NOTES OF CASES

MULTIPLIERS AND MULTIPLICANDS IN THE ASSESSMENT OF DAMAGES FOR LOSS OF FUTURE EARNINGS

Lai Wee Lian v. *Singapore Bus Service (1978) Limited*[1]

NOT many people can give an accurate estimate of what they expect to earn the rest of their natural lives. No one will dispute the fact that it is even less realistic for a third party to try and do so. Judges, as a matter of law, are however entrusted with this very task in any claim in which loss of future earnings is involved. They are asked not just to determine what the earning capacity of the claimant will be for the rest of his life but also how long that life might be expected to last. Though it is a difficult and somewhat speculative task, there is no alternative given the present system of compensation for tortious acts in Singapore. The alternative of not doing so at all is really unacceptable and until some other system is devised by the legislature, judges will have to continue to do the near impossible by dealing with the problem with all the available evidence on the economic potential of the claimant at the date of the trial.

In determining the amount that the claimant will lose in terms of future earnings, the court has to ascertain two factors. First it has to determine the amount of money each month or year that the claimant, but for the tortious act, would have earned the rest of his life. This figure is commonly called the multiplicand. For a relatively mature person past the peak of his career, one might perhaps agree that a relatively accurate estimate could be given. For a young person, there are really no means to arrive at an accurate estimate. In this respect, courts tend to use a single multiplicand for a person despite the fact that there may be different stages of his career at which he would be earning different amounts of money. There is a general tendency to use the last drawn salary of the claimant with minor adjustments for likely promotions or advancements in the forseeable future. Second, the court tries to determine the number of working years that the claimant has lost because of the tortious act. This is commonly called the multiplier. The starting point for the determination of the multiplier is the age of the claimant at the time of the trial and his expected retiring age.[2] The difference between the two would without considering any other factors be the most natural figure to multiply the multiplicand by, in order to arrive at the total loss of future earnings. In practice, the difference is not always taken as the multiplier. There are various factors that could and should be taken into account.

[1] Privy Council Appeal No. 53 of 1982, an Appeal from Singapore. Judgment was delivered on 10 April 1984, reported at [1984] 1 M.L.J. 325.

[2] Regard being given to the retiring age of the profession to which the claimant belongs or is likely to belong at that age.

Courts tend to take into account two main factors: the contingencies of life that may result in the claimant being incapacitated or not living a full life even without the tortious act concerned; and the fact that a lump sum of money is paid in advance which can be invested to produce some income.

To take both contingencies of life and advance payment into account, the courts have two alternatives. They could take the difference between the present age and expected retirement age, multiply it by the multiplicand and then reduce the result by whatever ratio it thinks fit to take the two factors into account. They could also reduce the same difference first, by a ratio to take into account the two factors and use the reduced figure as the multiplier to be multiplied by the multiplicand. The result with either method is the same if the same ratio is used.[3] The courts in Singapore tend to use the second alternative in a modified manner. They have developed the practice of first reducing the multiplicand to take into account contingencies; then, to take into account the advance payment, they commonly use a set of annuity tables (the tables) prepared by a local firm of solicitors.[4] Instead of multiplying directly the multiplier and multiplicand, they match the corresponding figures in the tables for the multiplier and the multiplicand to arrive at the loss of future earnings.

The tables are a set of precomputed figures on a fixed mathematical formula. Its main principle is the fact that a smaller capital sum can be invested at a reasonable rate of interest (that is assumed to be constant) to produce income every year. The principal sum would therefore increase because of the interest that is earned.[5] The capital sum is computed in such a way that with monthly or yearly drawings from the principal sum equal to the multiplicand, the principal sum will be reduced to zero in the number of years equal to the multiplier.[6] Though this may seem attractive at first sight, it must be remembered that in an attempt to be precise the courts also make an arbitrary reduction of the multiplier for contingencies. It might be noted that the tables are based on a constant rate of interest — which is unreal.

