

AMIN HALIM BIN CASAN

... Plaintiff

AND

MASA'IN BINTI AWANG HAJI TUAH (D1)

...1<sup>st</sup> Defendant

NORMILA SDN BHD (D2)

... 2<sup>nd</sup> Defendant

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(High Court of Brunei Darussalam)  
(Civil Suit No. 24 of 2019)

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Muhammed Faisal bin PDJLD Kol (B) DSP Hj Kefli, JC  
30<sup>th</sup> May, 2024.

**Headnote:** *Personal Injuries – liability – employer's duty or care – negligence – contributory negligence – quantum – damages*

Plaintiff is represented by (M/S Sandhu & Company).

First Defendant In Person and Unrepresented.

Second Defendant is represented by V.K. Rajakanu & Associates.

**Cases cited:**

*Chan Choi Fook v Spennex Stainless Steel Industries Sdn. Bhd.* [1994] JCBD 208

*Abdul Hadi bin Sijas v Jayayasan Contractors* [2005] BLR 170

*Chang Fah Lin v United Engineers (M) Sdn Bhd & Ors* [1978] 2 MLJ 259

*Wheat v Lacon* [1966] A.C.

*Neo Siong v Cheng Ghuan Seng & Others* [2013] SGHC 93

*Lim Jun Kai (Lin Jun Kai) v Orientus Country Clubs & Resorts Pte Ltd* [2011] (DC Suit No. 1010 of 2011)

*Julia binti Haji Hidup and Anor v Abd Aziz bin Hj Idris* [2002] BLR 73

*Lim Xueru and Another v Lim Kai Meng* [1992] SGHC 183

*Abdul Mannan Mobarak Ali Mollah v Abshi Engineering Sdn Bhd* (ICCS 91 of 2016)

*Muliadi bin Maksin v Wang Meng Peck & Anor* [2003] BLR 257

*Mohammad Arif bin Abdullah & 2 Ors v Too Shu Yun* (HCCS No. 82 of 2012)

*Mak Pik Hong & Anor v Quintin Dureza Billiones* (HCCS No.2 of 2008)

*Hjh Sauyah Bte Hj Kamis v Maimunah Bte Abd Ghani* [2007] JCBD 324

*Ponnusamy Rajapandian v Hj Awg Mohd Hussainin bin PP Hj Awg Ahmad* [2019] (ICCS No. 43 of 2012)

*Siti Supatin binti Hj Asar v The estate of Norlia binti Yusoff (deceased) & Anor* [2002] BLR 229

*Megalift Sdn Bhd v Fabiola Ng Yiok Chin* [2016] (COA No. 5 of 2016)

*Aijaz Nabi & 4 Ors v Helena Simon & Anor* [2005] BLR 6

*Yeap Cheng Hock v Kajima-Taisei Joint Venture* [1973] MLJ 230

*Dharam Singh v Ibrahim bin Shaaban* [1995] 4 CLJ 207

*Chua Kain Meng v Sahid Sdn Bhd & Anor* [2006] (HCCS No. 5 of 2002)

## **RULING**

**Muhammed Faisal, JC:**

### **I. INTRODUCTION**

The plaintiff, Amin Halim bin Casan ("Amin Halim") was employed by the First and Second Defendant as a construction labourer. His duties were to carry out works at the instruction of the First and Second Defendant.

The First Defendant, Masa'in Binti Awang Haji Tuah ("Masa'in") is the registered sole proprietor of a business registered under the Business Names Act (CAP. 92) trading under the name and style of *Perusahaan Masa'in bte Hj. Tuan dan Anak-Anak* at No. 12A, Simpang 86, Kampong Kiulap, Bandar Seri Begawan 3184, and an additional address at No. 247, Kampong Penanjong, Tutong, Brunei Darussalam.

At all material times, the First Defendant was the employer of Amin Halim.

The Second Defendant, Normila Sdn Bhd ("Normila") is a private limited company incorporated under the Company Act and having its registered office address at Lot 25104, Kg. Lambak, Km 11, Jln. Berakas, Brunei Darussalam.

The Second Defendant ("Normila") entered into a subcontract agreement dated 15th June 2010 with CCCC Third Harbour Engineering Co. Ltd. for the sum of B\$6,409,698.74 ("the said contract") to perform Earthwork and foundation treatment and ancillaries work for the construction of the Telisai-Lumut Highway ("the said project site"). Thus, the Second Defendant was the subcontractor for the construction of the Telisai-Lumut Highway and CCCC Third Harbour Engineering Co Ltd was the main contractor.

The Second Defendant then entered into a sub-sub-contract agreement with the First Defendant dated 1st October 2010 for Reinforcement Concrete Works in relation to the said project.

### **II. LIABILITY**

#### **The Accident**

On 2<sup>nd</sup> March 2016 at about 1530 hours, the Plaintiff while in the course of his employment was instructed by First Defendant and/or Second Defendant at the vicinity of CH 5, Labi along the proposed Telisai-Lumut Highway. He was tasked along with a group of fellow workers to clear an area in preparation for further construction work. While Amin was performing his work, suddenly, an excavator negligently manoeuvred and struck Amin's left leg. As a result of the said accident, Amin sustained severe injuries and has suffered losses and damages.

## **The Plaintiff's Case**

It is the plaintiff's case that:

1. Masa'in was the plaintiff's sponsored employer at the time of the said accident;
2. Given the facts of the case, Normila was also the employer of the plaintiff and there existed a relationship of employer and employee;
3. Masa'in and Normila owed a duty of care towards the plaintiff as co-employers;
4. The said accident occurred at CH 5, Labi along the said project site which was under the direct management supervision and control of Normila;
5. Normila paid for the plaintiff's salary while he was working at the said project and also between January, 2016 to April, 2018.
6. At all material times, Amin Halim worked under the direct management supervision and control of Normila at the said worksite and at the time of the said accident;
7. As a result of the breach of the duty of care owed by Masa'in and Normila as employers, the plaintiff sustained injuries loss and damage;
8. Further and/or in the alternative, Normila was an occupier of the said worksite and they had direct control and possession of the said project site and the nature of work being performed at the said worksite;
9. As an occupier of the said worksite, Normila had breached their duty to use reasonable care to prevent the plaintiff from sustaining injuries loss and damage from the said accident; and
10. The said accident and the resulting injuries, losses and damages suffered by Amin were caused as a result of the breach of the duty of care owed by Normila under the occupiers' liability.

