, and there is indeed nothing wrong with using present value tables for this purpose. But the ultimate purpose of the exercise remains *the derivation of a multiplier* that can be cross-checked with the multipliers used in past cases so as to achieve consistency with cases involving similarly-situated plaintiffs.

21 Further, the reason why we gave emphasis to the second approach in *Hafizul* was because we were dealing with a Bangladeshi plaintiff who would be living and working in Bangladesh and investing his lump sum award there. The economic conditions in Bangladesh are different from those in Singapore, and simply applying the multipliers used in past cases involving local plaintiffs would have been less than satisfactory. We also noted in *Hafizul* (at [59]) that had there been evidence of real interest rates in Bangladesh, a further discount for contingencies would have been appropriate since the plaintiff's job as a foreign construction worker was exposed to unique vagaries that did not usually attend other forms of employment. These considerations called for the various components embedded in the multiplier to be unbundled and adjusted individually. However, because of the lack of evidence of the deposit interest rates and inflation rates in Bangladesh, we ultimately had to apply the first approach of considering the multipliers used in comparable cases (see *Hafizul* at [60]).

22 *Hafizul* should therefore not be viewed as authority for the proposition that the second approach is invariably to be preferred over the first approach. We remain of the view that *both* are appropriate approaches which our courts may adopt in assessing damages for LFE, with the caveat that a court utilising the second approach should ensure that the resulting multiplier is broadly consistent with the multipliers used in comparable cases. In other words, in determining the various discounts to be applied under the second approach, a court should not stray too far from the implicit discounts embedded in the multipliers used in comparable cases. This naturally brings us to the next issue.

Whether the multipliers used under the conventional approach should be revised

23 The second issue identified at [13] above is really the crux of this appeal, *viz*: whether the *multipliers* used under the conventional approach should be revised upwards. Indeed, it was apparent that the reason why Mr Wee advocated so fervently the present value approach was because he wanted the court to depart from the multipliers used in past cases, which, he argued, had failed to keep pace with the social and economic changes in Singapore. According to Mr Wee, the multipliers used in past cases were based on assumptions regarding the minimum retirement age and real rates of return that no longer hold true.

24 We will consider these two factors in turn, beginning with the minimum retirement age.

Increase in the minimum retirement age

25 According to Mr Wee, the retirement age in the 1970s and 1980s was 55, and the multipliers used in personal injury cases during that period were calculated accordingly. However, a minimum retirement age (set at 60) was introduced in 1993 by the Retirement Age Act 1993 (Act 14 of 1993), and that retirement age has now been increased to 62: see s 4(1) of the Retirement and Re-Employment Act (Cap 274A, 2012 Rev Ed). Consequently, Mr Wee argues, there is a need to revise the multipliers upwards to account for Singaporeans' longer working lifespans.

26 We agree that the increase in the minimum retirement age is a factor that should be taken into account in determining the appropriate multiplier. But this is something that the courts have *already* been doing when applying the conventional approach. The multiplier to be adopted in each case has always depended on the court's assessment of the likely retirement age of the plaintiff in question but for the accident, and the minimum retirement age would naturally be a factor that the courts would take into account (although they have not hesitated to assume a shorter or longer working lifespan if the facts call for it). This is seen, for example, in the following cases:

(a) In *Lim Fook Lau and another v Kepdrill International Inc SA and others* [1992] 3 SLR(R) 244, the deceased doctor was nearly 30 years old at the time of the accident. The High Court adopted a multiplier of 16 in assessing the deceased's "lost years" earnings on the basis that there was no compulsory retirement age for private medical practitioners, and that the deceased would have had a further working life of between 30 and 35 years but for the accident (at [9]).

(b) In *Neo Kim Seng v Clough Petrosea Pte Ltd* [1996] 2 SLR(R) 413, the High Court adopted a multiplier of six for a plaintiff who was 48 years old at the time of the assessment hearing. In doing so, the court took note of counsel's submission (at [13]) that under the (now repealed) Retirement Age Act (Cap 274A, 1994 Rev Ed), the "normal retirement age" had been raised to 65 (this seems to have been a mistake as 60 was the correct figure at that time), but also took into account (at [15]) the fact that the plaintiff would have had a shorter working life than a white-collar worker in view of the physical demands of his job as a ship's mechanic.