Anyone using either method to compute the loss of future earnings should realise the exact rationale behind them. A confusion or lack of understanding of the principles involved may well result in a double discounting as in *Lai Chi Kay and Others* v. *Lee Kuo Shin.*[7] In that case, Chua J. made a further discount on the capital sum for advance payment after applying the tables without realising that the use of the tables themselves was to give such a discount.

[3] Mathematical, $(A \times B) \times C = A \times (B \times C)$
where A is the ratio by which contingencies are taken into account,
B the difference between the age of the claimant at trial and his expected retiring age and
C the multiplicand. Under the first alternative, $(A \times B)$ would be the multiplier. Under the second, B would be the multiplier.

[4] Prepared by Messrs. Murphy & Dunbar and entitled
"Table computing capital sums required when invested at 5% interest per annum to provide monthly payments over a given period of years together with table of life expectation."

[5] 5% is taken as a reasonable rate. No account is taken for the possibility of this rate proving unsuitable in the future, an event which cannot be said to be unlikely.

[6] See Dass, K.S., *Quantum in Accident Claims,* Malaysian Law Publisher 1975 pp. 1003-1006 for a more detailed explanation of this concept.

[7] [1981] 2 M.L.J. 167.

In *Lai Wee Lian* v. *Singapore Bus Service (1978) Limited*[8] the very legality of the use of the tables was challenged before the Privy Council. The Privy Council in response made pronouncements on the legality of the use of the tables despite the fact that it was not raised in the Court of Appeal in Singapore, presumably because of the importance of the issue. Whilst upholding the validity of the use of the tables, the Privy Council itself resorted to the use of a straightforward multiplication and in the process made certain pronouncements that would be of interest to any lawyer dealing with claims for loss of future earnings.

The Facts

The plaintiff was thrown off a bus driven by a servant of the defendants and sustained serious physical injuries. Liability was not disputed. Contributory negligence was admitted and agreed at 15%. Loss of earnings up till the trial was agreed at $600 per month and special damages was on the whole agreed at $24,861.40. There was evidence to show that the plaintiff was only giving part-time tuition before the accident and had no other fixed employment. Medical evidence at the trial also indicated that she was unlikely to hold any form of employment. One doctor who gave evidence, was of the view that it would be difficult for her to hold any job as she looked as if she was of unsound mind and would require constant overall supervision for her day to day living.

In the High Court, the learned Chief Justice, in a brief judgment, awarded $122,056 as general damages which comprised $45,000 for pain and suffering, $40,000 for loss of amenities and $37,056 for loss of future earnings. The $37,056 for loss of future earnings was based on the annuity tables for a $400 multiplicand with a multiplier of 10 years. A multiplier of 10 was used despite the fact that the claimant was only 26½ at the date of the trial. A multiplier of 10 in fact meant that she was estimated by the High Court to have an expected working life of up to the age of 36½. This would be a discount or reduction of almost 15 years on the assumption that she would have retired at the age of 55.

The plaintiff appealed to the Court of Appeal against the award for loss of future earnings. The defendant cross-appealed against the award for loss of amenities on the ground that $40,000 was excessive and not in line with authorities. The Court of Appeal delivered a brief judgement[9] and had only a few words to say of the merits of both appeals:

> We have considered the arguments of both counsel in respect of loss of future earnings and loss of amenities. We are of the view that what really matters in cases of damages for personal injuries is the global figure finally arrived at by a trial Judge even if he has calculated the damages under a number of recognised heads. If the global figure arrived at is, in the particular circumstances of each case, reasonable and fair then we do not think that any appellate Court would increase or decrease a component item of damage on the basis that such item is low or excessive. In the instant case the sum arrived at for loss of amenities is $40,000/-

[8] *Supra,* n. 1.
[9] Reported at [1982] 2 M.L.J. 137.

