

**IN THE INTERMEDIATE COURT OF BRUNEI DARUSSALAM
HOLDEN AT BANDAR SERI BEGAWAN**

ICCS/49/2019

Ruhul Amin (BGIC NO 51-343779)	...	Plaintiff
And		
Lau Choon Yung (trading under the name and style of AIDAS CONTRACTOR)	...	1 st Defendant
Aidas Contractor (Business Registration No P00077781) (sued as a firm)	...	2 nd Defendant
Daelim Industrial Co. Ltd (Company Registration No RF0000870)	...	3rd Defendant

Hazarena bte POKSJ DP Hj Hurairah
Intermediate Court Judge

Negligence - Workplace Accident - Personal Injury - Assessment of Damages - Quantum - Pain, Suffering and Loss of Amenities - Fractures - Permanent Deformity - Residual Disability - Limp - Scarring - Psychological Injury - Emotional Distress - Absence of Expert Evidence - No Separate Award - Special Damages - Loss of Earnings - Repatriation - Causation - Proof of Loss - Mitigation - Loss of Earning Capacity - General Damages - Labour Market Disadvantage - Permanent Handicap - Medical Expenses - Future Medical Expenses - Litigation Expenses - Costs

Cases Cited:

- *Allan Bernardo Castellano & Ors v Samuel Milan & Ors* (HCCS 118 of 1997)
- *Sayed Late Momin Sheikh v Syarikat Haji Abd. Hamid Haji Bakar* (HCCS No. 310 of 2004)
- *Chan Choi Fook v Spennex Stainless Steel Industries Sdn Bhd* [1994] JCBD 208
- *Linda Rosana v Chen Kim Siong* (HCCS No. 23 of 2005)
- *Imam Sunardi v Teo Hock Chuan* (ICCS No. 152 of 2017)
- *Muliadi bin Awg Mohsin v Wang Meng Peck & Anor* (HCCS No. 139 of 2002)
- *Bijun Bin Kalu v Chalor Mokkosong, Sanit Tonam v Pahayat Sdn Bhd* (HCCS No. 59 of 2006)

JUDGMENT ON ASSESMENT OF DAMAGES

Introduction

1. Having found the 3rd Defendant liable for the Plaintiff's injuries, the remaining issue concerns the appropriate assessment of damages. Judgment in default had been entered against the 1st and 2nd defendant.
2. The Plaintiff, Md Ruhul Amin, a Bangladeshi national, was employed as a construction worker on the Temburong Bridge Project (also known as the SOAS Bridge) in Brunei. On 23 January 2018, while taking a short break at the Serasa Project site, he was seriously injured when a spiral-shaped metal wire weighing approximately 200 kilograms unexpectedly slid down and struck his left leg. This object was being prepared for loading onto a barge. The impact caused Ruhul to fall, during which he experienced a brief loss of consciousness. Coworkers at the site assisted in removing the heavy object and evacuated him from the scene. He was subsequently taken to RIPAS Hospital by his site foreman.
3. Following emergency treatment, medical imaging confirmed that Ruhul sustained a deep wound on the lateral aspect of his left leg and segmental fractures to both the tibia and fibula. He underwent surgical intervention the next day and was later subjected to skin grafting procedures on 7 February 2018. Ruhul was discharged from hospital care on 13 February 2018 with instructions for assisted mobility using crutches. His final medical review in Brunei, dated 13 March 2018, during which the doctor recorded limited ankle movement and incomplete fracture healing. Ruhul returned to Bangladesh on 27 March 2018.
4. Ruhul Amin seeks compensation for personal injury, medical expenses, and loss of future earnings. His claims include loss of physical function, inability to work, psychological trauma, and a total disruption of livelihood. Prior to the injury, Ruhul earned BND 23.00 per day with additional overtime, enjoyed employer-paid return tickets to Bangladesh, and resided in employer-supported accommodations. He has stated that, absent the accident, he intended to work in Brunei until the age of 60 to support his family.
5. The judgment only pertains to the 3rd defendant as Judgment in default has been entered against the first and second defendants.

Evidence and Witnesses

6. The plaintiff's cases consisted of documents and exhibit and evidence. For the purposes of this judgment I shall only re-visit the witnesses who gave evidence on quantum. The 3rd defendant did not call any witnesses to give evidence on the issue of quantum.

Dr. Ketan Chandrashekhar Pande (PW1)

7. Dr. Ketan Chandrashekhar Pande, herein referred to as Dr. Pande is a consultant orthopaedic surgeon employed by the Ministry of Health (MOH) at RIPAS Hospital and also served as a visiting consultant at Jerudong Park Medical Centre (JPMC). He has been

practicing medicine since 1988 and in Brunei since 2005. His qualifications include degrees in medicine and orthopaedics from India and the UK. A detailed resume is attached as exhibit "DKCP-1".

Reference was made to the following:

8. A report based on his colleagues' findings (referenced on page 5 of Plaintiff's Document bundle 1).
9. A report based on his Zoom examination of the Plaintiff on 8/4/2020 (referenced on page 25 of Plaintiff's Document bundle 2). (Note: The AEIC previously mentioned the Zoom assessment date as 8/4/2022).
10. Dr Pande confirmed under oath that he had produced a report as a Visiting Consultant Orthopaedic Surgeon at Jerudong Park Medical Centre. The report, based on a Zoom-based physical and verbal assessment conducted on 8 April 2022, and provided a detailed insight into Ruhul's current condition and long-term prognosis. Dr. Pande noted multiple physical complaints including chronic pain in the left leg and ankle, restricted joint mobility, inability to squat or kneel, difficulty climbing stairs, and loss of functional independence. Ruhul also reported difficulty in engaging in religious activities, physical intimacy, and returning to any form of labour-intensive employment.
11. Dr. Pande's resulting medical report, encompassing diagnosis, prognosis, and permanent disabilities, is included at pages 25–32 of the Plaintiff's Supplementary Bundle of Documents, dated 7 December 2023.