(c) In *Ang Leng Hock v Leo Ee Ah* [2004] 2 SLR(R) 361 ("*Ang Leng Hock*"), the High Court observed (at [54]) that the minimum retirement age had been raised to 62 since 1999, but opined (at [55]) that as the plaintiff was a self-employed person who depended on his established business contacts, there should be no prefixed cut-off date for his employment. The court consequently adopted a multiplier of ten for the plaintiff, who was 45 years old at the time of the assessment hearing. We ought to clarify that the sum so arrived at by the judge was regarded as an award for loss of earning capacity rather than an award for LFE as there was no reliable evidence of the plaintiff's loss of earnings from his employment (see *Ang Leng Hock* at [54]).

(d) In *Teo Ai Ling (by her next friend Chua Wee Bee) v Koh Chai Kwang* [2010] 2 SLR 1037, the High Court applied a multiplier of 20 for a female polytechnic student who was 17 years old at the time of the accident (and who would have started work at 20 after graduating from polytechnic). In doing so, the court expressly took into account the fact that the minimum retirement age had been raised to 62. On appeal, we did not disapprove of the High Court's choice of multiplier, but substituted the award for LFE with a provisional damages award under para 16 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) in order to have time to assess more accurately the injured victim's employment prospects (see *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] 3 SLR 610 ("*Teo Ai Ling (CA)*")).

27 In our judgment, therefore, it is unnecessary to undertake a broad review of the multipliers used under the conventional approach to account for the increase in the minimum retirement age as

this is something that the courts would in any event take into account if it is relevant on the facts of the case, as demonstrated by the precedents which we have just cited.

Decrease in the real rates of return achievable

28 Turning to the next factor cited by Mr Wee (see [23] above), the cases indicate that the multipliers used under the conventional approach have been based on the assumption that the lump sum award can be invested to achieve real rates of return of 4–5%. This was the reason cited by Lord Diplock in *Mallett v McMonagle, a minor by Hugh Joseph McMonagle, his father and guardian ad litem, and Another* [1970] AC 166 ("*Mallett v McMonagle*") for a cap of 16 on the multiplier, even for young plaintiffs (at 177):

> … In cases such as the present where the deceased was aged 25 and his widow about the same age, courts have not infrequently awarded 16 years' purchase of the dependency. It is seldom that this number of years' purchase is exceeded. *It represents the capital value of an annuity certain for a period of 26 years at interest rates of 4 per cent., 29 years at interest rates of 4½ per cent. or 33 years at interest rates of 5 per cent.* Having regard to the uncertainties to be taken into account, 16 years would appear to represent a reasonable maximum number of years' purchase where the deceased died in his twenties. Even if the period were extended to 40 years, that is, when the deceased would have attained the age of 65, the additional number of years' purchase at interest rates of 4 per cent. would be less than 4 years, at 4½ per cent. would be less than 2½ years, and at 5 per cent. would be little more than 1 year. [emphasis added]

29 The point was reiterated in *Cookson (Widow and Administratrix of the estate of Frank Cookson, decd) v Knowles* [1979] AC 556, where Lord Fraser of Tullybelton said (at 576–577):

> … *The multipliers which are generally adopted in practice are based on the assumption (rarely mentioned and perhaps rarely appreciated) that the principal sum of damages will earn interest at about 4 or 5 per cent.*, which are rates that would be appropriate in time of stable currency, as my noble and learned friend Lord Diplock pointed out in *Mallett* v. *McMonagle* [1970] A.C. 166, 176D. But in time of rapid inflation the rate of interest that can be earned by prudent investment in fixed interest securities tends to be high, as investors seek to protect their capital and also to obtain a positive rate of interest. *At the date of the trial in this case (May 1976) it was possible to obtain interest at a rate of approximately 14 per cent. in gilt edged securities, and so long as inflation continues at its present rate of approximately 10 per cent., experience suggests that the interest element in the widow's assumed annuity will be appreciably higher than the 4 or 5 per cent. on which the multiplier is based.* … [emphasis added]

