

COMPENSATION FOR VICTIMS OF CRIMES: SHOULD VICTIMS’ FINANCIAL MEANS AND INSURANCE COVERAGE MATTER?

CRIMINAL PROCEDURE CODE 2010, s 359(1); *PUBLIC PROSECUTOR v ONG ENG SIEW* [2025] SGHC 55

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Under s 359(1) of the Criminal Procedure Code 2010, the court can order an offender to compensate the victim with a sum which the victim would have been able to recover in a civil claim in tort against the offender. The courts have used this useful power extensively, though problems remain. One such problem is seen in *Ong Eng Siew*, where the court declined to make a compensation order. Given the purpose of the compensation system, the court was not correct to hold – in effect – that the purpose of s 359(1) is to benefit only impecunious victims, and that the Prosecution bears the burden of proving that the victim is impecunious. Further, the compensation order should have covered not only medical expenses paid by the victim in cash, but also those paid using Central Provident Fund savings and MediShield Life insurance payouts. This comment also calls for further study of the compensation regime in practice and possible procedural reforms to make it easier for victims to have prosecutors present evidence relevant to the issue of compensation.

I. INTRODUCTION

Often, the victim of crime (especially violent crime) suffers physical injuries and/or damage of or loss to property. The victim would ordinarily have to sue the offender in tort to recover compensation for this. This process can, like all civil litigation, be cumbersome and costly; and even if it were not very much so, one may ask: why should the victim of a crime be made to go through the trouble at all?

That is why section 359(1) of the Criminal Procedure Code 2010 (“CPC”) exists. It requires a criminal court to consider ordering an offender to pay compensation in respect of injuries to “body, character or property” caused by the offence(s). This serves as a “shortcut to the remedy that the victim could obtain in a civil suit against the offender”.¹

This comment considers *Public Prosecutor v Ong Eng Siew*,² where there was no doubt that the offender’s crimes were the cause of the victim’s having incurred medical expenses, and yet the General Division of the High Court – for unusual and (it is respectfully submitted) erroneous reasons – declined to make a compensation order.

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¹ *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 at [56] [*Soh Meiyun*].

² *Public Prosecutor v Ong Eng Siew* [2025] SGHC 55 [*Ong Eng Siew*].

II. THE COMPENSATION LEGISLATION AND ITS PURPOSES

Before we turn to *Ong Eng Siew*, it would be useful to first consider the reasons why the compensation legislation exists.

Criminal conduct is often also tortious. Offences against the human body, such as voluntarily causing hurt, involve committing the tort of trespass to the person. An act of theft is also an act of conversion and/or trespass to goods. If the crime of defamation is committed, it is likely that the tort has been as well. There are also crimes, which, if committed, would amount to a statutory tort: an example is the crime/tort of harassment created by the Protection from Harassment Act 2014.³

Of course, it is not always easy to calculate the precise amount of damages. But, to the extent that at the end of criminal proceedings it is possible to identify and quantify at least some heads of loss caused by the crime, there is no reason why the criminal court should be unable to grant compensation in respect of a tort which it has just found (beyond reasonable doubt, too) to have been committed. Section 359(1) of the CPC empowers the court to do just that, while preserving the victim's right to sue the offender in tort to recover compensation for other heads of loss whose extent has not become clearly apparent in the course of the criminal proceedings.

This statutory "shortcut" is useful for at least five reasons:⁴

- (a) First, it affirms the dignity of the victim vis-à-vis the seriousness of the wrong.⁵ A crime is a wrong which is so serious and unacceptable that the State has seen fit to recognise it as a crime, and for which the State has dedicated public resources to deal with. This being so, to expect the victim to go through the trouble of making a claim to gain recompense would be to add insult to injury.⁶ By contrast, a court's compensation order is at least a "symbolic gesture of reparative justice" to the victim.⁷
- (b) Second, it serves the utilitarian purpose of saving the victim the time and effort of making a civil claim.⁸ Claims in respect of personal injuries and theft cannot be filed in the Small Claims Tribunals,⁹ so even the smallest claims must begin in a Magistrate's Court. There are filing fees to be paid,

³ Protection from Harassment Act 2014 (2020 Rev Ed), s 11 read with ss 3, 4, 5, and 7.