Clinical Findings by Dr. Pande

12. Following the accident, Dr. Ketan Pande examined Ruhul Amin and documented the extent of his injuries. Initially, Ruhul sustained a large wound on the lateral aspect of his left leg, measuring 7 cm by 3 cm, along with a segmental fracture of both the left tibia and fibula. Surgical intervention began promptly; on 24 January 2018, he underwent intramedullary (IM) nailing of the tibial fracture, followed by a skin graft procedure on 7 February 2018 to address the wound. He was discharged from hospital care on 13 February 2018, using crutches for mobility.
13. By March 2018, post-treatment assessments revealed a mixed recovery. While Ruhul exhibited a good range of motion in his left knee, his left ankle movement remained limited. X-rays indicated that although the implants were properly positioned, there was still no significant evidence of bone healing. Ruhul returned to Bangladesh on 27 March 2018. Prior to his injury, he was a healthy and active construction site worker who participated in sports and managed household responsibilities. He was also the primary supporter of his extended family, including his parents, wife, and a sibling.

14. Despite the medical interventions, by August 2018, Ruhul's recovery was deemed incomplete. Imaging showed slow fracture healing, shortening of the tibia, and malalignment of the fibula. Dr. Pande confirmed that these structural changes were permanent. Consequently, Ruhul developed a series of enduring functional impairments. He now walks with a permanent limp, experiences limited flexion in the left knee, and suffers from restricted dorsiflexion of the left ankle. He is unable to squat, sit cross-legged, or climb stairs, and cannot use a squatting toilet. Physical measurements reveal significant muscle wasting: his left thigh circumference is 4 cm smaller, and his left lower leg is 5 cm smaller than the right.

Prognosis and Long-Term Disability

15. According to Dr. Pande's expert opinion, Ruhul Amin suffers from permanent orthopaedic disability as a direct result of the workplace accident. Dr. Pande's physical examination confirmed significant muscle wasting in the left thigh and calf, visible surgical and graft-related scarring, and restricted mobility in both the knee and ankle joints. Radiographic images reviewed from May and August 2018 revealed delayed healing, tibial shortening, and fibular malalignment. These structural deformities were considered permanent.

16. Dr Pande then went on to state that the injury has drastically impacted Ruhul's daily life and occupational abilities. He can no longer perform manual labour, climb ladders, or ride a motorcycle. He is unfit for construction work and remains unemployed, relying heavily on family support. Chronic pain persists, requiring ongoing use of painkillers such as Panadol.

17. In addition to his physical impairments, Ruhul has suffered substantial psychological and social consequences. He reports frequent nightmares and flashbacks related to the accident, struggles with disturbed sleep, and experiences emotional trauma and anxiety. His ability to engage in intimacy and perform religious practices, such as prayer that requires kneeling, has been severely hindered. Fear of returning to any form of physical work and a profound loss of self-esteem have further eroded his earning capacity and overall quality of life.

18. Dr Pande then prepared a diagnostic and prognostic report based on hospital records and follow-up evaluations. The relevant findings and observations were documented in a medical report included in the Plaintiff's Bundle of Documents ("BOD 1").

19. Dr Pande reviewed the Plaintiff's full medical history and records stored within the Bru-HIMS system and referred to medical notes from the Accident & Emergency Department at RIPAS Hospital, dated 23 January 2018.

20. Despite the Court noting that liability and quantum (amount of damages) were being dealt with together, the Defence Counsel did not cross-examine Dr. Pande on the injuries or quantum at this stage, reserving the right to make submissions later if liability is found

against their client. The medical evidence was not challenged by the Defendant. Defence Counsel stated they are not disputing the Plaintiff's injuries themselves but disputed that the injuries occurred at the specific project site mentioned in the case. Indeed, Defence Counsel expressly stated during the trial that the Defendant did not dispute the nature or extent of the Plaintiff's injuries.

21. The evidence establishes that the Plaintiff sustained a significant wound measuring approximately 7 cm by 3 cm together with segmental fractures of the left tibia and fibula. He required surgical fixation by intramedullary nailing and subsequently underwent a skin graft procedure. Despite treatment, healing was incomplete and resulted in permanent shortening of the tibia, malalignment of the fibula, muscle wasting, restricted movement of the knee and ankle, and a permanent limp.
22. Dr. Pande further concluded that the Plaintiff suffers from permanent orthopaedic disability directly attributable to the accident. The Plaintiff is unable to squat, kneel, sit cross-legged, climb ladders, ride a motorcycle, or perform the type of manual labour he undertook before the accident. Chronic pain persists and affects his daily functioning. The evidence sought to show that the Plaintiff has suffered significant psychological and social consequences arising from his disability, including anxiety, disturbed sleep, loss of confidence, and reduced enjoyment of life.

Ruhul Amin (the plaintiff)

23. Ruhul Amin affirmed in his affidavit that he is a Bangladeshi citizen who initially worked for AIDAS Construction Sdn Bhd in Brunei. Upon arriving in Brunei, he lived in company-provided accommodations and was assigned work through AIDAS. Later, he began working under BT Forwarding Sdn Bhd, which acted as a subcontractor for Daelim Industrial Co Ltd, the main contractor for the Temburong Bridge project.
24. On 23 January 2018, while working at the casting yard area, he suffered an accident that severely injured his leg. After the accident, he was assisted by colleagues and supervisors and was transported to RIPAS Hospital for treatment.
25. Ruhul Amin also gave evidence regarding the effect of the injuries upon his daily life and ability to work. His evidence was generally consistent with the medical findings of Dr Pande and was not materially challenged by the Defendant on the issue of quantum.
26. Ruhul testified that before the accident he was healthy, physically active and worked as a labourer carrying out demanding manual work on construction sites. His duties involved loading and unloading heavy materials, lifting equipment and performing physically strenuous tasks. He was able to work without restriction and regularly participated in recreational activities and sports.