> and that for loss of future earnings is $37,056.00 computed on a multiplier of 10 applied to a base figure of $400/-. We ourselves think that perhaps a multiplier of 10 is not adequate considering that the Appellant was born on the 22nd July 1955. However, we are also of the view that the award of $40,000/- for loss of amenities is somewhat generous in all the circumstances of the instant case. On the whole we think that these two items balance each other off to the extent that in our view the global figure of $146,917.40 arrived at is on the whole a fair assessment of the damages for personal injuries suffered by the Appellant in the instant case.[10]

In short, what the learned judges were saying was that whilst one item was "not adequate", it was balanced off by a "somewhat generous" award elsewhere. This was done without stating the specific extent as to how much less and how much more the two items were respectively, in order to determine if they in fact were of the same or almost of the same value. Lai Wee Lian then appealed to the Privy Council.

The Judgment

1. Grounds of Judgment

Lord Fraser of Tullybelton delivering the judgment of the Privy Council first expressed concern at the brevity of the judgement of the learned Chief Justice. In their view, it was not enough for a judge merely to decide on a multiplier of 10 without giving reasons:

> The need for a judge to state the reasons for his decision is no mere technicality, nor does it depend mainly on the rules of Court. It is an important part of a judge's duty in every case, when he gives a final judgment at the end of a trial, to state the grounds of his decision, unless there are special reasons, such as urgency, for not doing so. No special reasons exist in this case. An award of damages for personal injuries, particularly where the injuries are of the serious nature suffered by the present appellant, is a matter of great importance to the parties; especially to the plaintiff. The parties are entitled to know the judge's reasons; so are any appellate courts in the event of an appeal. In the present case, neither the parties nor the Court of Appeal nor their Lordships' Board can tell what conclusions the judge drew from the evidence or, except by inference, what process of reasoning led to his award.[11]

Lord Fraser was no less critical of the Court of Appeal. He found the judgment of the Court of Appeal to be "brief and almost devoid of reference to the facts so that their reasons for upholding the judge's award are obscure." The explanation of the Court of Appeal was found to be "entirely inadequate in a case where the trial judge had given no explanation at all."

The problems that could arise from a judgment that does not contain any grounds are two-fold. First, it will be difficult for the unsuccessful party to decide whether to appeal at all and if so, how to refute the reasoning of the judge that has not been articulated. Secondly, the appeal court will have to try and ascertain how the trial judge came to his findings and on what evidence he based them.

[10] *Id.*
[11] *Supra,* n. 1 at p. 326.

While their Lordships spoke against the passing of such "inadequate" judgments, they did not offer any solution or remedy that the affected litigant may pursue. This is because there is no law by which a litigant could compel a judge to give more reasons than he has chosen to write in his judgment. *Order 57 rule 5* of the Rules of the Supreme Court 1970 states that a judge must certify in writing the grounds of his judgment. The legal question that arises when a judge does write a judgment is whether that piece of paper regardless of what it contains or does not contain, is sufficient to satisfy *Order 57 rule* .5, being the grounds of judgment referred to in the order. It is submitted that on policy grounds, it is imperative that a written judgment must not be allowed to be challenged as being inadequate for failing to reveal the actual grounds. If this were not so there would be nothing to prevent a judgment from being called into question without a formal appeal. Indeed, the approach of the Privy Council was to try and ascertain the reasoning of the judges themselves and, if it cannot be found on the record, then to assess the evidence themselves.[12]

Order 58 Rule 6(2) of the Rules which is parallel to *Order 57 rule 5,* covers appeals from the Court of Appeal to the Privy Council, and should be subject to the same interpretation.