⁴ Compensation orders can also serve to "deprive the criminal of the fruits of his crime": Walter Woon, "Compensation Orders in Criminal Cases" (1992) 4 SAcLJ 359 at 363 [Woon]; however, it is submitted that this function is now primarily served by legislation relating specifically to the confiscation of the proceeds of crime, such as the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (2020 Rev Ed). For other views, see Stanley Yeo, "Compensating Victims of Crime in Singapore" (1984) 26 MLR 219 at 220–223 [Yeo].

⁵ Yeo, *supra* note 4 at 220–221.

⁶ For a contrary view, see Michael Hor, "Clashing Conceptions of the Victim's Role in Singapore's Criminal Process" in Wing-Cheong Chan, ed. *Support for Victims of Crime in Asia* (London: Routledge, 2008) ch 10 at 214 [Hor].

⁷ Wing-Cheong Chan, "Compensation Orders in Singapore, Malaysia and India: A Call for Rejuvenation" in Wing-Cheong Chan, ed. *Support for Victims of Crime in Asia* (London: Routledge, 2008) ch 18 at 378 [Chan].

⁸ Woon, *supra* note 4 at 362.

⁹ Such claims are not "specified claims" as defined in the Small Claims Tribunals Act 1984 (2020 Rev Ed), s 5(1)(a) read with the Schedule.

to say nothing of lawyers' fees and various disbursements; there is no guarantee that the victim-plaintiff will be able to recover the full amount of her costs from the offender-defendant.

- (c) Third, it promotes equality between victims with different characteristics. Not everybody can afford to pay the abovementioned fees upfront, even if they can ultimately be recovered as costs from the offender. Further, some lack the ability to effectively represent themselves in court and navigate the complexities of court processes. The courts have recognised this, remarking that the compensation regime is particularly useful to those who are "impecunious",¹⁰ have "limited to no knowledge of or familiarity with Singapore's legal infrastructure",¹¹ are foreigners who "wish to return to [their] home country speedily",¹² or face "other difficulties in commencing civil proceedings for damages against the offender".¹³
- (d) Fourth, it saves the *defendant* the trouble of defending the civil claim. One may ask why the law should show sympathy for a person who, through his criminal acts, has brought this trouble upon himself. Yet there may be cases in which this is what justice requires, as when the offender is impecunious (which might well be why he has resorted to crime in the first place). We are far from the time of the Roman Empire, where the law deliberately imposed heavy liability on thieves because of "detestation of thieves... in order that they might be exposed to a greater number of actions".¹⁴ Besides, allowing the offender to move on from his misdeeds faster would likely be more conducive to rehabilitation. (In addition, the victim would be spared the potential trauma of seeing the offender in court again.)
- (e) Fifth, it promotes efficiency and conserves public resources. It would be more resource-efficient for the criminal trial judge – who would have become familiar with the facts – to hear and determine the issue of compensation, than to have separate civil proceedings in which a *second* judge has to re-acquaint herself with the facts.¹⁵ Even if the judgment of the criminal court, with the attendant findings of fact, is admissible in evidence,¹⁶ there are administrative overheads involved with having a separate set of civil proceedings.

¹⁰ *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] 5 SLR 438 at [15] [*Tay Wee Kiat*].

¹¹ *Lim Jun Yao Clarence v Public Prosecutor* [2023] 3 SLR 862 at [97] [*Lim Jun Yao Clarence*].

¹² *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [158].

¹³ *Public Prosecutor v AOB* [2011] 2 SLR 793 at [23] [*AOB*].