27. Following the accident, Ruhul stated that he experienced significant pain in his left leg and underwent surgery and subsequent medical treatment. Although the fractures eventually healed, he continued to experience pain, weakness and difficulty using his left leg. He stated that he was no longer able to walk normally and had developed a permanent limp.
28. Ruhul further explained that he experiences difficulty standing or walking for prolonged periods. Activities which he previously took for granted, such as climbing stairs, squatting, kneeling, running and carrying heavy objects, have become difficult or impossible. He testified that he can no longer perform the type of construction work which he undertook before the accident and remains restricted in the range of employment available to him.
29. In addition to the physical limitations, Ruhul described the impact of the injuries on his personal life. He stated that he is unable to participate in sports and recreational activities that he previously enjoyed, including football, cricket, badminton and jogging. He also experiences difficulty riding a motorcycle and performing household tasks involving climbing or lifting.
30. Ruhul further testified that his injuries affect his ability to perform religious practices requiring kneeling and sitting in certain positions. He also spoke of the emotional consequences of the accident, including concerns about his future, anxiety regarding his ability to earn a living, and the psychological effect of being unable to provide for his family in the same manner as before.
31. Of particular significance was Ruhul's evidence concerning his employment. He stated that prior to the accident he earned his livelihood through manual labour and intended to continue working in Brunei for many years. Following the accident, however, he was eventually repatriated to Bangladesh and was unable to resume the same type of physically demanding work. He testified that his present employment opportunities are significantly reduced and that he earns substantially less than he did before the accident.
32. I found Ruhul's evidence regarding the ongoing effects of his injuries to be broadly credible. His account was consistent with the objective medical evidence, including the findings of permanent disability, restricted mobility, muscle wasting and chronic pain recorded by Dr Pande. While some aspects of his evidence relating to future earnings necessarily involve speculation, his description of the physical and practical consequences of the accident was supported by the medical evidence and I accept that the injuries have had a substantial and continuing impact upon his quality of life, employability and earning capacity.

Damages

33. The purpose of an award of damages in personal injury cases is to place the injured party, so far as money can do so, in the position he would have been in had the tort not occurred. In assessing damages, the Court considers the nature and extent of the injuries sustained,

the pain and suffering endured, the impact of the injuries on the Plaintiff's enjoyment of life, the permanence of any disability, and any resulting loss of earning capacity.

34. The Court has considered the medical evidence of Dr. Pande, the Plaintiff's own evidence concerning the effect of the injuries on his daily life, together with the authorities cited by counsel on quantum.

35. The Plaintiff seeks damages under the following heads:

Head of Damage	Amount Claimed (BND)
Pain and Suffering	57,000
Loss of Amenities	22,000
Loss of Earnings as a Labourer (Future Earnings)	111,600
Loss of Earning Capacity	30,000
Special Damages	37,490 (approximately)
Trial-related Expenses	6,088.91
Interest	As claimed
Costs	To be taxed if not agreed

A. General Damages

36. For the purposes of assessing general damages, the Court should not simply adopt the Plaintiff's categorisation of the injuries. A number of the alleged injuries overlap significantly, and there is a real risk of double recovery if each physical consequence is compensated separately. The proper approach is first to identify the injuries established by the medical evidence and then determine which of those injuries are merely manifestations or consequences of a broader underlying injury.

37. The medical evidence establishes that the Plaintiff sustained a serious orthopedic injury to his left lower limb. This comprised a segmental fracture of the left tibia, a fracture of the left fibula, soft tissue injury requiring skin grafting, tibial shortening and fibular malalignment. In addition, the Plaintiff suffered a wound to the lateral aspect of the left leg measuring approximately 7 cm by 3 cm. The evidence further demonstrates that he continues to suffer a number of residual disabilities, including limitation of flexion of the left knee, limitation of dorsiflexion of the left ankle, a permanent limp, inability to squat, kneel or sit cross-legged, difficulty climbing stairs, inability to climb ladders, and inability to run or jump. He is also unable to use a squatting toilet.

38. The Plaintiff further suffers from muscle wasting of the left thigh and left calf together with residual surgical and skin graft scarring. In addition, he reports disturbed sleep, nightmares, flashbacks of the accident, anxiety regarding future employment, fear of returning to heavy work and reduced self-esteem. The evidence also shows that his injuries have affected various aspects of his lifestyle, including his ability to participate in

sports and recreational activities, ride a motorcycle, perform certain aspects of Islamic prayer, engage in intimacy and generally enjoy life as he did prior to the accident.