2. *Global Figure*

The view expressed by the Court of Appeal on the global figure was not rejected by the Privy Council but it warned that the component items must be separately considered. "[T]he only proper way of deciding whether the global award is too low or too high is by assessing the separate items and arriving at a fair total."[13] The Court of Appeal had merely stated that the global figure was a fair assessment without specifically referring to the extent to which the two mam component items were wrong. The Privy Council then assumed that the Court of Appeal had not done an item by item quantification before concluding that the global figure was fair. Though it is true that the Court of Appeal did not list out the extent to which either component was erroneous, one must ask whether it is plausible that they had so decided with a mental computation that was not shown on the record. It is a question of whether the fact that they had stated that the two balanced each other off to the extent that the global figure is fair, is sufficient indication that they had actually assessed the separate items. The Privy Council must presumably have thought it was not sufficient and proceeded to assess the two disputed items.

The concept of the global figure first emerged in the English case of *Povey* v. *W.E. & E. Jackson* (*a firm*)[14] where Edmund Davies L.J. asked the question: "Was the global figure right, or was it demonstrably wrong?"[15] On the facts of that case, he found that the general damages awarded was on the "low side" while the special damages was on the "high side." According to him, each of them if they stood alone would have warranted interference, but together, they cancelled each other out. No specific quantification was shown in the written judgment for both items in that case.

[12] *Order 57 Rule 5* applies to appeals from the High Court to the Court of Appeal.
[13] *Supra,* n. 1 at p. 326.
[14] [1970] 2 All E.R. 495.
[15] *Ibid.,* at p. 496.

The Court of Appeal in *Lai Wee Lian's* case seemed therefore to have followed *Povey* v. *W.E. & E. Jackson* without realising that the English courts have criticised the citing of that case "week in and week out... by respondents seeking to uphold a quantum of damage judgment when the appellants have shown one element to be definitely too low."[16] The Court of Appeal in England, in *George and another* v. *Pinnock and another*[17] chose to follow the practice in *Jeffrey* v. *Gee,*[18] (also a Court of Appeal decision), to examine the main components of that figure.

With the Privy Council decision in *Lai Wee Lian* and *Jamil bin Harun* v. *Yang Kansiah*[19] it would seem that the present English position is equally applicable in both Singapore and Malaysia: though what counts in the end is the global figure, each component item must be separately assessed.

3. *Multiplier and Multiplicand*

The legality of the use of the tables was challenged by the appellant in the Privy Council. Though this was not raised in the Court of Appeal, the Privy Council heard arguments on this fresh point and upheld the legality of the use of the tables but used a straight multiplier in accordance with English practice instead.

Their Lordships first explained the different approaches used in England and Singapore. In England, straight multipliers are used with a reduction for contingencies and advance payment being made on the final figure or on the multiplier. In Singapore, there was a general tendency to use the tables instead. After approving in principle *both* approaches, their Lordships accepted the submission that authorities using one particular approach should neither be confused or applied in cases where the judge is using the other approach. They said that there is nothing contrary to the use of the tables provided that their true effect is appreciated and correctly used. In *Paul* v. *Rendell,*[20] an earlier Privy Council decision on appeal from Australia, the use of similar tables in Australia was implicitly approved by the Board. The confusion of the judge in *Lai Chi Kay and others* v. *Lee Kuo Shin*[21] was highlighted to show how a double discount would be made if the logic of either method was not appreciated. A similar error was also pointed out in the Federal Court decision of *Murtadza bin Mohd. Hanan* v. *Chong Swee Pian*[22] where Chang Min Tat C.J. reduced the multiplier for both contingencies and advance payment and then reduced it further for advance payment by applying the tables.

Their Lordships then addressed the question of which system should be used in preference to the other:

> 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

[16] *Per* Sachs L.J. in *George and another* v. *Pinnock and another* [1973] 1 All E.R. 926.
[17] *Id.*
[18] [1970] 1 All E.R. 1202, [1970] 2 Q.B. 130.
[19] [1984] 2 W.L.R. 668, [1984] 1 M.L.J. 217, a Privy Council decision on appeal from Malaysia.
[20] 34 A.L.R. 569.
[21] *Supra,* n. 7.
[22] [1980] 1 M.L.J. 216.