¹⁴ Gaius, *Institutes* commentary 4, para 4 [translated by T Lambert Mears]; Justinian, *Institutes*, book 4, title 6, para 14 [translated by T Lambert Mears], published in T Lambert Mears, *The Institutes of Gaius and Justinian, the Twelve Tables, and the CXVIIIth and CXXVIIth Novels, with Introduction and Translation* (London: Stevens and Sons, 1882). S P Scott's translation uses the word "hatred".

¹⁵ Benjamin Joshua Ong, "Compensation for Abused Foreign Domestic Workers: A Problem of Enforcement" (2020) 32 SAclJ 1200 at [22] [Ong].

¹⁶ The position under the Evidence Act 1893 (2020 Rev Ed) is not entirely clear. The general rule is that a judgment of a court is only relevant as proof that that judgment exists: s 44; there are statutory exceptions in ss 42–43, but they are not relevant here. While s 45A states that the fact that a person has been convicted of an offence is admissible as evidence that the person committed that offence, it is questionable whether the fact of conviction is admissible as evidence of each and every factual detail of the offence (such as the nature and extent of the harm caused). This is especially so when the court's judgment is only oral and not written.

III. THE COMPENSATION LEGISLATION IN PRACTICE

The pre-2010 equivalent of section 359(1) (and its predecessors) was under-utilised: compensation orders were made only “on occasion”.¹⁷ Since then, there have been various reforms, including (as Chan suggested in 2008) explicitly requiring the court to consider making a compensation order¹⁸ and allowing for compensation for offences “even for damage caused by offences for which the offender is not convicted but were only taken into consideration”.¹⁹ Further, from 2024, if a court declines to order compensation, it must explicitly state why not.²⁰

Since then, while it appears that a comprehensive empirical study of compensation orders in Singapore has not yet been done, the courts have been making compensation orders in a variety of cases. This includes cases involving causing physical injury²¹ (including compensation for pain and suffering²² and for loss of earnings²³), causing psychological harm,²⁴ damaging public property while driving carelessly,²⁵ damaging private property,²⁶ cheating,²⁷ fraudulent trading,²⁸ and labour trafficking.²⁹ The sums awarded are not necessarily small: they are sometimes in the tens of thousands of dollars.³⁰

Of course, we cannot conclude that the decision in *Ong Eng Siew* is necessarily open to question merely because compensation was not ordered. Indeed, there have been several cases where the courts have declined to order compensation for reasons that are, in this writer’s respectful submission, sensible and in line with the principles behind the legislation:

- (a) Where the victim was the offender’s father, the court noted “the father-son relationship” and that “the offence arose from a domestic dispute”.³¹ This decision may be rationalised on the basis that, in the court’s view, the victim *would not* have sued the offender in tort. So, too, when the victim *positively*

¹⁷ Hor, *supra* note 6 at 213. See Yeo, *supra* note 4 at 228–229 for a fuller account of the reasons.

¹⁸ Chan, *supra* note 7 at 371–373.

¹⁹ These are the words of Chan, *supra* note 7 at 371, who first suggested the idea in 2008.

²⁰ Criminal Procedure Code 2010 (2020 Rev Ed), s 359(2A), added by the Criminal Procedure (Miscellaneous Amendments) Act 2024 (Act 5 of 2024).

²¹ *Public Prosecutor v Tan Lee Hoon* [2024] SGMC 28; *Public Prosecutor v Fei Yi* [2022] SGDC 81.

²² *Public Prosecutor v Wang Cheng Xiang and another* [2024] SGMC 17 [Wang Cheng Xiang]; *Public Prosecutor v Vedamoorthy Sivapriya* [2023] SGMC 74 [Vedamoorthy Sivapriya].

²³ *Public Prosecutor v GFY* [2023] SGMC 70.

²⁴ *Public Prosecutor v GEK* [2022] SGMC 25 at [256]–[258] [GEK].

²⁵ *Public Prosecutor v Gulam Fazal-e-Alam s/o Gulam Rasul* [2025] SGDC 11 [Gulam Fazal-e-Alam].