30 Likewise, in *Kartina Bte Mohd Nor v Pee Tian Leng (an infant)* [1994] SGHC 291, the High Court referred to Lord Diplock's remarks in *Mallett v McMonagle* and observed that the assumption of a 4% interest rate held true in Singapore at that time:

> The plaintiff was 34 years old at the time of assessment. The multiplier a court would grant even for a much younger person would be in the region of 15 to 16 [citing *Lai Wee Lian*, *Chan Heng Wah and another v Peh Thiam Choh and another* [1987] SLR(R) 501 and *Peh Diana and another v Tan Miang Lee* [1991] 1 SLR(R) 22] … According to Lord Diplock in [*Mallett v McMonagle*] using a multiplier of 16 would give a capital sum which would compensate the victim over a period of 26 years assuming that the interest rate was at 4%. The current rate of interest for fixed deposit (for 12 month period) in Singapore certainly exceeds that rate. …

31 Given this background, Mr Wee says that it is high time for the multipliers used under the

conventional approach to be revised. This is because it is unrealistic today to assume that real rates of return of 4–5% are achievable by plaintiffs in personal injury cases. He notes that the annual interest rates for 12-month fixed deposits ranged between 0.53% and 0.88% from 2005 to 2009 (when the appellant's claim was brought), and the average annual inflation rate over the same period was 2.08%. Thus, Mr Wee argues, the real rate of return under current economic circumstances is in fact *negative* and a discount rate of 4–5% would result in gross under-compensation. He suggests that we adopt a discount rate of 1% instead.

32 We accept that the present rates of return on fixed deposits are very low and have remained so for many years – records from the Monetary Authority of Singapore's website indicate that the last time that interest rates for bank fixed deposits exceeded 4% was in October 1998. However, we have several reservations about using the prevailing fixed deposit interest rates as the benchmark for determining the discount for accelerated receipt.

33 In the first place, we do not think it would be reasonable for a plaintiff to invest his entire lump sum award in fixed deposits. Mr Wee submits that this is reasonable because a tort victim who depends on his damages award for his day-to-day expenses cannot afford to place it in riskier investments which can potentially provide higher returns, such as equities. He draws support from the following remarks by Lord Lloyd of Berwick in *Wells v Wells* [1999] 1 AC 345 at 366–367:

> … Granted that a substantial proportion of equities is the best long-term investment for the ordinary prudent investor, the question is whether the same is true for these plaintiffs. The ordinary investor may be presumed to have enough to live on. He can meet his day-to-day requirements. If the equity market suffers a catastrophic fall, as it did in 1972, he has no immediate need to sell. He can abide his time, and wait until the equity market eventually recovers.
>
> The plaintiffs are not in the same happy position. They are not "ordinary investors" in the sense that they can wait for long-term recovery, remembering that it was not until 1989 that equity prices regained their old pre-1972 level in real terms. For they need the income, and a portion of their capital, every year to meet their current cost of care. A plaintiff who invested the whole of his award in equities in 1972 would have found that their real value had fallen by 41 per cent. in 1973 and by a further 62 per cent. in 1974. The real value of the income on his equities had also fallen.
>
> So *it does not follow that a prudent investment for the ordinary investor is a prudent investment for the plaintiffs. Equities may well prove the best long-term investment. But their volatility over the short term creates a serious risk.* This risk was well understood by the experts. Indeed Mr. Coonan [counsel for the defendants] conceded that if you are investing so as to meet a plaintiff's needs over a period of five years, or even 10 years, it would be foolish to invest in equities. But that concession, properly made as it was on the evidence, is fatal to the defendants' case. For as Mr. Purchas [counsel for the plaintiffs] pointed out in reply, every long period starts with a short period. If there is a substantial fall in equities in the first five or 10 years, during which the plaintiff will have had to call on part of his capital to meet his needs, and will have had to realise that part of his capital in a depressed market, the depleted fund may never recover.
>
> [emphasis added]