> 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.[23]

In the end, their Lordships applied a multiplier of 15 to a multiplicand of $600 per month using the straight multiplier approach. The multiplier of 10 on the other principle was found to be too low and their Lordships felt that a multiplier of 15 was more appropriate. The use of the English method of performing a straight multiplication is significant. This has to be seen in the light of the passage in the judgment where their Lordships said: "[I]f confusion is to be avoided, it seems desirable that a uniform practice should be followed by all courts in the *same area.*"[24] Were their Lordships saying that even though the use of the tables was not unlawful, it *should not* be resorted to for the sake of uniformity in the region?

The exact interpretation of this aspect of the judgment is important as it will have a bearing on how judges in future are to apply the multiplier and multiplicand in their cases. It is submitted that whilst the preference of their Lordships is obvious, the judgment does not go so far as to rule out the possibility of any other local judge resorting to the tables in future. In the light of *Paul v. Rendell*[25] it is unarguable that the courts here are not at liberty to use the tables. Their Lordships in *Lai Wee Lian's* case did not use any clear language to indicate the contrary. They merely said that it would be "desirable" to use one method and on record they expressly said that the use of the tables was lawful. Their suggestion that a straight multiplier be adopted for uniformity cannot be anything more than a suggestion.

The Privy Council's choice of the English method of computation can be criticised. If uniformity was all they were concerned with, then the most natural system to adopt would have been the one most commonly used locally. Despite the fact that a straight multiplier was used in *Low Kok Tong's* case it is generally true that it is the exception rather than the norm in Singapore.[26] With respect, it is not proper for their Lordships to suggest that the Singapore courts should discard an acceptable and *established* system of computation just for the sake of uniformity in the *geographical area.* There is certainly no principle of law upon which one could argue that an independent country's laws

[23] *Supra,* n. 1, at p. 330.

[24] In the context, the Privy Council was referring to Malaysia, Brunei and Singapore.

[25] *Supra,* n. 20.

[26] In fact, *Low Kok Tong's* case [1982] 1 M.L.J. 62 was the only Singapore case cited in support of the proposition that a straight multiplier had been used in Singapore. Their Lordships seem to have taken one isolated case as being indicative of widespread variation in the method of computation.

should be aligned, for the sake of convenience of some, with those of other sovereign states.

The choice of the English system is however, from another point of view, to be welcomed. It simplifies the final computation and takes away the pretentions that can so often creep in, in the assessment of loss of future earnings. In the words of Lord Diplock, annuity tables are but theoretical calculations that do not take into account some real facts of life.[27] If one tries to be overly scientific in the computation of the loss of future earnings one would be grasping at variables that in reality are impossible to estimate. In Lord Diplock's words:

> To undertake detailed mathematical calculations in which nearly every factor is so speculative or unreliable in order to assess the capital sum to represent what is only one of several components in a total award of compensation for personal injuries, is, in their Lordship's view, not only not worthwhile but, worse than this, it has a tendency to mislead.[28]

4. *Remittance for assessment*

The last point for the Privy Council to consider was whether to remit the case back to Singapore for assessment. The principle involved is clear. As a general rule, the Privy Council will not assess damages if it involves an understanding of local conditions with which their Lordships are unfamiliar. It was argued and accepted by the Privy Council that this was one of the exceptional cases where their Lordships ought to assess the amount themselves.

> If the correct assessment of that item depended on local conditions in Singapore, of which the Courts of that country would be in a better position to judge than the members of this Board, they would be very slow to undertake the burden of assessing it for themselves — see *Selvanayagam* v. *University of West Indies* [1983] 1 W.L.R. 585. But the assessment of this item depends entirely on the selection of appropriate figures for the multiplicand and the multiplier. Their Lordships, having fully considered the evidence, are in as good a position as the Court of Appeal in making these selections. Accordingly they propose to do so.[29]

With that, the Privy Council after having found the multiplier and multiplicand used in the courts below wholly inadequate, followed the English practice and used a multiplicand of $600 per month with a multiplier of 15 years to arrive at the loss of future earnings.