39. In assessing damages, I consider that a number of these matters should be grouped together under broader heads of loss. The principal injury is the Plaintiff's orthopedic injury. The segmental tibial fracture, fibular fracture, tibial shortening, fibular malalignment, restrictions of knee and ankle movement, permanent limp, inability to squat, kneel or sit cross-legged, difficulty climbing stairs, inability to climb ladders and inability to run or jump are all manifestations of the same underlying orthopedic injury. They should therefore be treated as a single composite injury attracting one award for pain, suffering and disability. It would be inappropriate to award separate sums for the fractures, limp, ankle restriction, knee restriction and inability to squat, as these are not distinct injuries but consequences of the same injury.
40. Separate consideration may, however, be given to the wound, skin grafting and resulting scarring. The original wound, the skin graft procedure, residual scarring and cosmetic disfigurement constitute a distinct aspect of the Plaintiff's injuries and are not merely part of the orthopedic disability. Accordingly, these matters may properly be compensated under a separate head for scarring and disfigurement.
41. The Plaintiff also seeks a separate award for muscle wasting affecting the left thigh and calf. There is force in the argument that the muscle wasting should not be treated as a distinct injury. The evidence suggests that it is largely a consequence of the permanent orthopedic injury and the reduced use of the affected limb. It is therefore one of the physical manifestations of the fracture injury rather than a separate injury in its own right. Unless the evidence demonstrates a distinct functional impairment attributable specifically to the muscle wasting, there is a substantial risk of double counting if a separate award is made. In my view, the muscle wasting is more appropriately subsumed within the award for the orthopedic injury.
42. The medical evidence of Dr Pande supports the Plaintiff's contention that the injuries are permanent. The Plaintiff continues to suffer chronic pain, restricted mobility, shortening of the tibia, fibular malalignment and a permanent limp. He remains unable to squat, kneel, climb ladders, run or undertake heavy physical work. I find that these matters ought to be reflected within the award for the orthopedic injury.
43. The Plaintiff separately claims BND22,000 for loss of amenities. The claim is based on the continuing restrictions arising from the injuries, including pain and discomfort in the left leg and ankle, restricted ankle movement, inability to run, jump or walk long distances, inability to squat or sit cross-legged, inability to use squatting toilets, difficulty climbing stairs, inability to climb ladders, inability to ride a motorcycle, difficulty performing Islamic prayers requiring kneeling, inability to participate in sports and recreational activities such as cricket, football, badminton and jogging, difficulty with intimacy, disturbed sleep,

nightmares and flashbacks of the accident, and anxiety regarding future employment and earning prospects.

44. In my view, these matters are more properly characterised as loss of amenities rather than separate injuries. The inability to participate in sports, ride a motorcycle, perform do-it-yourself activities, carry out religious practices in the manner previously enjoyed, engage in intimacy and generally enjoy life are all consequences of the Plaintiff's permanent disability. They reflect a diminution in the quality and enjoyment of life rather than separate physical injuries.
45. As for the Plaintiff's complaints of nightmares, flashbacks, anxiety, fear of returning to heavy work and disturbed sleep, there is no psychiatric evidence before the Court and no diagnosed psychiatric disorder. Whilst these matters may properly be taken into account in assessing the overall impact of the injuries and the Plaintiff's loss of amenities, they would not ordinarily justify a separate award in the absence of medical evidence establishing a recognised psychiatric condition.
46. In *Allan Bernardo Castellano & Ors v Samuel Milan & Ors (HCCS 118 of 1997)*, the Court was concerned with a serious lower limb injury which resulted in permanent residual disability. The Court did not assess each individual symptom separately. Rather, it considered the overall effect of the injury on the plaintiff's mobility, function and enjoyment of life. The significance of the decision lies in the Court's recognition that fractures, residual deformity, pain, restricted movement, gait disturbance, and difficulty performing ordinary activities, are often manifestations of a single underlying orthopedic injury.
47. The Court therefore approached the assessment globally rather than by awarding separate figures for each consequence.
48. The approach taken in *Allan Bernardo Castellano* is relevant here. The Plaintiff's segmental tibial fracture, fibular fracture, tibial shortening, fibular malalignment, restricted knee movement, restricted ankle movement, permanent limp, inability to squat, kneel or sit cross-legged, and inability to run or climb ladders all stem from the same underlying injury to the left leg. Following *Allan Bernardo Castellano*, these matters should be considered together under a single award for pain, suffering and disability rather than fragmented into separate heads.
49. The case also supports the proposition that the Court should focus on the practical effect of the injury on the Plaintiff's life. Here, the Plaintiff was a manual worker who can no longer undertake heavy physical work and whose mobility is permanently compromised. Those functional consequences are highly material to the assessment.
50. Accordingly, the Plaintiff's claim may be more appropriately assessed under four principal heads. The first is pain and suffering arising from the orthopedic injury, including the tibia

and fibula fractures, resulting deformity, restricted movement, chronic pain, limp and associated muscle wasting. The second is scarring and disfigurement, including the wound, skin graft and residual scarring. The third is loss of amenities, including the restrictions on sporting, recreational, religious and personal activities and the general reduction in enjoyment of life. The fourth concerns economic loss, comprising past loss of earnings and future loss of earnings or earning capacity. Such an approach avoids overlap and double recovery whilst accurately reflecting the true nature and extent of the Plaintiff's injuries and their long-term consequences.