## **Evidence of Amin Halim**

According to Amin Halim's account of the accident on March 2nd, 2016, the day started with hot and dry weather. He began his workday around 5:00 am after taking a shower and having breakfast. He was driven to the worksite by Edi Heryana from Normila. Upon arrival at approximately 8:00 am, they started working on building a V-shaped concrete drain without any safety briefing or training.

Amin Halim was working with a group of co-workers from Normila, including Hartono, Wawan, Putut, Jamal, Wartoni, and Muslim. They continued their work throughout the morning, taking a lunch break from 12:00 pm to 1:00 pm, and then resumed work at 2:00 pm. At around 2:30 pm, they poured cement into the V-shaped drain mould and waited for it to dry.

Around 3:00 pm, they took a short break, during which their foreman, Ah Min, instructed Amin Halim to assist Ghofur in manoeuvring an excavator. Ghofur was operating the excavator to dig the surface of a hill, with Amin Halim instructed to ensure the excavator's arm wouldn't hit the bridge nearby.

Despite being told to prevent the arm from hitting the bridge, Amin Halim wasn't given specific instructions on where to stand for safety. He positioned himself approximately one metre from the left side of the excavator, facing the hill where Ghofur was digging. Suddenly, the excavator's arm moved to the left, and the tracks of the excavator struck Amin Halim's left leg, causing the accident.

As a result of the accident, Amin Halim lost his footing and fell to the ground. He was assisted by his co-workers, who rushed to his aid and removed his safety boots. A significant amount of blood began pouring from his left leg, causing shock among the workers. Eventually, Amin Halim was carried to Hartono's car for further assistance.

### **Evidence of Hartono**

Hartono states that he has been employed by the Second Defendant since around 2010 and was present at the worksite when the accident occurred.

He mentions that daily toolbox safety briefings were conducted for all workers at the worksite, emphasising the importance of wearing safety equipment, maintaining a safe distance from machinery/vehicles, paying attention to surroundings, and avoiding fooling around to prevent accidents. These briefings were conducted for personal safety. The main contractor, CCCC Third Harbour Engineering, also provided similar briefings at least once a week.

Hartono confirms the presence of workers from various contractors at the worksite, including CCCC Harbour.

He was familiar with the plaintiff's role as a survey assistant at the worksite and observed that the plaintiff would often remain around the worksite after finishing his work, either helping or talking to other workers.

On the day of the accident, Hartono noticed the plaintiff and another worker, Wartoni, standing in an area where workers gathered for breaks. It was not a designated assembly point, and from Hartono's position, they appeared to be standing and talking to each other.

Hartono mentions that Abdul Ghopur Bin Syehrudin was operating the excavator that hit the plaintiff. Ghopur had been instructed by supervisor/personnel from CCCC Harbour to dig trenches for laying pipes. The first trench to be dug was located directly in front of the plaintiff and Wartoni, but they were not instructed to assist Ghopur. They were not involved in any work at the time.

After receiving instructions, Ghopur began moving the excavator towards the area where he was instructed to dig. Despite the excavator approaching the plaintiff and Wartoni, they did not move

from their position but continued talking to each other. Hartono believed they should have moved to a safe distance, considering the approaching excavator.

Hartono lost sight of the plaintiff and Wartoni as the excavator blocked his view. He then heard Wartoni calling for help, stating that the plaintiff had been hit by the excavator's wheel.

### **Evidence of Chow Kwai Choong**

He is a director of the Second Defendant. He confirms that the Second Defendant was subcontracted for the construction of the Telisai-Lumut Highway, with the main contractor being CCCC Third Harbour Engineering Co Ltd (CCC Harbour).

He states that the First Defendant was the plaintiff's employer at the time of the accident. The plaintiff worked under the First Defendant, and there was a contractual relationship between them.

The accident occurred during the execution of the project, almost two years before the plaintiff left his employment. The Second Defendant was not aware of the accident at the time, and no investigation was carried out. The plaintiff filed the lawsuit more than three years after the accident.

The delay in filing the lawsuit made it challenging for the Second Defendant to obtain relevant information about the accident, including the identity of the excavator operator who hit the plaintiff, but faced challenges in obtaining the relevant information.

In early 2023, the Second Defendant learned that Abdul Ghopur Bin Syehrudin, an employee of the First Defendant, operated the excavator that hit the plaintiff.

He asserts that the Second Defendant did not have absolute control over Abdul Ghopur Bin Syehrudin, as he was under the control and supervision of the main contractor, CCC Harbour, at the time of the accident.

The Second Defendant claims to have taken all reasonable precautions for the health and safety of workers, including conducting daily health and safety talks and toolbox briefings. These briefings included warnings about the blind spots of excavators and the safe distance to maintain from them.

He alleges that the plaintiff failed to adhere to safety regulations and procedures, stood in the blind spot of the excavator operator, and did not heed warnings about the risks involved. The plaintiff's actions contributed to the accident.

### **Safety Briefings and Toolbox Briefings**

Overall, Chow Kwai Choong explains that the toolbox and safety briefings are integral components of the Second Defendant's safety protocols. These briefings were conducted regularly to educate workers about potential hazards and ensure compliance with safety regulations on the work site.

He explains that the Second Defendant conducted health and safety talks and toolbox briefings with all workers, employees, servants, agents, and authorized personnel on a daily basis. The toolbox briefings included training on safety procedures when working with excavators and other heavy machinery on an active work site. Workers were warned to be aware/alert of their surroundings and the blind spots of excavators or other vehicles while they were being operated. They were strictly forbidden to be within the 5-metre radius of an excavator during operation.

The briefings aimed to educate workers about potential hazards on the work site and to provide them with guidelines for maintaining safety. Workers were advised on safe areas to be when an excavator was being operated and were informed of the consequences of not complying with safety procedures.

It was expected all workers, including the plaintiff, to attend the toolbox briefings and adhere to the safety regulations and procedures outlined during these sessions. The plaintiff's alleged failure to comply with these safety measures is highlighted as a factor contributing to the accident.

#### **Any safety briefings done on that day?**

Amin Halim stated that there was no safety briefing or meeting about the task they were to perform on the day of the accident. He mentioned that throughout the period of working at the worksite, there were no safety briefings in the morning, and they were not given any safety training by Normila or anyone else.