²⁶ *Public Prosecutor v Zhou Dani* [2024] SLR(StC) 546 [Zhou Dani].

²⁷ *Public Prosecutor v Ho* [2024] SGDC 271 [Ho].

²⁸ *Lim Jun Yao Clarence*, *supra* note 11.

²⁹ *Public Prosecutor v Alagar Balasubramanian* [2022] SGDC 304.

³⁰ *Public Prosecutor v Terry Tan-Soo I-Hse (Chenxu Yusi) and another* [2021] SGDC 171 [Terry Tan-Soo I-Hse (Chenxu Yusi)]; *Public Prosecutor v M Akbar bin Mohamed Ibrahim* [2021] SGDC 61 [M Akbar].

³¹ *Public Prosecutor v Teo Wen Jie* [2024] SGDC 173.

declined compensation,³² and when the victims were not “contactable and able to receive the money”.³³

- (b) Where the victim suffered only “minor injuries” and “momentary body pain”³⁴ – which may be explained on the basis that, given the *de minimis* principle, the civil law would proceed as though no tort had been committed or at most nominal damages would be available.
- (c) Where there were already pending civil proceedings taken by the victim against the accused.³⁵
- (d) Where the “compensation is difficult to quantify”.³⁶
- (e) Where the victim had not provided a “credible explanation” for not mitigating her loss of earnings by seeking employment in a timely manner.³⁷

That said, certain aspects of how the courts have dealt with the compensation legislation remain open to criticism; we see these in the following cases where the courts declined to order compensation:

- (a) Where the offender was unable to pay.³⁸ While a compensation order is not meant to be punitive,³⁹ it must be remembered that the court has options such as to allow payment in instalments or through garnishment of wages;⁴⁰ these, it is submitted, should be considered. More generally, there is something to be said about the means through which compensation orders are to be enforced.⁴¹
- (b) Where the offender had cheated the victims of funds, but there was “no evidence that the Accused had received the cheated funds”.⁴² This, with respect, appears to conflate compensation for a wrong with the distinct concept of disgorgement.
- (c) Where the offender had received a heavier sentence for having failed to make restitution, the court considered that ordering compensation would be “tantamount to punishing [the offender] twice for the same thing”.⁴³ This conflates compensation with punishment.

³² *Public Prosecutor v GEH* [2022] SGDC 25 at [93], [122]; *Public Prosecutor v Andrew Lim Jun Kit* [2021] SGMC 35 at [129]. It is submitted that the courts ought to distinguish between cases where the victim did not want compensation at all, and cases where the victim had not ruled out receiving compensation altogether but had declined it because of, for example, an unwillingness to meet the victim in order to receive compensation.

³³ *Terry Tan-Soo I-Hse (Chenxu Yusi)*, *supra* note 30 at [99].

³⁴ *Public Prosecutor v Tong Guangxian* [2024] SGDC 153 at [16], [40].

³⁵ *Public Prosecutor v Edge Mark Alan* [2024] SGDC 13 at [270].

³⁶ *Public Prosecutor v Gabriel See Wei Yang* [2023] SGDC 305 at [346].

³⁷ *Public Prosecutor v Rosdiana binte Abdul Rahim* [2021] SGMC 78 at [172].

³⁸ *Public Prosecutor v G Yoraju s/o A Gopalkrishnan* [2023] SGDC 252 at [55]; *Public Prosecutor v Tan Jun Kai* [2021] SGDC 101 at [28].

³⁹ *Public Prosecutor v Ng Ah Ghoo* [2020] SGDC 184 at [31].

⁴⁰ Criminal Procedure Code 2010 (2020 Rev Ed), s 360.

⁴¹ Ong, *supra* note 15.

⁴² *Public Prosecutor v Lim Beng Kim, Lulu* [2023] SGDC 9 at [61].

⁴³ *Public Prosecutor v Zarifah bte Idris* [2022] SGDC 20 at [35].