34 With respect, we disagree. While it is true that a tort victim who has been disabled by an accident would have to live off his damages award, he plainly does not require the *entire sum* to

meet his expenses at any one point in time. In cases where the damages award is meant to compensate a plaintiff for decades of lost earnings, a substantial portion of the award would not be called upon for many years, and we see no reason why that portion cannot be invested in equities or other asset classes to achieve a higher return (as compared to fixed deposits) in the meantime. Such a plaintiff *would* be in a position to ride out the short-term volatility that equities and other relatively high-risk investments are susceptible to. Furthermore, Lord Lloyd's remarks in *Wells v Wells* were made in a context where index-linked government stocks ("ILGS") were available as an alternative investment vehicle. It was held in *Well v Wells* that it would be prudent for the plaintiffs to invest in ILGS, given that they provided a guaranteed risk-free return above the rate of inflation. As Lord Lloyd explained (at 364–365):

> … The difficulty arises because … money does not retain its value. How is the court to ensure that the plaintiff receives the money he will need to purchase the care he needs as the years go by despite the impact of inflation? *In the past the courts have solved this problem by assuming that the plaintiff can take care of future inflation in a rough and ready way by investing the lump sum sensibly in a mixed "basket" of equities and gilts. But the advent of the index-linked government stock ("I.L.G.S.") (they were first issued in 1981) has provided an alternative.* ***The return of income and capital on I.L.G.S. is fully protected against inflation.*** Thus the purchaser of £100 of I.L.G.S. with a maturity date of 2020 knows that his investment will then be worth £100 plus *x* per cent. of £100, where *x* represents the percentage increase in the retail price index between the date of issue and the date of maturity (or, more accurately, eight months before the two dates). Of course if the plaintiff were to invest his £100 in equities it might then be worth much more. But it might also be worth less. ***The virtue of I.L.G.S. is that it provides a risk-free investment.*** [emphasis added in italics and bold italics]

35 In Singapore, however, inflation-proof investment products are unavailable; Lord Lloyd's views are therefore not applicable in our context. We further observe that there has been a proliferation of new investment options since *Wells v Wells* was decided, such as low-cost index funds and real estate investment trusts, which may provide a less risky alternative to purchasing individual stocks and shares while still promising a rate of return that substantially exceeds inflation in the long run. It would thus not be prudent or reasonable for a plaintiff to invest his entire lump sum award in fixed deposits.

36 Second, and more importantly, there is no guarantee that the present low rates of return will persist. Indeed, with the ongoing tapering by the United States of its quantitative easing policy, many economists believe that interest rates will rise in the near future. Mr Wee submits that even if interest rates do rise, any such increase would be gradual, and any over-compensation in the latter stages would be far less significant than the under-compensation in the initial stages because of the ever decreasing capital sum on which the rate of return is applied. But this is pure speculation. We note, for example, that the interest rate for 12-month bank fixed deposits fell from 7.43% in October 1984 to 3.35% by October 1986; in 1998, it stood at 5.34% in January, but plunged to 2.51% by December. The point is that no one can confidently predict the direction and gradient of future interest rate changes, and given the numerous imponderables involved, we do not think the courts should peg the discount rate for accelerated receipt – which is supposed to represent the average rate of return over a plaintiff's remaining working lifespan – to the prevailing fixed deposit interest rates.

37 We agree that the present state of the law is rather unsatisfactory and that there is scope for reform in this area. However, we do not think the courts are really in a position to undertake this reform. Any drastic change to the discount rate for accelerated receipt can only be undertaken after a careful study, with input from experts and the various stakeholders involved. This is a matter that

falls within the institutional competence of the Legislature. In the United Kingdom, for example, the Lord Chancellor was given the power by Parliament to prescribe a rate of return that the courts would have to take into account in assessing damages for future pecuniary losses in personal injury actions: see s 1 of the Damages Act 1996 (c 48) (UK). This rate was fixed at 2.5%, but that is now under review – a joint consultation paper was published by the Department of Justice, the Ministry of Justice and the Scottish Government wherein it was suggested that the rate of 2.5% might be too low (see *Damages Act 1996: The Discount Rate* (Consultation Paper CP 3/2013, 12 February 2013) at p 3):