Hartono did not specifically mention whether a safety briefing or toolbox briefing was conducted on the day of the accident. He described the events leading up to the accident, including the plaintiff and another worker standing and talking to each other before the accident occurred. However, he did not provide details about any safety briefings being conducted that day.

Chow Kwai Choong did not mention whether a safety briefing or toolbox briefing was conducted on the day of the accident. He provided details about the company's general practice of conducting daily health and safety talks and toolbox briefings but did not specify whether one took place on the specific day of the accident.

I would thus conclude that there were no safety briefing or toolbox briefing conducted on the day of the accident.

#### **Duty of the First Defendant, Masa'in**

Masa'in was Amin Halim's employer at the time of the said accident. This is based on his Contract of Employment 10th August 2022.

Masa'in duty towards Amin Halim were,

- To provide and maintain a safe or proper system of work;
- To provide adequate and proper supervision of the labourers' work;

- To take or provide any adequate or effective precaution for the safety of the labourers at the worksite;
- To ensure and/or provide adequate and/or proper training of the safety features or precautions;
- To provide competent and safety conscious workers, agents, servants; and
- To take all reasonable care and measures to ensure that the worksite/place of work is safe.

She failed in discharging her duties, which resulted in injuries sustained by Amin Halim in the aforementioned accident.

In the case of ***Chan Choi Fook v Spennex Stainless Steel Industries Sdn. Bhd.*** [1994] JCBD 208 at 217 [Tab 4 OF PBoAJ]. Robert CJ laid down the principle duty of care of an employer.

*“The duty of care of an employer can be summarised under five heads... They are examples of the ways in which the Courts have ruled that an employer can satisfy the broader duty of taking reasonable care for the safety of his workmen — see Winter v Cardiff R DC [1950] 1 All ER 819 (HL) at p. 823 —*

*(1) Place of work;*

*(2) Employment of competent servants and supervision;*

*(3) Adequate plant and appliances;*

*(4) Safe system of work;*

*(5) Other cases, where an injury is caused by the negligence of a fellow servant...”*

In ***Abdul Hadi bin Sijas v Jayayasan Contractors*** [2005] BLR 170. Her Ladyship Datin Hayati J. after citing the case of ***Chan Choi Fook***, as referred to above, stated at page 179 of the Judgment as follows:

*“A statement of the relevant principle of law can be divided into three parts. First, an employer owes to his employee a duty to exercise reasonable care to ensure that the system of work is a safe one. Secondly, the provision of a safe system of work has two aspects; (a) the devising of such a system; and (b) the operation of it. Thirdly, the duty concerned has been described alternatively as personal and non-delegable. The meaning of these expressions is not self-evident and needs explaining. The essential characteristics of that duty is that, if it is not performed, it is no defence for the employer to say that he delegated its performance to a person, whether his servant or not his servant, whom he reasonably believed to be competent to perform it. Despite such delegation the employer is still liable for the non-performance of the duty.”*

Although Amin was working at the said worksite which was not under the control, management, or supervision of Masa'in, however, the First Defendant was still the employer of Amin Halim. It shall be no defence for Masa'in to say that they had delegated the performance of the work to Normila. It was the duty of Masa'in not to expose Amin Halim to the risk of damage or injury; to

provide and maintain safe, adequate, and suitable plant, tackle, and appliances; and to provide and maintain a safe and proper system of work, to enable Amin Halim to carry out his work safely.

### **Duty of the Second Defendant, Normila**

Amin also worked under the direct management supervision and control of Normila's foreman and supervisor at the said worksite. It is clear from the evidence presented that Normila paid his salary while he was working at the worksite and was also provided with accommodation. Normila also had paid for Amin Halim's hospitalisation and treatment fees for the injuries he suffered.

It is the Plaintiff case, that at the time of the incident, Amin Halim was instructed by Normila's foreman to assist the excavator operator, Abdul Ghofur. Abdul Ghofur was an employee of Normila, and the excavator which he was operating was owned by Normila.

It is clear to me that Amin Halim was working directly under the control, management and supervision of Normila. Amin Halim also stated that he had worked with Normila since 2011 and started working with Normila's workers since 2010 at the said project.

Normila had the powers of direction and control with regard to the work of the Plaintiff and that he was working under the control and supervision of Normila as early as 2011. Normila being a 'factual' employer of Amin Halim, owed duty of care towards him, which they failed to discharge when they failed to ensure that Amin Haim would not be injured while working at the worksite.

In *Chang Fah Lin v United Engineers (M) Sdn Bhd & Ors* [1978] 2 MLJ 259, Abdul Hamid J cited the following passage in 25 Halsbury's Laws of England:

"Whether or not, in any given case, the relationship of master and servant exists is a question of fact; but in general, the relationship imports the existence of power in the employer not only to direct what work the servant is to do, but also the manner in which the work is to be done. A person may be the servant of another although a third party has the power of appointing or dismissing him or of requiring his dismissal, or has the power of appointing or dismissing him or of requiring his dismissal, or has the powers of direction and control in regard to his work, or pays him his wages. A person may be a servant although remunerated otherwise than by wages, or although only employed at will, and the relation is not destroyed because the master works with the servant. A person may be a servant to different masters; and a contract for exclusive personal service does not necessarily establish the relation of master and servant.

Further, the issue on whether or not the Second Defendant was an occupier or joint occupier. The plaintiff refers to *Wheat v Lacon* [1966] A.C. Lord Denning provides a concise rundown of who occupiers are, and the nature of their general duty:

"In order to be an "occupier" it is not necessary for a person to have entire control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share the control with others. Two or more may be "occupiers."

*And whenever this happens, each is under a duty to use care towards **persons coming lawfully on to the premises**, dependent on his degree of control. If each fails in his duty, each is liable to a visitor who is injured in consequence of his failure, but each may have a claim to contribution from the other."*

The fact that Normila signed the Subcontract Agreement with CCCC Third Harbour dated 15th June 2010 of the said project. In this case, Normila had been occupying that said worksite since 2011. The said worksite was under the charge/management and occupation of Normila. It had control and management of the said worksite when they started to work on the said project. Normila was paid by the CCCC Third Harbour to complete the said project and it is clear that Normila had joint occupation with CCCC Third Harbour.

Normila's workers were working at the said worksite; they controlled, managed, and supervised the work. Normila's foreman, Ah Min, and supervisor, Hartono, were at the said worksite, supervising and instructing Amin Halim and other workers on the works to be done.