- (d) Where (among other reasons) the victim had passed away.⁴⁴ As long as there is some evidence of the extent of harm suffered, the court ought to consider ordering that compensation be paid to the victim's "representative[s]".⁴⁵
- (e) Where the Prosecution did not request a compensation order.⁴⁶ Some weight ought to be given to this, but it is submitted that a distinction should be drawn between cases where the Prosecution has a positive reason for not doing so, and cases where the Prosecution has simply omitted to say something about the matter. In the latter case, the Prosecution's silence is neither here nor there; ultimately, it is for the court to decide whether to order compensation.⁴⁷

IV. THE *ONG ENG SIEW* CASE: COMPENSATION INCORRECTLY DENIED

The recent decision in *Public Prosecutor v Ong Eng Siew*⁴⁸ may now be added to the list just provided. For the following reasons, the decision is an aberration, and, with respect, should not be followed. The High Court was not correct to hold that the *victim's* financial means were relevant to whether a compensation order should be granted.

The offender, Ong Eng Siew, had attempted to murder the victim by slashing and stabbing him in a "vicious and unrelenting" manner.⁴⁹ The victim would have died "but for emergency medical intervention" in the form of two surgeries;⁵⁰ the injuries were, in the court's words, "severe and significant", "extremely serious", and "horrific".⁵¹ The victim's medical bills amounted to slightly over \$11,000. There was no dispute that the offender's crime had caused the victim's injuries, which in turn were the cause of the victim's having to incur those medical expenses. One might think, therefore, that – in keeping with the practice embodied in the cases listed above – the court should have inclined in favour of granting a compensation order. After all, the injuries were clearly serious, and there was no suggestion that the victim did not *want* compensation.

Yet the High Court declined to order the offender to compensate the victim. This was for a reason not encountered in past cases: The High Court stated, citing the decision of the three-judge High Court in *Tay Wee Kiat*, that "the purpose of compensation is to allow a victim, especially an impecunious victim, to recover compensation where a civil suit is an inadequate or impractical remedy".⁵² The High Court then stated: "In this case, it is not alleged that Ku is impecunious; and there

⁴⁴ *Public Prosecutor v Haleem Bathusa bin Abdul Rahim* [2022] SGMC 63 at [102] [*Haleem Bathusa*].

⁴⁵ Criminal Procedure Code 2010 (2020 Rev Ed), s 359(1)(b).

⁴⁶ *Haleem Bathusa*, *supra* note 44 at [102].

⁴⁷ Criminal Procedure Code 2010 (2020 Rev Ed), s 359(1).

⁴⁸ *Ong Eng Siew*, *supra* note 2.

⁴⁹ *Ibid* at [17].

⁵⁰ *Ibid* at [5]–[6].

⁵¹ *Ibid* at [11].

⁵² *Ibid* at [79], citing *Tay Wee Kiat*, *supra* note 10 at [7], which in turn cited *Soh Meiyun*, *supra* note 1 at [56].

is no evidence that a civil suit ‘is an inadequate or impractical remedy’.” Therefore, the High Court declined to make a compensation order.

It is submitted that this reasoning is problematic for the following reasons.

A. *Compensation is Intended to Benefit All Victims, Not Only Impecunious Ones*

First, it appears that the High Court held that it should only exercise its discretion to make a compensation order if a civil suit would be an “inadequate or impractical remedy” because the victim is impecunious. However, the purpose of the compensation regime is not to benefit *only* impecunious victims, and the case law does not limit the discretion in this way. The case law does point out that the compensation provisions will be *especially* useful to impecunious victims,⁵³ and it is true that many of the leading decisions on compensation orders involve crimes against domestic workers who are “often, if not invariably, impecunious”.⁵⁴ It may even be that the compensation provisions were put in place with the motive of helping impecunious victims. But the motive behind the legislation is not the same as its effect, and the courts have in many cases – even in cases not involving migrant domestic workers – simply not considered the victim’s means when deciding whether to order compensation.⁵⁵ If the courts did, then the various benefits of the compensation legislation identified above⁵⁶ would be diminished. It bears repeating that the purposes of compensation orders include conserving public resources (*ie*, judicial time) and saving the victim the time and trouble of commencing separate civil proceedings. Neither of these goals turns on the victim’s means.

