

Increase in Damages due to the Introduction of Actuarial Tables

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Introduction

1. From 1 April 2021 onwards, the assessment of damages in the High Court for personal injury and death claims has been conducted on the basis of actuarial tables (“**the Actuarial Tables**”). This is regardless of when the incident forming the subject matter of the dispute occurred and when the legal claim was initiated.
2. The Actuarial Tables were developed by the Personal Injury (Claims Assessment) Review Committee and published in *Actuarial Tables with Explanatory Notes for use in Personal Injury and Death Claims* (Academy Publishing, 2021) (“**Actuarial Tables Guide**”).
3. Crucially, the Actuarial Tables are likely to result in increased multiplier values and hence increased damages awarded to successful claimants.

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The Approach to Calculating Damages

4. The Court applies the **multiplier-multiplicand approach** to determine the quantum of certain “big ticket” items of damages in personal injury and death claims: -
 - a. in non-fatal personal injury claims, it is used to determine the quantum of damages for future medical expenses, cost of future care and loss of future earnings; and¹
 - b. in fatal personal injury claims, it is used to determine the quantum of damages for loss of inheritance and dependency claims.²
5. The **multiplicand** represents the quantum of loss that the claimant is expected to suffer annually in the future.
6. To obtain the quantum of damages, the Court multiplies the multiplier and the multiplicand, making the calculation of the multiplier a crucial factor in the eventual outcome.

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¹ *Quek Yen Fei Kenneth v Yeo Chye Huat* [2017] SGCA 29 at [42]. This multiplier-multiplicand approach was followed in *Yap Boon Fong Yvonne v Wong Kok Mun Alvin* [2018] SGCA 80 at [72] in relation to calculating Loss of Earning Capacity, and *Lua Bee Kiang v Yeo Chee Siong* [2018] SGCA 74 at [51] in relation to calculating the Loss of Future Earnings

² *Zhu Xiu Chun (alias Myint Mint Kyi) v Rockwills Trustee Ltd* [2016] SGCA 52 at [115] for loss of inheritance, and [14] and [92] for dependency; *Armstrong, Carol Ann v Quest Laboratories Pte Ltd* [2019] SGCA 75 at [198]-[199].

7. The **multiplier** is a value used to determine the present value of the lump-sum compensation that a claimant should justly receive to compensate for the future periods of loss. Future periods of loss are measured from the date of the assessment of damages to either the date of the claimant's death (for a lifetime multiplier) or the claimant's retirement (for an earnings multiplier).³
8. The multiplier assumes that the lump-sum is invested upon receipt to produce investment returns, and assumes that there exists the possibility of the claimant passing on prematurely or other vicissitudes of life affecting the claimant's period of future loss.⁴
9. Previously, the multiplier was determined by either comparing the present case before the Court to precedents with similar fact patterns ("**the Precedent Approach**") or applying a fixed mathematical formula ("**the Arithmetic Approach**").⁵ The Court would often apply both approaches to cross-check the results.⁶
10. The Precedent Approach and the Arithmetic Approach were based on the assumptions of a certain prevailing fixed deposit interest rate⁷ and the average population mortality at the time when the judgements were delivered. However, these approaches gradually became outdated as socioeconomic circumstances shifted.⁸
11. The Actuarial Tables were developed in response using updated economic, financial and mortality data. The multiplier value is represented by the intersection between the following variables reflected on the x- and y-axis of the Actuarial Tables: -
 - a. the claimant's age at the start of payments, which is the claimant's age at the time of the hearing (reflected on the y-axis); and
 - b. the claimant's age at the end of payments (reflected on the x-axis).
12. The Court can nonetheless proceed to adjust the multiplier value away from the value indicated by the Actuarial Tables to take into account other circumstances that are specific to the case before it.⁹

Increase in multiplier values

13. As a result of the Actuarial Tables incorporating updated economic, financial and mortality data, the multiplier values produced will often be larger compared to the values obtained under the former Precedent and Arithmetic Approaches.
14. Just as an experiment, we used the cases surveyed in *Quek Yen Fei Kenneth v Yeo Chye Huat* [2017] SGCA 29 at [72] as examples (although not all these cases are medical negligence cases, the same principles apply when it comes to assessing damages). Compared to the actual multiplier values obtained under the former Precedent and Arithmetic Approaches, the multiplier values obtained under the Actuarial Tables were generally larger (this calculation assumes that the Court does not adjust a multiplier value away from the