### **Conclusion on Liability**

After carefully considering the facts, circumstances, and weighing the evidence and testimonies from witnesses on both sides, I conclude that both the First and Second Defendants share liability for the injuries sustained by the plaintiff.

### **Contributory Negligence**

Did the plaintiff's action or lack of action contributed to the accident occurring and thus his injuries?

To repeat myself, the facts leans towards that there were neither safety briefings nor toolbox briefing held that morning. That being said, I accept that these toolbox briefings were conducted regularly prior to the start of work. During these briefings, Masa'in was required to educate or warn the workers of the 'blind spots' of an excavator and that they were strictly forbidden to be within the 3-5 metres radius of an excavator when the said excavator was being operated. They were advised of the "safe areas" to be when an excavator is being operated. They were informed of the consequence of not complying with such safety procedures.

Amin Halim has been working with both the Defendants from 2011 to the time of the accident. He should have known about the inherent risk of being physically close to a working excavator and be aware of the excavator's potential blind spots.

There is dispute between the parties whether a signalman was present or not when the excavator was present. It is the plaintiff's assertion that the lack of signalman during the operation of the excavator was the main cause of the accident. The Second Defendant asserted that a signalman was present. I believe that the fact that all of the workers were advised not to be within the 3-5 metres of working excavators to be more relevant; the fact that the plaintiff that was standing only a metre away from a working excavator places himself in a dangerous position and was careless in failing to keep a safe distance from the excavator.

Furthermore, in Amin Halim's own evidence that Abdul Ghofur, the excavator driver was not looking at him but instead focused on digging the hill and upon the CCCC signalman. In this matter, Amin Halim would have known that he ought to have placed himself in a safe distance of at least 3-5 metres away from the excavator and not a mere metre away.

In the case of *Neo Siong v Cheng Ghuan Seng & Others [2013] SGHC 93*, the Learned Judge found that the plaintiff was careless in failing to keep a distance lookout for the excavator and that reasonably prudent man in the plaintiff's position would have kept a close eye on the excavator. The Learned Judge found that the plaintiff is liable for the accident to the extent of 30%, with the first Defendant bearing 70% liability.

The plaintiff thus bears partial responsibility for the injuries sustained in the accident, with 30% of the liability attributed to his own actions.

### **III QUANTUM**

#### **The Plaintiff's Claim**

General Damages:

- Pain and suffering
- Loss of amenities
- Loss of future earnings
- Loss of earnings capacity
- Difficulty to perform DIY tasks
- Cost of future treatment
- Special damages
- Interest accrued on general damages and special damages
- Legal costs to the plaintiff, to be taxed, if not agreed

#### **Evidence of Dr Ketan Q Pande**

He gave evidence on behalf of the plaintiff. In summary, Dr. Pande's affidavit provides a comprehensive overview of Amin Halim's current medical condition, the nature of his injuries, the treatments he has undergone, his symptoms and limitations, and the prognosis for his future mobility and functionality.

Nature of Injury:

Amin Halim sustained a bimalleolar fracture of the left ankle with a deep open laceration wound over the posterior medial aspect of the left ankle as a result of the workplace accident on March 2, 2016. This type of fracture involves the lateral and medial malleolus of the ankle, as well as damage to the syndesmosis ligaments.

Surgical Procedures:

He underwent two surgeries:

- On March 3, 2016, he underwent open reduction and internal fixation of the left ankle fracture, during which a 7-hole plate and 5 screws, including one syndesmotic screw, were used to stabilise the fractured ankle.
- On May 12, 2016, he underwent a second operation for the removal of the syndesmotic screw as part of routine treatment.

Symptoms and Limitations:

Amin Halim experienced persistent pain and functional limitations in his left ankle following the surgeries. He reported pain while walking, climbing stairs, running, jumping, squatting, and carrying heavy weights. These symptoms limited his ability to perform his job, which involved activities such as walking, bending his ankle, standing for long periods, and carrying heavy items.

Medical Examination and Opinions:

Dr. Pande conducted a detailed medical examination of Amin Halim and reviewed his medical history and diagnostic imaging. He confirmed that Amin Halim's reported symptoms were consistent with the mechanism of injury and the subsequent treatment. Dr. Pande agreed with the opinions of other expert doctors regarding Amin Halim's injuries and disabilities, including the permanent residual disabilities and limitations in movement and function of the left lower limb.

Permanent Disabilities:

Dr. Pande concluded that Amin Halim is permanently unable to perform certain activities such as running, jumping, squatting, and assisting in physically demanding household chores. He is also not fit for physically strenuous work or his previous occupation due to his permanent disabilities.

Future Treatment and Prognosis:

Dr. Pande noted that even if future treatments were successful, Amin Halim is likely to be left with permanent disabilities and limited movement and function of his left lower limb.

Current Status:

Dr. Pande examined Amin Halim again on March 24, 2023, and confirmed that while there was slight improvement in his range of motion, his disabilities as stated above remained present and permanent.

### **Evidence of Dr Tam Tian Siong**

He gave evidence on behalf of the defence. In summary, Dr. Tan Tiam Siong's conclusion suggests that while Amin Halim may have some limitations due to his injuries, surgical intervention may not be immediately necessary, and alternative treatments and rehabilitation measures could be

considered. However, the potential need for surgery in the future is also highlighted based on the ongoing weakness observed in Amin Halim's condition.

#### Assessment of Driving and Mobility:

Dr. Tan Tiam Siong believes that Amin Halim is capable of driving a car with automatic transmission and cycling without any significant issues. He also suggests that Amin Halim may be able to drive a car with manual transmission, albeit with some limitations, particularly for prolonged periods. Additionally, he notes that Amin Halim can operate a motorcycle with only slight limitations due to the need to use his left ankle to shift gears occasionally.

#### Ability to Perform Simple Housework:

Dr. Tan Tiam Siong states that Amin Halim is capable of performing simple housework tasks such as cooking, cleaning, and washing.

#### Recommendation regarding Surgery:

Dr. Tan Tiam Siong suggests that arthroscopic ankle debridement surgery may reduce pain for Amin Halim but may not fully resolve his disabilities. He indicates that this surgery would only be necessary if Amin Halim experiences unbearable pain. However, based on his examination, Amin Halim was not in unbearable pain at the time. Therefore, Dr. Tan Tiam Siong concludes that the surgery is not required at the moment.