The High Court’s remark that “it is not alleged that Ku is impecunious” is also troubling, because it suggests that making such an allegation (which surely must entail supporting it by evidence) is necessary to prompt the court to make a compensation order. This would, it appears, require the Prosecution to bear the burden of proving the victim’s impecuniosity, and in turn the victim to go through the trouble of providing evidence thereof – which may well come across as adding insult to injury. Let it not be forgotten that the purpose of the compensation legislation is to provide a “shortcut” to giving the victim what she would receive were she to commence separate civil proceedings. Such civil proceedings would simply be indifferent to the victim’s financial means.

Further, it would be problematic to require courts to decide whether a victim of a crime is “impecunious”. Victims, particularly of violent crimes, may well have suffered a diminution in earning ability of uncertain magnitude and duration. There are underlying important problems of principle: How is a court to figure out a minimum level of wealth and/or income above which a victim should be put through the expense of civil litigation? Then there is the question of the victim’s

⁵³ *AOB*, *supra* note 13 at [23]; *Soh Meiyun*, *supra* note 1 at [56].

⁵⁴ *Soh Meiyun*, *supra* note 1 at [56].

⁵⁵ *Lim Poh Eng v Public Prosecutor* [1999] 1 SLR(R) 428; *Public Prosecutor v Low Song Chye* [2018] SGMC 68 (on appeal, [2019] 5 SLR 526); *GEK*, *supra* note 24; *Gulam Fazal-e-Alam*, *supra* note 25; *Zhou Dani*, *supra* note 26; *Ho*, *supra* note 27; *M Akbar*, *supra* note 30.

⁵⁶ See note 4 above.

autonomy: is the court to scrutinise the victim's expense patterns and, say, decide that a cash-strapped victim ought to switch from eating avocado toast to kaya toast in order to save enough to pay court fees? It is one thing for a court to hold that an offender (or judgment debtor) should; it is another to impose such a burden on the victim of a crime.

Again – as noted in section II above – the purposes of the compensation legislation include vindicating the victim's dignity, saving both the victim and the offender time and effort, and saving public resources. None of these goals loses its relevance simply because the victim is not impecunious.

B. *The Sum Payable Does Not Matter*

The court also remarked that the victim's "out-of-pocket medical expenses effectively amount to \$210.25". If the point is that this figure is small, its relevance is, with respect, not clear. Courts have made compensation orders for even smaller amounts⁵⁷ – not that the amount matters, given the dignity-vindicating and public-resource-saving rationales for the compensation legislation. Further, given that one of the ideals of civil litigation set out in the Rules of Court 2021 is "cost-effective work proportionate to", among other things, the "amount or value of the claim",⁵⁸ the *smaller* the sum of compensation, the more the law should avoid the hassle of civil litigation, and the more appropriate it would be for a court to simply make a compensation order under s 359(1) of the CPC.

C. *Compensation should be Granted in Respect of Expenses Paid Using Medisave Funds and MediShield Life Payouts*

Moreover, the court ought to have made a compensation order in respect of the full sum of medical expenses, and not only the \$210.25 which the victim had paid in cash.

1. *Medisave*

This point is straightforward in the case of the medical fees paid from the Medisave account. The money in that account, quite simply, is that person's money,⁵⁹ no less than are the sums in the person's bank accounts. The sum might be held in a separate "pocket" from cash and is subject to restrictions on what it can be used for, but the fact remains that it is the person's money. Courts in previous cases have recognised this: in *Public Prosecutor v Elaiyanathan s/o Rajamanikam*, the court

⁵⁷ For example, in *Vance John Doray v Public Prosecutor* [2001] SGM 43, the court awarded \$66.13 in compensation (at [49]).

⁵⁸ Rules of Court 2021, O 3 r 1(2)(c)(iii).