1. Pain and suffering arising from Orthopedic Injuries

51. The Plaintiff suffered a segmental fracture of the left tibia requiring intramedullary nailing together with a fracture of the left fibula which subsequently healed with malalignment. The medical evidence further establishes deformity of the lower one-third of the tibia, limitation of flexion of the left knee, limitation of dorsiflexion of the left ankle, tibial shortening, fibular malalignment, muscle wasting and a permanent limp. These injuries have resulted in permanent orthopedic disability affecting the Plaintiff's mobility and ability to perform ordinary daily activities.
52. The Plaintiff relied principally upon *Sayed Late Momin Sheikh v Syarikat Haji Abd. Hamid Haji Bakar* (HCCS No. 310 of 2004), which I accept is the authority most comparable to the present case. In that case, the plaintiff suffered a fracture of the lower one-third of the tibia and fibula together with residual disability, limitation of ankle movement and the prospect of future degenerative changes. The Court awarded BND25,000 in 2006 for the orthopedic injury. The Plaintiff submitted that, when adjusted for inflation, the equivalent value would be approximately BND42,608.26.
53. The relevance of *Sayed Late Momin Sheikh* lies in the similarity of the underlying injury. As in the present case, the claimant suffered fractures of the tibia and fibula resulting in permanent residual disability and long-term impairment of mobility. Whilst no two cases are identical, the decision provides a useful benchmark for assessing the pain, suffering and loss of function associated with serious lower limb fractures.
54. The defendant relied on *Chan Choi Fook v Spennex Stainless Steel Industries Sdn Bhd* [1994] JCB 208. That case emphasises that damages for pain and suffering must reflect not merely the physical injury sustained but also the continuing disability and loss of function arising from it. The Court observed that regard must be had to the severity of the original injury, the permanence of the disability, the extent to which normal activities have been curtailed and the impact of the injury upon the plaintiff's future life.
55. Those principles are directly applicable in the present case. The Plaintiff's injuries are not confined to healed fractures. The evidence of Dr Pande establishes permanent orthopedic sequelae including shortening of the tibia, fibular malalignment, restriction of knee and ankle movement, muscle wasting and a permanent limp. More than six years after the

accident, the Plaintiff continues to suffer substantial physical limitations. His ability to walk, climb stairs, engage in sports, perform religious activities requiring kneeling and undertake ordinary daily activities has been permanently affected.

56. The Plaintiff can no longer squat, kneel, sit cross-legged, climb ladders, run, participate in sports or use a squatting toilet normally. He also experiences difficulty performing aspects of Islamic prayer which require kneeling and prolonged flexion of the lower limbs. These limitations are not separate injuries but manifestations of the permanent orthopaedic disability arising from the fractures sustained in the accident.
57. Considering the nature of the fractures, the surgical intervention required, the permanent limp, continuing pain, muscle wasting, restricted mobility and the significant impact upon the Plaintiff's quality of life, I consider that a substantial award under this head is justified. Having regard to *Sayed Late Momin Sheikh* and the principles articulated in *Chan Choi Fook*, an award within the range of BND35,000 to BND50,000 would be supportable. The Plaintiff's proposed figure of BND42,600 falls within a reasonable range when considered against the authorities and the permanent consequences of the injury and as such award the sum of **BND42,600.00** under this head.

2. Scarring and Disfigurement

58. The Plaintiff also seeks compensation for the wound sustained to his left leg, the skin grafting procedure which became necessary as a result of the injury and the permanent residual scarring which remains. The medical evidence shows that the Plaintiff suffered an approximately 8 cm wound to the lateral aspect of the left lower leg together with significant soft tissue injury requiring skin grafting. The Plaintiff has been left with visible surgical and graft-related scarring which is permanent in nature.
59. In support of this aspect of the claim, the Plaintiff relied upon *Sayed Late Momin Sheikh v Syarikat Haji Abd. Hamid Haji Bakar and Linda Rosana v Chen Kim Siong* (HCCS No. 23 of 2005).
60. In *Sayed Late Momin Sheikh*, the Court awarded BND10,000 in 2006 for significant scarring and skin loss to the thigh associated with the accident injuries. The decision is relevant as it demonstrates that substantial scarring and tissue loss arising from serious lower limb injuries may justify a separate award distinct from the award for the underlying orthopedic injury.
61. The Plaintiff also relied upon *Linda Rosana v Chen Kim Siong* (HCCS No. 23 of 2005), where the Court awarded BND6,000 in 2006 for a 6 cm scar on the inside of the plaintiff's thigh. The Plaintiff submitted that, when adjusted for inflation, the equivalent value would be approximately BND10,214.60. Whilst *Linda Rosana* is of assistance in valuing the cosmetic aspect of scarring, its relevance is necessarily limited as the principal injuries in the

present case concern permanent orthopedic disability rather than cosmetic disfigurement alone.

62. I accept that the Plaintiff's scarring represents a permanent consequence of the accident. Although the scars are located on the leg rather than on a highly visible area such as the face, they nevertheless represent a lasting reminder of the injury and the surgical treatment which followed. The Plaintiff also underwent skin grafting, which distinguishes the present case from more minor scar-only authorities.
63. Having regard to the location of the scars, the fact that they are not situated on a prominently exposed part of the body, the requirement for skin grafting, and the guidance provided by *Sayed Late Momin Sheikh* and *Linda Rosana*, I consider that a reasonable award under this head would fall within the region of BND5,000 to BND8,000. Such an award fairly reflects the permanent scarring and disfigurement without overstating its cosmetic impact. As such I award **BND\$7,500.00**.

3. Loss of amenities

64. The Plaintiff claims damages for loss of amenities arising from the permanent restrictions imposed upon his daily life by the injuries sustained in the accident. In addition to the physical limitations already discussed, the Plaintiff relies on the evidence of Dr Pande that the consequences of the accident extend beyond purely physical disability and continue to affect various aspects of his personal, social and emotional well-being.
65. The Plaintiff stated that he experiences difficulty maintaining intimacy with his wife and remains concerned about his ability to obtain alternative employment. He reported disturbed sleep arising from recurring flashbacks of the accident and persistent pain in his left leg, together with nightmares relating to the incident. He also described a continuing fear of returning to heavy manual work and anxiety regarding his future earning capacity and ability to provide for himself and his family. The Plaintiff contends that these matters, together with his physical disabilities, have significantly diminished his quality of life and enjoyment of the ordinary amenities of life.
66. The Plaintiff further submits that his injuries have permanently restricted his ability to participate in activities which he previously enjoyed. He is unable to engage in sporting and recreational activities, has difficulty riding a motorcycle, cannot squat, kneel or sit cross-legged comfortably, experiences difficulty climbing stairs and is restricted in the performance of religious activities requiring prolonged kneeling and flexion of the lower limbs.
67. The Plaintiff contends that these continuing limitations justify an award of BND22,000 under this head.