#### Likelihood of Posterior Tibialis Tendon Reconstruction Surgery:

Dr. Tan Tiam Siong assesses the likelihood of Amin Halim requiring posterior tibialis tendon reconstruction and extraosseous talotarsal joint stabilisation surgery as around 50%. This assessment is based on the weakness of the posterior tibialis muscle function even seven years after the injury.

### **Difference between Dr Tam and Dr Pande Assessment**

#### 1. Severity of Injuries

- Dr. Tan Tiam Siong: Indicates that Amin Halim's injuries, particularly related to his left ankle, may not be severe enough to warrant immediate surgical intervention. He suggests that surgery might not be necessary at the present time.
- Dr. Ketan Q. Pande: Describes Amin Halim's left ankle fracture as severe, involving a bimalleolar fracture with a deep open laceration wound. Dr. Pande highlights the complexity of the fracture, involving both the tibia and fibula bones and the syndesmosis ligaments. He performed surgeries to stabilise the fracture, indicating the seriousness of the injury.

#### 2. Functional Limitations

- Dr. Tan Tiam Siong: Mentions Amin Halim's ability to perform certain activities such as driving, cycling, and simple housework. He suggests that Amin Halim may have some limitations but can still carry out these tasks to some extent.
- Dr. Ketan Q. Pande: Reports that Amin Halim experienced persistent pain and functional limitations in his left ankle, including difficulty walking, climbing stairs, running, jumping, squatting, and carrying heavy weights. Dr. Pande concludes that Amin Halim is permanently unable to perform certain activities and is unfit for physically strenuous work due to his disabilities.

### 3. Need for Surgery

- Dr. Tan Tiam Siong: Suggests that arthroscopic ankle debridement surgery may reduce pain for Amin Halim but may not fully resolve his disabilities. He indicates that surgery might not be required immediately as Amin Halim was not experiencing unbearable pain at the time of examination.
- Dr. Ketan Q. Pande: Describes the surgical procedures performed on Amin Halim's left ankle, including open reduction and internal fixation of the fracture. He indicates that surgery was necessary due to the severity of the injury and the need for stabilisation. Dr. Pande also mentions Amin Halim's ongoing pain and limitations despite the surgeries.

### 4. Prognosis

- Dr. Tan Tiam Siong: Does not provide a definitive prognosis but indicates that Amin Halim's condition may not warrant immediate surgical intervention. He suggests that Amin Halim's ability to perform certain activities might be limited but does not provide a long-term prognosis.
- Dr. Ketan Q. Pande: Concludes that Amin Halim is likely to have permanent disabilities and limited movement and function of his left lower limb. He suggests that even if future treatments were successful, Amin Halim would still have permanent limitations.

Overall, the key differences between Dr. Tan Tiam Siong and Dr. Ketan Q. Pande's assessments lie in their views on the severity of Amin Halim's injuries, the necessity of surgical intervention, the extent of functional limitations, and the long-term prognosis for Amin Halim's recovery and mobility.

After due consideration of the facts before me, I would lean towards the testimony and views of Dr. Tan Tiam Siong.

## A. General Damages

### I. Pain and Suffering and Loss of Amenities

#### (a) Bimalleolar Fracture Left Ankle (Fracture of Medial and Lateral Malleolus)

In the case of *Lim Jun Kai (Lin Jun Kai) v Orientus Country Clubs & Resorts Pte Ltd* [2011] (DC Suit No. 1010 of 2011), the court awarded the Plaintiff S\$30,000.00 for severe open bimalleolar fracture of right ankle and predisposition to osteoarthritis. The Plaintiff underwent several operations to stabilise the fracture and cover the wound including internal fixation and gracilis flap cover and removal implants. The Court also considered that the Plaintiff suffered stiffness, occasional swelling and pain.

In the above case, the award was S\$30,000.00 as the date of accident should be awarded based on: Award x Inflation x (date of past award to date of accident). Thus, the calculation is B\$30,000.00 x 3% x 5 years. Accordingly, I award this amount of **B\$34,500.00** under this heading.

#### (b) Deep lacerated wound estimated to 11 cm over postero-medial aspect of left ankle

In *Mohammad Arif Bin Abdullah & 2 Anor v Too Shu Vun* [2015] 2 BLR 196, the court awarded First Plaintiff BND2,500.00 for the left ankle medial malleolus 2 cm laceration scar. After inflation, this amounts to B\$14,880.00. In a further case of *Mak Pik Hong & Anor v Quintin Dureza Billiones* [2010] BLR 109, the court awarded the sum of BND13,552.00 for 7 cm laceration.

In the case of *Mohammad Arif Bin Abdullah* and *Mak Pik Hong*, the laceration scars were shorter than Amin Halim's scar which was 11 cm and submitted the sum of \$18,000.00. I find this amount to be reasonable for the scar and award the proposed amount of **\$18,000.00** under this heading.

#### (c) Scarring

The Plaintiff also suffers from the following scars as stated in Dr. Tan Tiam Siong's medical report:

*"10 cm surgical scar over lateral aspect of his left ankle, 8 cm surgical scar over medial aspect of his left ankle and 4 cm scar at the proximally at previous deep laceration wound site."*

In *Julia binti Haji Hidup and Anor v Abd Aziz bin Hj Idris* [2002] 2 BLR 2002, the court awarded the First Plaintiff BND13,000.00 for multiple scarring including surgical scars. Where the injuries are so proximately close, the proper approach is

to group the injuries together and make a single award (*Lim Xueru and Another v Lim Kai Meng* [1992] SGHC 183).

The approach to take then is to award this category of damages is by grouping the said 3 scars and make a single award which are all located in the left ankle and are so proximately close to each other. It can be fairly said that the pain and suffering is commonly shared by those 3 scars.

In *Mohammad Arif Bin Abdullah & 2 ors v Too Shu Vun* [2015] 2 JCBD 196, where the sum of \$8,000.00 was awarded for right knee lateral aspect 11 cm incisional scar in 2015.

Following the award above, the amount of **B\$8,000.00** is reasonable and should be awarded.

**(d) 2 cm muscle wasting on left thigh and 2 cm left calf**

In *Julia bte Hj Hidup & Norinah bte Matamit v Abd Aziz bin Hj Idris* [2002] BLR 73, the sum of BND2,500.00 was awarded for muscle wasting of 1 inch of the quadriceps and muscle wasting of 0.5 inches of the calf in 2002. Collectively, this was a wastage of 1.5 inches.