³ *Quek Yen Fei Kenneth v Yeo Chye Huat* [2017] SGCA 29 at [43] (see *Kemp & Kemp: The Quantum of Damages* (William Norris QC gen ed) (Sweet & Maxwell, Looseleaf Ed, 2009, Release 137 (October 2015)) at paras 10-009.1–10-009.2)

⁴ *Actuarial Tables Guide* at v

⁵ *Quek Yen Fei Kenneth v Yeo Chye Huat* [2017] SGCA 29 at [50]

⁶ *Lai Wai Keong Eugene v Loo Wei Yen* [2014] SGCA 31 at [20]-[22]

⁷ *Lai Wai Keong Eugene v Loo Wei Yen* [2014] SGCA 31 at [32]-[38] and [55]; *Actuarial Tables Guide* at iii

⁸ *Lai Wai Keong Eugene v Loo Wei Yen* [2014] SGCA 31 at [32]-[38];

⁹ *Actuarial Tables Guide* at ix

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value indicated by the Actuarial Tables). This has resulted in the quantum of damages increasing by **13% to 62%**.

| Case | Actual multiplier(s) using Precedent/ Arithmetic Approaches | Multiplier(s) if Actuarial Tables used | Actual damages awarded | Damages awarded if Actuarial Tables used | % increase in damages |
|---|---|---|------------------------|--|-----------------------|
| <i>Lai Wai Keong Eugene v Loo Wei Yen</i> [2014] SGCA 31 | 13 15 | 18.96 22.17 | \$1.74 mil | \$2.81 mil | 62 |
| <i>AOD v AOE</i> [2015] SGHC 272 | 8 9 14 14 14 | 19.24 14.66 14.68 20.93 20.93 | \$1.64 mil | \$2.23 mil | 36 |
| <i>Toh Wai Sie v Ranjendran s/o G Selamuthu</i> [2012] SGHC 33 | 9 9 9 11 11 | 9 9 9 14.55 14.55 | \$1.43 mil | \$1.69 mil | 18 |
| <i>Ng Song Leng v Soh Kim Seng Engineering & Trading Pte Ltd</i> [1997] SGHC 289 | 15 17 | 22.59 23.86 | \$0.95 mil | \$1.27 mil | 34 |
| <i>Tan Juay Mui v Sher Kuan Hock</i> [2012] SGHC 100 | 17 | 23.58 | \$1.05 mil | \$1.27 mil | 21 |
| <i>Poh Huat Heng Corp Pte Ltd v Hafizul Islam Kofil Uddin</i> [2012] SGCA 31 | 17 18 | 23.87 26.93 | \$1.00 mil | \$1.24 mil | 23 |
| <i>Lee Wei Kong v Ng Siok Tong</i> [2012] SGCA 4 | 20 20 | 24.95 27.57 | \$0.96 mil | \$1.14 mil | 19 |
| <i>TV Media Pte Ltd v De Cruz Andrea Heidi</i> [2004] SGCA 29 | 17 | 27.40 | \$0.61 mil | \$0.69 mil | 13 |
| <i>Quek Yen Fei Kenneth v Yeo Chye Huat</i> [2017] SGCA 29 | 20 20 | 25.48 27.41 | \$0.45 mil | \$0.55 mil | 21 |
| <i>Lee Mui Yeng v Ng Tong Yoo</i> [2016] SGHC 46 | 10.5 | 19.48 | \$0.23 mil | \$0.29 mil | 25 |

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Conclusion

15. The adoption of Actuarial Tables represents a sea change in the manner in which the quantum of damages in personal injury and death cases is calculated. Multiplier values and the quantum of damages are expected to increase.
16. Our practical tips for doctors in the private sector are as follows: -
 - a. doctors should consider whether they should **increase the maximum limit** of the quantum of damages covered by their professional indemnity insurance policies (if there is a limit); and
 - b. doctors should ensure that they have a **separate insurance policy** covering possible negligence by their clinic, staff and nurses (apart from doctors' own professional indemnity insurance policies). We have noticed that unlike hospital and large practices who have separate insurances policies covering their institution, staff and nurses, many small clinics do not have a separate insurance policy covering their clinic, staff and nurses.

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