⁵⁹ See *Hazwani bte Amin v Chia Heok Meng* [2018] SGHCR 2 at [52]–[53].

made a compensation order in respect of “the total amount [the victim] had paid out-of-pocket, either in cash or by way of monies from her Central Provident Fund [account]”.⁶⁰

2. *MediShield Life*

A more complex issue concerns the payouts to the victim from MediShield Life (an insurance scheme). The starting point is that the law on statutory compensation ought to follow the same position as in tort law: “where the claimant [victim] had taken out accident insurance, the moneys received by them under the insurance policy were not to be taken into account in assessing the damages for the injury in respect of which they had been paid the insurance moneys”.⁶¹

But matters are not so straightforward. The rationale for the rule just mentioned is that the claimant/victim “paid for the accident insurance with their own moneys, and the fruits of this thrift and foresight should in fairness enure to their and not to the defendant’s [offender’s] advantage”.⁶² By contrast, MediShield Life coverage is compulsory. Moreover, there are tort cases suggesting that the defendant was not liable to compensate the plaintiff for sums paid out of MediShield Life as the MediShield Life coverage is a benefit granted by the state to “all injured citizens and permanent residents in Singapore”.⁶³

The countervailing view is that the defendant *is* so liable because, quite simply, a person’s MediShield Life premiums are paid using Central Provident Fund savings, which, in turn, are that person’s own money. Therefore, the argument goes, payouts from MediShield Life are the “fruits” of the policy, even if having that policy is compulsory.

The issue boils down to a question of principle: Is the chief principle underlying compensation that (a) the victim must be compensated (in which case, the offender need not compensate the victim for what MediShield Life has already compensated for); or that (b) *the offender* ought to pay for the losses caused by his crimes (whether or not those losses are first reimbursed to the victim by an insurance policy)? The general principle “[a]s far as civil claims go” is the former,⁶⁴ but should it make a difference when the claim is for a tort incidental to the commission of a crime?

⁶⁰ *Public Prosecutor v Elaiyanathan s/o Rajamanikam* [2022] SGDC 53 at [88].

⁶¹ James Edelman, Jason Varuhas & Andrew Higgins eds. *McGregor on Damages*, 22d ed (United Kingdom: Sweet & Maxwell, 2024) at [41-155]; see also [10-170]–[10-173] [McGregor]. This approach was applied in *Tan Ching Shuon, Kelvin v Azli bin Omar and another (NTUC Income Insurance Co-operative Limited, intervener)* [2021] SGDC 71 at [12] [Tan Ching Shuon, Kelvin], citing *Minichit Bunhom v Jazali bin Kastari and another* [2018] 1 SLR 1037 at [83] [Minichit Bunhom]. While it may be otherwise if the victim/plaintiff did not pay the insurance premiums, the courts have taken a flexible approach, considering (for example) that, even though an employer paid the premiums, the employee was taken to have paid for the insurance coverage “in kind, through his labour as an employee”: *Tan Ching Shuon, Kelvin* at [12]. For extensive discussion, see *Lo Kok Jong v Eng Beng* [2024] SGCA 28 [Lo Kok Jong].

⁶² McGregor, *supra* note 61 at [41-155], cited in *Minichit Bunhom*, *supra* note 61 at [83].

⁶³ *Tan Ching Shuon, Kelvin*, *supra* note 61 at [19]–[20].

⁶⁴ *Lo Kok Jong*, *supra* note 61 at [102]–[104].

This is a policy question on which the law is not settled. The Court of Appeal has held that, in tort cases, the plaintiff can recover from the defendant sums which were paid out by “insurance”, but not sums paid out by government “subsidies and grants”.⁶⁵ What about government-mandated insurance? In *Lo Kok Jong*, the Court of Appeal did not disturb a decision by a Deputy Registrar of the State Courts that the plaintiff could recover “special damages for medical and transport expenses paid by the [defendant] in cash or through Medisave/Medishield” (emphasis added),⁶⁶ but it appears that that point was not appealed.