In the case of *Abdul Mannan Mobarak Ali Mollah v Abshi Engineering Sdn Bhd* (ICCS 91 of 2016), the court awarded a sum of BND3,700.00 for muscle wasting of 4 cm of the thigh and calf muscle in 2018.

I award the Plaintiff the sum of **BND1,000.00** for the 2 cm muscle wasting.

For the 2 cm wasting of the left calf, Dr Tam Tiam Siong stated that there was no obvious calf wasting. Therefore, I denied this claim under this heading.

**(e) Soft tissue of the left ankle ligaments**

In *Mak Pik Hong & Anor v Quitin Dureza Billones* [2010] 1 BLR 109, the court awarded the First Plaintiff BND40,800.00 for 6 torn ligaments/tendons at BND\$6,800.00 per ligament/tendon. The court held that for the purpose of the assessment, ligament is treated similar to tendon.

I agree with the Defendant's submission that in Dr Kannan's medical report there is no evidence mentioned on how many ligaments were affected. In the absence of the number of ligament/tendon, given the above figure, in the case of *Mak Pik Hong's case* of BND6,800.00 per ligament. After taking into consideration the 3% increase in inflation, now the award would have been, BND6,800.00 + (BND6,800.00 x 3% x 6 years). Accordingly, I award this amount of **BND8,024.00**.

**(f) Tenderness over medial and lateral ankle joint line**

The most relevant case to this present case is that of ***Mak Pik Hong & Anor v Quitin Dureza Billones [2010] 1 BLR 109***, the court awarded the First Plaintiff BND\$2,000.00 for the tenderness on a large horizontal hyperpigmented scar on the medial aspect of the right ankle.

Adjusting the inflation rate at 3% per year the award today is worth BND\$2,780.00, based on the calculation BND\$2,000.00 (BND\$2,000.00 X 3% x 6 years). As the Plaintiff suffered tenderness on two areas, i.e. the ankle joint line and previous laceration wound site, BND\$2,360.00 x 2. I will award **BND\$4,720.00**.

**(g) Post traumatic osteoarthritis on left ankle**

Dr. Tan Tiam Siong suggests that surgery may not be immediately necessary for Amin Halim's left ankle injuries, implying they might not be severe. It is stated in Dr. Tan Tiam Siong's medical report:

*"b. x-ray of left ankle done on 23/03/2023 showed fracture fully united, with features of post traumatic osteoarthritis, including osteophytes and subchondral sclerosis."*

In ***Muliadi bin Maksin v Wang Meng Peck & Anor [2003] BLR 257***, the court awarded the Plaintiff BND6,000.00 for osteoarthritis/arthrosis of the right ankle. In ***Pierre Gupson v Wong Kok Huay [2014] SGHCR 9***, the court awarded the Plaintiff BND3,000.00 for osteoarthritis of his ankle joint as the court accepted the doctor's evidence that the Plaintiff was already suffering the onset of osteoarthritis.

In the case of ***Mohammad Arif bin Abdullah & 2 Ors v Too Shu Vun (HCCS No. 82 of 2012)***. The sum of BND8,500.00 was awarded for moderate degenerative arthritis on the right ankle joint in 2015.

The Plaintiff's osteoarthritis is at stage 2, considered mild, compared to stage 3<sup>1</sup> in a referenced case. Despite this, the court leans towards the referenced case above to determine the award amount. After analysing other cases and factoring in inflation, the reasonable award is calculated as **BND9,520.00** [BND8,500 + (BND8,500 X 3% X 4 years)].

**(h) Posterior tibialis tendon tendinopathy**

Dr. Tan Tiam Siong in his medical report that the Plaintiff suffered in his current diagnosis and problem described as follows:

*"United bimalleolar fracture of left ankle with post traumatic ankle osteoarthritis"*  
*"Posterior tibialis tendon tendinopathy, presented as pain and weakness"*

In ***Mak Pik Hong & Anor v Quintin Dureza Billiones (HCCS No.2 of 2008)***, the sum of BND6,800.00 was awarded for injury to one ligament/tendon in 2010.

Both parties submitted different amounts for the award, due to their approach to its inflation calculation. Taking into the account the inflation rate of 3% per annum, I hereby award the Plaintiff as follows for the injury to his tendon: BND6,800.00 + (BND6,800.00 x 3% x 8 years) = **BND8,432.00**

## **II. Loss of Amenities**

Due to the Plaintiff's injuries, the Plaintiff can no longer enjoy his previous sports of jogging and football and difficulty with prolonged driving. This is supported by Dr. Liam Lian Arch's medical report that the Plaintiff's inability to kneel down or squat comfortably has affected his posture while praying.

In ***Hjh Sauyah Bte Hj Kamis v Maimunah Bte Abd Ghani [2007] JCBD 324***, the sum of BND17,000.00 was awarded in 2007 to the Plaintiff who was 57 years old for loss of amenities for her loss of ability to perform activities that she used to enjoy.

In a further case of ***Mohammad Arif Bin Abdullah & 2 ors v Too Shu Vun***, where the sum of BND25,000 was awarded in 2015 for loss of amenities to a 28-year-old male. After inflation, the sum is about BND31,000.00 [BND25,000.00 x 3% x 8 years].

The Plaintiff submits that based on the two cases above, the Plaintiff Amin Halim was 43 years old about 14 years younger than Hjh Sauyah and 15 years older than Mohammad Arif. I find that the sum of the award should be between both cases **BND28,000.00** suggested by the Plaintiff's counsel to be reasonable.

### **B. Loss of Future Earnings**

The accident left Amin Halim unable to perform physically demanding tasks due to lower limb strength and joint movement issues. Despite this, he remained employed with the Second Defendant, receiving full salary despite performing simpler tasks. Two years later, he chose to leave the job and return to Indonesia voluntarily, thus knowingly increasing his losses and assuming the associated risks.

With regards to the loss of future earnings, it is stated in ***Ponnusamy Rajapandian v Hj Awg Mohd Hussainin bin PP Hj Awg Ahmad [2019] (ICCS No. 43 of 2012)***:

*"I take note that the plaintiff was not able to perform his job as he was doing before the injury. However, the plaintiff chose to terminate his service with the Defendant and that is the risk that the plaintiff had to undertake..."*

As the Plaintiff chose to leave his employment, without being terminated, the Plaintiff is not entitled to the loss of future earnings. The claim for the loss of future earnings is hereby denied.