68. In support of the claim, the Plaintiff relied upon *Imam Sunardi v Teo Hock Chuan* (ICCS No. 152 of 2017). In that case, the Court awarded BND25,000 in 2019 for loss of amenities where the plaintiff suffered restrictions affecting sporting and recreational activities and was unable to ride a motorcycle. The Plaintiff submits that the inflation-adjusted equivalent of that award would be approximately BND28,981.85. The authority is relevant because it recognises that compensation may be awarded not merely for the physical injury itself but also for the loss of enjoyment of life resulting from permanent functional limitations. Like the plaintiff in *Imam Sunardi*, the present Plaintiff has lost the ability to participate fully in recreational activities and experiences significant restrictions in his mobility and independence.
69. The Plaintiff also relied upon *Muliadi bin Awg Mohsin v Wang Meng Peck & Anor* (HCCS No. 139 of 2002), where the Court awarded BND11,000 for loss of amenities arising from restrictions affecting sporting and recreational pursuits, including badminton and cycling. According to the Plaintiff's submissions, the inflation-adjusted equivalent would be approximately BND21,077.14. The decision supports the proposition that loss of participation in recreational activities and the resulting diminution in quality of life constitute compensable losses independent of the award made for the underlying physical injuries.
70. Reference was further made to *Bijun Bin Kalu v Chalar Mokhkosong, Sanit Tonam v Pahayat Sdn Bhd* (HCCS No. 59 of 2006), where the Court awarded BND7,500 for loss of amenities arising from restrictions on physical activities. The Plaintiff submitted that the inflation-adjusted equivalent would be approximately BND12,035.30. The authority provides a further comparator demonstrating that damages may be awarded for reduced enjoyment of life and the inability to engage in normal physical and recreational activities.
71. I accept that the Plaintiff's injuries have resulted in a significant loss of amenities. The evidence establishes that the Plaintiff's mobility has been permanently impaired and that many ordinary activities previously taken for granted can no longer be performed without difficulty or cannot be performed at all. The loss extends beyond recreational pursuits and affects matters of personal independence, religious practice, family life and general enjoyment of everyday living.
72. The Plaintiff also gave evidence that following the accident he experienced emotional distress, difficulty sleeping, and a reduced ability to engage in intimate relations. However, no medical or expert evidence was adduced to substantiate any psychiatric, psychological, or emotional injury arising from the accident. There was no diagnosis of depression, anxiety, post-traumatic stress disorder, adjustment disorder, or any other recognised psychiatric condition. Nor was there any evidence from a psychiatrist, psychologist, counsellor, or treating medical practitioner linking such symptoms to the accident.
73. While the Court accepts that a serious physical injury may naturally cause some degree of upset, frustration, or emotional discomfort, damages must be assessed on the evidence

before the Court. In the absence of independent medical evidence establishing a recognised psychological injury or demonstrating that the Plaintiff's alleged symptoms were causally attributable to the accident, the Court is unable to make any separate award for emotional trauma, psychological distress, sleep disturbance, or impairment of intimate relations.

74. To the extent that the Plaintiff experienced disappointment, frustration, inconvenience, or loss of enjoyment arising from his physical injuries and disabilities, those matters are adequately reflected within the award for pain, suffering and loss of amenities. A separate award under these heads would not be justified on the evidence.
75. Whilst the Plaintiff's claimed figure of BND22,000 is not wholly unsupported by authority, it is somewhat generous when compared with the range of awards made in comparable cases. Having regard to the authorities cited, the permanent nature of the Plaintiff's restrictions and the extent to which his enjoyment of life has been diminished, I consider that an award in the range of BND10,000 to BND18,000 would reasonably reflect the Plaintiff's loss of amenities. As such, the plaintiff is awarded the sum of **BND16,000.00** under this head.

4. Economic loss, comprising past loss of earnings and future loss of earnings or earning capacity.

76. The Plaintiff advances two related claims under this head. First, he claims BND111,600 for future loss of earnings. Secondly, he claims BND30,000 for loss of earning capacity.
77. The Plaintiff contends that, but for the accident, he would have continued working in Brunei as a labourer until the age of 55. Prior to the accident, he earned approximately BND600 per month. He submits that, having regard to wage increases and labour shortages experienced during the Covid-19 period, his earnings would likely have increased over time. On that basis, the Plaintiff adopts a notional monthly income of BND900 and applies what is described as a multiplier of 12 years, producing a gross figure of BND129,600. After deducting BND18,000 said to represent earnings which he could potentially earn in Bangladesh, the Plaintiff arrives at a net claim of BND111,600 for future loss of earnings.
78. The Plaintiff further claims BND30,000 for loss of earning capacity. He submits that he has effectively become unemployable as a manual labourer because of his permanent disability and that his opportunities to secure employment, particularly overseas employment, have been substantially reduced. Although he may remain capable of some limited forms of work, he contends that his earning potential has been permanently diminished.
79. The evidence establishes that prior to the accident the Plaintiff worked as a manual labourer engaged in physically demanding construction work. The medical evidence of Dr

Pande was clear that the Plaintiff is no longer fit to undertake heavy manual labour of that nature. I therefore accept that the Plaintiff has suffered a real and substantial loss of earning capacity. The accident has significantly reduced his competitiveness in the labour market and deprived him of the ability to continue the type of employment by which he previously supported himself and his family.