Then again, the question does not matter for present purposes. In *Lo Kok Jong*, the Court of Appeal suggested that in the case of government “subsidies and grants”, its view would have been different had there been a statutory scheme for the “recoupment of government benefits from tortfeasors”.⁶⁷ In the case of MediShield Life, such a statutory scheme exists: as the Prosecution in *Ong Eng Siew* pointed out, the victim would have been required to reimburse to his Medisave account and MediShield Life plan any expenses paid from these sources in respect of which the court had granted a compensation order.⁶⁸ Therefore, even if the offender had been held liable to compensate the victim for sums paid out from MediShield Life, the victim would have had to make reimbursement and would not have enjoyed “double recovery” – which is what the Court of Appeal’s concern was.

V. CONCLUSION

Of course, the court has the discretion to decide whether to make a compensation order, but that does not detract from this comment’s argument that in *Ong Eng Siew*, the High Court’s reasoning in deciding how to exercise its discretion was problematic and open to question. To sum up:

- (a) It is certainly true that the compensation legislation is *particularly* beneficial to impecunious and/or less sophisticated victims. It may even be that the legislation was designed with them in mind. But it does not follow that the legislation applies *only* to them. As we have seen, the compensation legislation benefits the victim in non-financial ways. It also benefits the offender and the public interest generally. Therefore, the General Division of the High Court appears to have erred in refusing to make a compensation order in *Ong Eng Siew*.
- (b) Moreover, the measure of compensation for medical expenses should simply have been the expenses to which the victim had been put, regardless of whether those expenses had been paid in cash, using CPF funds, or from an insurance policy (including MediShield Life).

⁶⁵ *Ibid.*

⁶⁶ *Ibid* at [7].

⁶⁷ *Ibid* at [96]–[97], [104].

⁶⁸ *Ong Eng Siew*, *supra* note 2 at [80].

VI. CODA

Two more points about compensation should perhaps be made, though they are not directly engaged by what the court decided in *Ong Eng Siew*.

First, as the law on compensation has been developing and new complexities have arisen,⁶⁹ it may well be time for a comprehensive study on how the Singapore courts approach compensation in criminal cases. This writer has attempted to identify some of the issues above, but this attempt is not to be seen as exhaustive.

Second, there are cases in which the Prosecution did not seek a compensation order “as the victim had not furnished the Prosecution with any details”.⁷⁰ This has been criticised;⁷¹ it may be time for the Legislature to take up Professor Chan’s suggestion of (as is done in Scotland, or at least was at the time Professor Chan wrote) issuing leaflets to victims of crime that provide information about the statutory compensation scheme, together with a “form which asks about the extent of the damage or injury” for the victim to complete and hand to prosecutors (who will in turn hand it to the judge).⁷²

On this last note: Whatever medical expenses Ku had or had not incurred, he had clearly experienced pain and suffering, for which tort law provides a remedy, and for which criminal courts have granted compensation.⁷³ The court did not consider this issue, perhaps because the Prosecution appears not to have sought compensation *for pain and suffering*.⁷⁴ While this mirrors the usual practice in tort cases – in which courts only consider heads of damage that have been pleaded – it raises further questions relating to whether the Prosecution’s submissions necessarily mirror the victim’s wishes. When considering these questions, one must also bear in mind that the legislation requires the court to consider on its own motion making a compensation order even if the Prosecution does not explicitly request one.

⁶⁹ See note 2 above.

⁷⁰ *Public Prosecutor v Zareena Begum d/o P A M Basheer Ahamed* [2021] SGDC 140 at [173].

⁷¹ Chan, *supra* note 7 at 372, citing Yeo, *supra* note 4 at 229.

⁷² Chan, *supra* note 7 at 373.

⁷³ Wang Cheng Xiang, *supra* note 22; Vedamoorthy Sivapriya, *supra* note 22.

⁷⁴ *Ong Eng Siew*, *supra* note 2 at [78].