### C. Loss of Earnings Capacity

The Plaintiff is deemed permanently unable to perform physically strenuous work which requires prolonged standing and walking permanently, affirmed by multiple medical experts, including Dr. Pande, Dr. Kanan, and Dr. Lim. I am satisfied that this does not contradict with Dr. Tan Tiam Siong, the Defendant's medical witness. Dr. Tan confirms that even though the fracture has fully united, there are features of post traumatic osteoarthritis including osteophytes and subchondral sclerosis which will be permanent. Due to this, there is a substantial risk that Amin Halim will lose his employment in the near future, and will likely struggle to regain employment.

In *Siti Supatin binti Hj Asar v The estate of Norliah binti Yusoff (deceased) & Anor* [2002] BLR 229, BND40,000.00 was awarded for loss of earnings, citing the weakening of their competitive position in the job market due to limited ability to perform heavy duties. The Plaintiff's claim mirrored the circumstances of Siti Supatin, submitting for the same compensation. However, the Second Defendant contested this claim.

Amin Halim's physical limitations restrict him to only light tasks, rendering him incapable of performing heavy manual work. This limitation puts him at a disadvantage in the job market, as employers typically seek individuals capable of handling heavier duties. Following the Supatin case, the amount of **BND40,000.00** is hereby granted.

### D. Loss of ability to carry out Do-It-Yourself chores or tasks

While Dr. Tan acknowledges some limitations, he suggests that Amin can still perform certain activities like driving, cycling, and simple housework. The Plaintiff argues for compensation in the sum of BND18,900.00, but the Second Defendant opposes it.

Despite some agreement on Amin's limitations, the claim for the loss of ability to perform DIY chores or tasks is hereby **denied** based on the evidence presented.

### E. Cost of future treatment

The Plaintiff is claiming for the cost of future treatments based upon the recommendations of the Second Defendant's medical doctor, Dr. Tan Tiam Siong, as follows:

#### I. Medication (anti-inflammatories and painkillers) on a monthly basis for 2-3 years

Dr. Tan opined that Amin Halim has post traumatic ankle osteoarthritis, which cause pain and stiffness, he needs analgesia when necessary to reduce his pain in future. Amin Halim stated that he is experiencing pain in his left ankle.

Based on this, I award **BND5,000.00** as proposed for medication on a monthly basis for 2 to 3 years.

## **II. Removal of implant in future**

Dr. Tan suggested that Amin Halim might eventually need his ankle implant removed, a view supported by Dr. K. Kannan's report. However, Dr. Pande, under cross-examination, stated there was no immediate necessity for implant removal. Additionally, Dr. Tan confirmed that since Amin Halim didn't report any issues with the implant, the likelihood of removal was minimal, unless requested by the patient. This evidence was unchallenged by the Plaintiff. I concur with Dr. Pande and Dr. Tan, denying the cost for future implant removal as the likelihood is less than 5%. Hence, this claim is hereby **denied**.

## **III. Ankle replacement surgery or ankle fusion surgery**

Dr. Tan in his medical report stated that *"If his ankle osteoarthritis worsens, he will need surgery to reduce his ankle pain, namely either ankle replacement surgery or ankle fusion surgery, which will cost around RM30,000 if done in a private hospital."*

However, in Dr. Tan's letter dated 5th April 2023, he confirmed that the percentage of ankle fusion or replacement surgery is less than 5%, in view that currently the Plaintiff is at stage 1-2 of ankle osteoarthritis.

In the case of ***Megalift Sdn Bhd v Fabiola Ng Yiok Chin [2016] (COA No. 5 of 2016)***, the court awarded the Plaintiff BND26,000.00 for cost of future treatment on the basis of medical consultant's opinion that there was more than 50% chance for the requirement of removal of implant, and elbow replacement procedure.

In a distinguishing case of ***Aijaz Nabi & 4 Ors v Helena Simon & Anor [2005] BLR 6***, the court made no award for cost of future consultation. The court considered the doctors' opinion that surgery is only necessary if the Plaintiff develops symptoms. The court also considered that there is no latest evidence as to the possibility of the Plaintiff developing these symptoms or the possibility of the Plaintiff needing surgery, and the Plaintiff's admission that he has not suffered from any of these symptoms to date.

To differentiate with the two cases above, it is clear that in the present case of Amin Halim, the likelihood of ankle fusion or replacement surgery does not exceed 50% in

fact the likelihood is less than 5%. I agree with the Second Defendant's submission that the said injury will only be required if the ankle osteoarthritis worsens. Currently, there is no certainty that the osteoarthritis will/has worsened.

Due to this, the claim for ankle fusion and replacement surgery is hereby **denied**.

#### **IV. Physiotherapy to improve posterior tibialis tendinopathy problem**

Physiotherapy once a week for 6 months duration for Amin Halim may be needed to alleviate pain and increase muscle strength. Based on costs in Singapore, the compensation for physiotherapy cost is BND150.00 - BND200.00 per session. They claim a conservative amount of BND10,400.00.

On the other hand, the Second Defendant argues for treatment in the Plaintiff's country of origin, citing legal precedents from Malaysia: *Yeap Cheng Hock v Kajima-Taisei Joint Venture* [1973] MLJ 230; and *Dharam Singh v Ibrhahim bin Shaaban* [1995] 4 CLJ 207. In these cases, the court allowed the award for cost of treatment at medical facilities in the Plaintiff's country origin.

The initial assessment and treatment at Physio Active costs 900,000 Indonesian Rupiah, which, based on the exchange rate of 1 Brunei Dollar to 11,053.60 Indonesian Rupiah as of June 8, 2023, amounts to approximately BND81.42.

The cost of each follow-up physiotherapy treatment is as follows:

|                   |              |
|-------------------|--------------|
| 60 minute session | 1,200,00 IDR |
| 45 minute session | 900,000 IDR  |
| 30 minute session | 6000,00 IDR  |

The second submits to adopting a middle ground of a 45-minute session, with the median cost of 900,000 IDR. I agree with this position. Calculating the cost for 24 weeks of sessions at BND81.42 per session, the reasonable award for physiotherapy is **BND1,954.08**.

#### **V. Surgery for posterior tibialis tendon reconstruction, extraosseus talotarsal joint stabilization**

Dr. Tan Tiam Siong reported that the surgery for posterior tibialis tendon reconstruction, extraosseous talotarsal joint stabilisation will be needed, and that it will cost around RM30,000.00 if done in a private hospital. Dr. Tan is also of view that

there is a 50% likelihood that the Plaintiff will need posterior tibialis tendon reconstruction, extraosseous talotarsal joint surgery as the posterior tibialis muscle function is still weak, 7 years since the injury.