80. However, considerable caution must be exercised when assessing future economic loss in the present case. The Plaintiff was a foreign worker whose continued employment in Brunei could never be guaranteed. Unlike a local employee with a settled career path, the Plaintiff's future working life in Brunei was necessarily subject to a number of contingencies and uncertainties. These include the finite nature of work permits, the possibility of repatriation to his home country, changes in immigration policies, fluctuations in labour demand, and changes in employment circumstances.
81. In those circumstances, I do not consider it appropriate to undertake a full multiplier-multiplicand calculation based upon the assumption that the Plaintiff would have remained continuously employed in Brunei until retirement age. Such an approach risks introducing a substantial degree of speculation into the assessment. The Court cannot simply assume that the Plaintiff would have continued earning at progressively increasing rates in Brunei over the entirety of the period claimed.
82. In my judgment, the more appropriate approach is to assess the Plaintiff's loss under the broader head of loss of earning capacity. The distinction is important. Future loss of earnings compensates for actual earnings which will probably be lost, whereas loss of earning capacity compensates for the disadvantage suffered in the labour market as a result of the injuries. The evidence in the present case more readily supports the latter than the former.
83. The Plaintiff's injuries have not rendered him wholly incapable of work. However, they have substantially restricted the range of employment available to him. He can no longer undertake heavy construction work, manual labour or occupations requiring prolonged standing, climbing, squatting, kneeling or carrying heavy loads. His opportunities for employment, particularly in the sectors in which he previously worked, have therefore been materially reduced.
84. I also note that there is no evidence from the Plaintiff's former employer to indicate that his employment would have continued for any particular period had the accident not occurred. No representative of the employer was called to testify and no documentary evidence was produced to establish that the Plaintiff would have remained employed in Brunei until the age of 55 or retirement age. Nor is there evidence of any contractual entitlement to continued employment, promotion, wage progression or renewal of work permits.

85. The Plaintiff's future earnings calculations are therefore founded largely upon assumptions as to the duration of his future employment and anticipated increases in earnings. Whilst such assumptions may be understandable, they remain speculative in the absence of supporting evidence from the employer. The Court has not been provided with evidence as to the employer's future labour requirements, whether the Plaintiff's employment would have been renewed, or whether he would have continued working in Brunei for the entirety of the period claimed.
86. This absence of evidence is particularly significant given the Plaintiff's status as a foreign worker. His continued presence and employment in Brunei would necessarily have depended upon a number of factors beyond his control, including the renewal of work permits, the availability of employment, economic conditions, the requirements of his employer and his own personal circumstances. In these circumstances, I am unable to conclude on the balance of probabilities that the Plaintiff would have continued earning at the projected level for the entirety of the multiplier period advanced.
87. The lack of evidence from the former employer further reinforces my view that this is not an appropriate case for a full multiplier-multiplicand assessment of future loss of earnings. Whilst I accept that the Plaintiff has suffered a genuine economic disadvantage as a result of his injuries, the evidence is insufficient to support a precise calculation of future earnings extending many years into the future. Therefore, I find that the more appropriate course is therefore to compensate the Plaintiff for his loss of earning capacity, which more accurately reflects the disadvantage he now faces in the labour market and true loss whilst avoiding undue speculation as to what his future earnings might have been.
88. In assessing the appropriate award, I have taken into account:
- (a) the Plaintiff's age at the time of the accident;
 - (b) his previous occupation as a manual labourer;
 - (c) the permanent nature of his orthopaedic disability;
 - (d) the medical evidence that he is no longer fit for heavy manual work;
 - (e) the fact that some residual earning capacity remains;
 - (f) the uncertainties surrounding his future employment as a foreign worker; and
 - (g) the need to avoid speculative assumptions regarding uninterrupted employment in Brunei over an extended period.
89. Having regard to those factors, an award for loss of earning capacity, rather than a full award for future loss of earnings, falls within the range of BND\$20,000.00 to BND\$40,000.00.
90. The court recognises the significant disadvantage which the Plaintiff now faces in the labour market whilst also accounting for the substantial contingencies affecting his future employment prospects. Such an award should fairly compensate the Plaintiff for the permanent diminution of his earning capacity without resorting to speculative assumptions concerning future earnings over an extended period. As such, I would award

the plaintiff **BND\$35,000.00 under loss of earning capacity and do not make orders for loss of future earning.**

B. Special Damages

91. Special damages must be specifically pleaded and strictly proved. Accordingly, the Court must examine whether each item is supported by documentary evidence and whether the expense was reasonably incurred as a consequence of the accident.

92. The Plaintiff claims special damages in the approximate sum of BND37,490 comprising:

- (a) Loss of income from January 2018 to 2022 – BND35,100;
- (b) Damage to clothing – BND100;
- (c) RIPAS medical reports – BND200;
- (d) JPMC registration fee – BND50;
- (e) JPMC medical report – BND1,800;
- (f) Dr Pande's consultation fee – BND200;
- (g) Transportation expenses for hospital and clinic visits – BND40; and
- (h) Business and bankruptcy search fees – BND200.

Claim for (a) Loss of earnings:

93. The Plaintiff's claim for loss of earnings beyond his return to Bangladesh in March 2018 presents considerable evidential difficulties. Whilst I accept that the Plaintiff was unable to work for a period following the accident, there is no evidence from his former employer that his employment would have continued had the accident not occurred. No witness from the employer was called and no documentary evidence was produced to establish that the Plaintiff's contract would have been renewed or that he would have remained employed in Brunei for the period claimed.

94. The claim relating to the Covid-19 period is even more speculative. It is premised upon assumptions that the Plaintiff would have remained employed in Brunei, would have benefited from labour shortages and overtime opportunities, and would have earned substantially higher wages. Those assumptions are not supported by evidence. In the circumstances, I am unable to conclude on the balance of probabilities that the Plaintiff would have earned the sums claimed.