Even though the Privy Council had fully *considered* the evidence, it can be questioned whether they were really in a position to *assess* the damages themselves. The selection of the appropriate multiplier and multiplicand depend on an understanding and appreciation of local conditions and it is submitted that because the assessment of damages depended entirely on the selection of appropriate figures for the multiplicand and multiplier, their Lordships should not have attempted to do so. It is difficult for a foreign tribunal to appreciate such factors

[27] In *Paul v. Rendell, supra* n. 20 at p. 580.
[28] *Per* Lord Diplock in *Paul* v. *Rendell, id.*
[29] *Supra,* n. 1 at p. 330.

as the contingencies of life in Singapore, the expected life span, the interest rates, the present value of future money and the expected return for a capital sum in Singapore.

Even if the appropriate multiplier could reasonably be determined by their Lordships, it is even more doubtful whether they could have fairly determined the appropriate multiplicand. The use of a $600 multiplicand by the Privy Council is tantamount to a finding of fact that the claimant would be permanently incapable of work after the accident. Whatever the earning potential of an equally handicapped person, may be in England, there is no reason to suppose that it would have been the same in Singapore. For one thing, it is most unlikely that their Lordships were familiar with the employment prospects in Singapore for someone in the claimant's position.[30] The only medical evidence that indicated that she would not be able to work was by one Dr. Gopal Baratham who said that it would be difficult for the appellant to hold any job because "she look as if she is of unsound mind." With that, their Lordships added that "in the absence of any indication that the trial judge regarded it as unreliable (they would) accept it as accurate."[31] This is a strange observation as the use by the Chief Justice of a $400 multiplicand cannot mean anything other than a rejection of that piece of medical evidence and an acceptance, whether rightly or wrongly, of the submission by the respondents that the appellant had a capacity to perform some sedentary work, which in the view of the Chief Justice would earn her $200 a month. With respect, this is clearly a finding of fact which should not be disturbed unless there was absolutely no evidence upon which it could have been founded.

CONCLUSION

The significance of this case lies not in the findings on the facts but the method of assessment used by the Privy Council. The question that will be asked now is how local judges should assess the loss of future earnings: should a straight multiplier be used or should the tables be continued to be used? Nowhere in the judgment do their Lordships disapprove of the use of the tables but they resorted to a straight multiplier which they were more familiar with. Despite their preference and their suggestion for uniformity, the only conclusion that can be drawn is that *both* methods are acceptable and lawful, though judges using either should be well aware of the logic of each to avoid the kind of error made in *Lai Chi Kay's* case.[32]

The distinction between the two methods would have the result that, if a local judge were to opt for the straight multiplier, he would not be bound to follow any local authorities for guidance in the selection of the appropriate multiplier if they had used the tables. With that, most of the existing local authorities will be irrelevant to him. Contingencies of life in England are different from Singapore. This, if

[30] In *Paul* v. *Rendell, supra* n. 20, at p. 581, the Privy Council refused to assess the figures themselves because of their lack of knowledge of employment prospects in South Australia for persons with qualifications comparable to those of the plaintiff and added that *it would not be intellectually honest* to do so.

[31] *Supra* n. 1 at. p, 327,

[32] *Supra* n.7.

accepted, will make the English authorities equally irrelevant.[33] The result is that there will be a dearth of authorities facing any judge who may elect to follow the English approach in Singapore.

Judges are however technically free to use a straight multiplier and with that, avoid being unrealistically scientific about their inherently unrealistic role in making a prediction on the economic future of the claimant. This, as was submitted, is not undesirable. It frees judges somewhat from the artificiality of the whole process of assessment.

SOH KEE BUN

[33] There are however instances where local judges using the tables have resorted to multipliers used in English cases for guidance despite the fact that those multipliers themselves incorporated a discount for contingencies and advance payment.