The Plaintiff submits that the amount of **BND8,700.00** is reasonable for this claim. As such the cost for this heading is allowed and I award the amount accordingly.

#### **F. Special Damages**

Under special damages, I am satisfied that the Plaintiff is entitled as claimed. I award the following sums.

1. Damages to clothing = \$50.00
2. Cost of medical report (Tutong) = \$50.00
3. Cost of medical report (RIPAS) = \$150.00
4. Cost of specialist medical report = \$900
5. Cost of transportation for 6 follow up appointments (RIPAS) = \$120.00
6. Cost of registration (RIPAS) = \$25.00
7. Cost of consultation (RIPAS) \$85.00
8. Cost of x-rays = \$40.00
9. Cost of company search = \$9.00
10. Cost of developing photographs = \$22.80
11. Cost of registration (JPMS) = \$10.00
12. Cost of x-ray (JPMC) = \$180.00
13. Cost of x-ray (Tutong) = \$40.00
14. Cost of return fare from Brunei to Singapore = \$368.00

The Defendant disputed the claim of BND40,600.00 for partial loss of salary, overtime and benefits at BND700.00 per month from September 2018 to date (July 2023) and continuing (58 months).

The refer to of **Ponnusamy Rajapandian v Hj Awg Mohd Hussainin bin PP Hj Awg Ahmad [2019] (ICCS No. 43 of 2012)**, where the court held that the Plaintiff chose to leave his employment with the Defendant. The court held as follows:

*"Plaintiff continues to work for the Defendant for another 2 years and 2 months... On the 15th February 2012, the plaintiff told the Defendant that he wishes to go back to India.*

*I agree with the Defendant's submission that the plaintiff is not entitled to any loss of earning because the Plaintiff was still working for the Defendant after the said accident. The Plaintiff admits that he continued to work as a driver and was receiving salary from the Defendant. Plaintiff also agrees that his workload reduces after the accident.*

*The fact the Plaintiff chose to leave the said employment, without being terminated the Plaintiff is not entitled to any loss of earning.*

*For the claim of loss of earning and loss of earning capacity, the Plaintiff claim is hereby denied."*

In the case of Amin Halim, as he continued with the employment with the Second Defendant, earning a full salary and overtime after the accident until September 2018. After working 2 years after the accident, the Plaintiff, on his own accord and choice, left the Second Defendant's employment to return to Indonesia.

The Second Defendant submitted that the Plaintiff is not entitled to claim for any loss of salary or overtime and/or benefits, due to the Second Defendant voluntarily leaving the said employment.

Hence, it is agreed that the Plaintiff has failed in his duty to mitigate his losses. Due to these facts, the Plaintiff's claim of BND40,600.00 for partial loss of salary, overtime and benefits is hereby **denied**.

The Defendants also disputed the claim on cost of specialist medical report and x-ray (Alpha Joints) \$2,897.55 and cost of specialist medical report (Centre for Foot & Ankle) of \$2,205.27 and disagrees with the award submitted by the Plaintiff.

Based on Dr. Ketan Pande's medical report, where the disabilities of the Plaintiff were already noted by Dr. Ketan Pande that the Plaintiff was noted to be walking with a limp, unable to squat or sit cross legged normally, restriction of movements of left ankle and some other medical issues stated in the report.

In ***Chua Kain Meng v Sahid Sdn Bhd & Anor [2006] (HCCS No. 5 of 2002)***, the court deciding that "*it was reasonable to take the second opinion and to undergo the treatment recommended*". In this case, two medical reports dated 1st December 1999 from a medical officer in the RIPAS Orthopaedic Department and 20th May 2000 from another medical officer in the RIPAS Oral Maxillofacial Unit. These reports did not state the qualifications or experience of the medical officers. The court also noted that the consultant in Singapore Dr Yeap which the Plaintiff went to consult had issued a report dated 1st March 2002 which mentioned Dr Yeap's qualifications and that he is a consultant plastic and cosmetic surgeon. The Defendants in this case did not adduce any evidence that an expert Dr Yeap's standing had been available in Brunei.

The Defendant submits that the facts in the case above are different and the principle is not applicable to the current issue due to the following:

- a. Dr Ketan Pande's medical report dated 22nd March 2017, where Dr Ketan Pande's qualifications and field of expertise are provided in the medical report, "MS, MCh (Orth.), Visiting Consultant Orthopaedic Surgeon."

- b. Dr Ketan Pande has deposed that he is a qualified Consultant Orthopaedic Surgeon, practicing medicine for about 35 years out of which, he has been specializing in Orthopaedics for 33 years. As such, Dr Ketan Pande is an expert of Dr Kannan and Dr Lim Lian Arn's standing and is available in Brunei.

Based on this, the Defendant submits that there is no necessity for the Plaintiff to be examined by two other Consultant Orthopaedic Surgeons, Dr Kannan and Dr Lim Liann Arn in Singapore dated 13th March 2019 and 14th March 2019 as the Plaintiff was already examined by a doctor of the same standing i.e. Dr Ketan Pande on 22nd March 2017 medical report has been issued.

Hence, the Defendant submits that the Plaintiff should only be awarded cost for One Specialist Medical report and the claim for cost of specialist medical reports & X-rays obtained in Singapore should be **denied**.

### ***Summary of Awards***

|                                             |                     |
|---------------------------------------------|---------------------|
| (a) General Damages                         |                     |
| 1. Pain and suffering and Loss of amenities | \$120,196.00        |
| 2. Loss of earnings capacity                | \$40,000.00         |
| 3. Cost of future treatment                 | \$15,654.08         |
| (b) Special damages                         | \$2,049.80          |
| Grand Total                                 | <b>\$177,899.88</b> |

The Plaintiff is contributory negligent by 30%. He is only entitled to 70% of the total amount of \$177,899.88, which amount to **BND124,529.92**

### ***Interest***

- (a) 6% interest on general damages from date of accident to date of judgment;
- (b) 3% interest on special damages from date of accident to date of judgment; and
- (c) 6% per annum on judgment sum until full payment.

### ***Cost***

Cost to be awarded to the Plaintiff, to be taxed, if not agreed.

**MUHAMMED FAISAL BIN PDJLD KOL (B) DSP HJ KEFLI**  
Judicial Commissioner