> At present the discount rate is set by reference to the expected rates of return on certain types of safe investments. However, there is evidence that recipients of these lump sums do not invest in the cautious way that is envisaged by the guidelines. Instead, the initial evidence indicates, they seem to invest in mixed portfolios, including higher risk investments. This may be the result of a number of factors, but it might suggest that the current legal parameters for setting the rate may produce a rate that is too low. This would result in over-compensation for claimants and extra cost for defendants and those who fund them. …

38 In our judgment, therefore, it would be inappropriate for us to effect a radical and sweeping revision of the discount rate embedded in the multipliers used under the conventional approach, and we decline the appellant's invitation to do so. We would add, however, that this does not preclude the courts from adopting a lower or higher discount rate if this is found to be appropriate on the facts of a particular case. For example, a court might be justified in pegging the discount rate to prevailing fixed deposit interest rates if the remaining working lifespan of the plaintiff is very short (such that there is less scope for investment in riskier assets or for drastic changes in the prevailing interest rates).

39 Before we move away from this issue, there is one observation which we need to make. At the further hearing on 24 April 2014 (see [4] above), we invited the appellant and the respondent to tender written submissions on whether this was an appropriate case for a provisional damages award to be made, as was done in *Teo Ai Ling (CA)* (see [26(d)] above). However, the appellant wishes to have an early final resolution of this matter, and has stated in a letter through his solicitors that he does not wish this court to consider the option of a provisional damages award. In the circumstances, we say no more on this option.

Whether the AR's award should be disturbed

40 Given our decision on the foregoing issues, it follows that there is no basis to disturb the AR's award of damages for LFE. As the Judge noted at [80] of the GD, a multiplier of 13 for LFE in the present case is consistent with the multipliers used in past cases, and the appellant himself concedes that there is no basis for interfering with this multiplier unless we revise our interest rate assumptions. [note: 4]

41 We turn to consider the AR's award for FME. The appellant relies on two cases to argue that the multiplier for FME should be increased from 15 to 17:

> (a) In *Chin Swey Min a patient suing by his wife and next friend Lim Siew Lee v Nor Nizar Bin Mohamed* [2004] SGHC 27, the assistant registrar adopted a multiplier of 16 for a male plaintiff who was 38 years old at the time of the accident.
>
> (b) In *Tan Juay Mui (by his next friend Chew Chwee Kim) v Sher Kuan Hock and another (Liberty Insurance Pte Ltd, co-defendant; Liberty Insurance Pte Ltd and another, third parties)*

[2012] 3 SLR 496, the assistant registrar fixed the multiplier for FME at 17 years for a female plaintiff aged 51 (at the time of the trial) who was expected to live for another 32 years. On appeal, the High Court declined to interfere with the multiplier.

42 However, there are other cases where the courts have been less generous in the multiplier for FME:

(a) In *Ang Leng Hock*, a 15-year multiplier (reduced from 20) was adopted in relation to a male plaintiff who was 41 years old at the time of the accident and 45 at the time of the assessment hearing.

(b) In *TV Media Pte Ltd v De Cruz Andrea Heidi and another appeal* [2004] 3 SLR(R) 543, a multiplier of 17 was applied in relation to a female plaintiff who was 27 at the time she sustained her injury, with an estimated 51 years of life remaining.

43 In the present case, it was conceded by the appellant that he has a remaining lifespan of 30 years as his life expectancy has been reduced as a result of his injuries. The AR's choice of a 15-year multiplier for FME, while perhaps on the low side, remains within the range contemplated by the authorities. It is not manifestly inadequate. We therefore see no reason to interfere with the AR's award for FME.

Conclusion

44 For the foregoing reasons, we dismiss this appeal. As for costs, although the appellant has failed in the appeal, the fact remains that he raised a point of general interest, which even necessitated our having to invite CASE and GIA to make submissions thereon. Consequently, we will not order costs against the appellant for the appeal. We would like to record our gratitude to CASE and GIA for their assistance in the appeal. We also wish to commend Mr Wee for his comprehensive and helpful submissions on behalf of his client, although we have been unable to agree with him in the end. The usual consequential orders will apply.

[note: 1] ROA vol V part C, p 16.

[note: 2] II CB 8.

[note: 3] ROA vol III part E, pp 72–73.

[note: 4] Appellant's Further Submissions, para 58.