95. The Court is satisfied that the Plaintiff suffered actual loss of earnings from the date of the accident until his repatriation to Bangladesh. Those losses are proved and are recoverable as special damages.

96. The Court is not satisfied that any further claim for loss of earnings after repatriation has been established. There is insufficient evidence as to the reason for the Plaintiff's repatriation, the duration and terms of his employment contract, whether his

employment would have continued but for the accident, and what efforts, if any, were made to obtain alternative employment thereafter. Any assessment of continuing wage loss would therefore be speculative.

97. Nevertheless, the Court accepts that the Plaintiff's permanent residual disabilities place him at a disadvantage in the labour market. That disadvantage is more appropriately reflected in the award for loss of earning capacity which I have already awarded above.

98. As such, the plaintiff is only entitled to the 3 months' salary as proven past loss of earnings as there is no specific evidence showing that he remained medically incapable of any work after returning to Bangladesh. As such I award **BND\$1,800.00 under loss of earnings.**

Claims (b) to (h)

99. Apart from a slight change to the cost of clothing, I award the following special damages as claimed:

- (b) Damage to clothing – BND\$50.00**
- (c) RIPAS medical reports – BND200;**
- (d) JPMC registration fee – BND50;**
- (e) JPMC medical report – BND1,800;**
- (f) Dr Pande's consultation fee – BND200;**
- (g) Transportation expenses for hospital and clinic visits – BND40; and**
- (h) Business and bankruptcy search fees – BND200.**

Trial-Related Expenses

100. The Plaintiff further claims expenses incurred in attending the trial, including:

- (a) Return air ticket between Bangladesh and Brunei – BND2,145;
- (b) Visa application fees – BND300;
- (c) Food allowance – BND600;
- (d) Accommodation expenses – BND528.80;
- (e) Interpreter expenses – BND280;
- (f) Dr Pande's attendance fee – BND1,500;
- (g) Dr Pande's affidavit fee – BND600; and
- (h) Notarisation of the Plaintiff's affidavit – BND135.11.

101. The Plaintiff further claims various expenses associated with the conduct of the proceedings, including travel expenses to attend trial, accommodation, visa fees, interpreter fees, expert witness fees, affidavit expenses and notarisation charges. In my judgment, these items are not properly recoverable as damages. They are litigation expenses incurred for the purpose of prosecuting the present action and fall more appropriately within the ambit of costs and disbursements. To award such sums as damages would create a risk of double recovery should costs subsequently be awarded.

Accordingly, I make no award under this head, without prejudice to the Plaintiff's entitlement to seek recovery of any properly allowable disbursements in the taxation or assessment of costs.

Conclusion on Quantum

102. Having considered all of the evidence, the medical findings, the Plaintiff's ongoing disabilities, the authorities cited, and the effect of the injuries on every aspect of the Plaintiff's life, I am satisfied that the Plaintiff is entitled to compensation for the following:

- (a) pain, suffering and loss of amenities including permanent disability and loss of function **BND42,600.00**
- (c) scarring and disfigurement **BND7,500.00**;
- (d) Loss of amenities **BND16,000.00**
- (e) loss of earning capacity **BND35,000.00**; and
- (f) proven special damages **BND4,340.00**

The total award is therefore **BND105,440.00**

Interest

103. The Plaintiff seeks interest at the rate of 6% per annum on general damages and 3% per annum on special damages from the date of the accident. I am unable to accept that submission. The conventional distinction between general and special damages remains applicable. General damages for pain and suffering, scarring, loss of amenities and loss of earning capacity are not readily ascertainable until assessed by the Court and therefore attract interest at a lower rate. Special damages, including any proven past loss of earnings and out-of-pocket expenses, represent losses already incurred and therefore justify a higher rate of interest. Accordingly, I would award interest on general damages at 3% per annum and on special damages at 6% per annum. Interest on general damages shall run from the date of the accident until judgment, whilst interest on special damages shall run from the date of the writ (or date incurred, if proved) until judgment.

104. As such, to be clear, I adopt the conventional approach generally applied in personal injury litigation. Interest is awarded as follows:

- **Pain and suffering (orthopaedic injuries)** – interest at **3% per annum** from the date of accident to judgment.
- **Scarring and disfigurement** – interest at **3% per annum** from the date of accident to judgment.
- **Loss of amenities** – interest at **3% per annum** from the date of accident to judgment.

- **Past loss of earnings being** monies which the Plaintiff **should already have received but did not receive because of the accident**. – interest at **6% per annum** from the date of the writ to judgment.
- **All other special damages** – interest at **6% per annum** from the date of the writ to judgment.
- **Future loss of earning capacity** – ordinarily **no pre-judgment interest**, because it compensates future loss.
- **Post-judgment interest** – **6% per annum** pursuant to Order 42 rule 12 until payment.

Costs

105. As the Plaintiff has substantially succeeded in his claim, he is entitled to his costs of the action.

106. However, having regard to the nature of the proceedings, the issues contested at trial, the extent of the Plaintiff's success, and the Court's desire to ensure that any costs awarded are fair, proportionate and reflective of the work reasonably undertaken, I do not consider it appropriate to fix costs without first hearing the parties.

107. For the avoidance of doubt, The Plaintiff shall have costs, to be fixed by the Court after hearing the parties. The only issue reserved for further determination is the amount of those costs. The quantum of costs will be fixed by the Court after hearing submissions from the parties at a separate costs hearing.


Hazarena bte POKSJ DP Hj Hurairah



Intermediate Court Judge