

# What to do in a motor accident?

A comprehensive practical guide to motor accident claims in Singapore

<b>Introduction</b>	<b>1</b>
<b>Immediate steps to take after collision</b>	<b>2</b>
<b>Possible options to pursue</b>	<b>3</b>
As claimant: claim own policy or other driver's policy, or private settlement .....	3
As defendant: private settlement or claim own policy .....	4
<b>The legal claim process</b>	<b>5</b>
Whom to sue .....	5
Things to do before suing (Pre-Action Protocols).....	6
Suing within the limitation period .....	7
Commencing civil action in the correct forum and level .....	8
Bifurcated proceedings in State Courts: liability first, then quantum.....	10
Liability: how to assess likely outcome .....	11
Quantum (assessment of damages): 'checklist' of claims to consider .....	13
Interest claimable on quantum.....	19
Legal costs (recoverable from defendant vs. payable to own lawyer).....	19
Strategic use of Offers to Settle (OTS) to negotiate .....	23
Whether to settle or fight .....	25
Applying for interim payments if matter is long drawn.....	26
Involvement of Public Trustee after claim has concluded .....	27
Counterclaim by defendant against claimant .....	28
<b>Conclusion</b>	<b>29</b>

## Introduction

1. As part of our commitment to increase public access to practical legal knowledge, we have put together this **comprehensive and practical guide** on motor accident claims. We have chosen this topic because of the increasing prevalence of motor accidents in densely populated Singapore. This guide is intended for **anyone who wishes to know his rights and options in the event of a motor accident**, including legal practitioners, claims managers and lay persons.
2. The contents are organised topically, so that readers may zoom-in directly on selected section(s) of immediate interest. As can be seen from the above contents page, this comprehensive guide covers the *entire* claim process: **before, during and after filing a claim**. For each of these stages, we have set out a **summary of the law and process**, as well as **practical and strategic tips** to secure your best interest either as claimant or defendant. Also, to suit legal users, this guide is heavily footnoted with useful links and comments for further reading, and the law stated herein has been kept current. It is hoped that this guide would be the **first reference point** for persons involved in a motor accident, giving an overall view of the legal claim process and 'teaser' introductions on specific areas, and thereafter recommending appropriate publications as 'specialist texts' for further reading in relation to a specific stage or issue in the legal claim process.
3. Although this guide contains our valuable know-how, we have kept it **free and publicly accessible** because we believe that the purpose of the law is to serve its users – you.

### Immediate steps to take after collision

4. The [General Insurance Association](#) ("GIA") of Singapore introduced the [Motor Claims Framework](#) ("MCF") on 1 June 2008, which is a standardised framework for reporting of motor accidents. Many motor insurers also have their own guidelines<sup>1</sup> on the dos and don'ts in a motor accident, which are consistent with the MCF.
5. Set out below are our suggested best practices in the event of a motor accident:
  - 5.1. **Stop the vehicle immediately** upon collision and do not move the vehicle unless absolutely necessary (e.g. for safety due to oncoming traffic).
  - 5.2. **Call the police and/or ambulance immediately if necessary**, such as where there are serious injuries or fatality, serious vehicular damage or damage to public property. Wait for the authorities to arrive and follow their instructions.
  - 5.3. **Exchange particulars** with the involved parties, including the name, NRIC number, contact number, address, insurer's details and vehicle number. If there is any witness, take down his particulars in case he has to be contacted subsequently. If the other driver refuses to provide his particulars, do not engage in an argument. Instead, take a photograph of his vehicle including the licence plate number, which will allow you to trace the vehicle owner and subsequently the driver of the vehicle (see paragraph 18 below). If you lodge a police report, record that the other driver had refused to provide you with his particulars and leave it to the Traffic Police to investigate.
  - 5.4. **Take proper photographs of the accident scene** – they are important to support or defend a claim subsequently. This includes photographs of the damaged portions of all vehicles, positions of all vehicles after collision, surrounding area and conditions (e.g. traffic light poles, lanes, dividers, overhead bridge, zebra crossing). Photographs of property damage should be taken at close-up for better resolution, and at the same height/elevation as the damage to avoid parallax error. If there is an in-vehicle video recording, retain a copy of the recording of the accident.
  - 5.5. Do not intimate any communication with the other driver that may be interpreted as an **acknowledgement of fault for the accident**. This may be argued to constitute an admission of liability, which prejudices a subsequent claim or defence, and may be a ground for your motor insurer to repudiate liability on your motor insurance policy.
  - 5.6. **Call your insurer's hotline for a tow truck if necessary** – only tow trucks authorised by your insurer should be allowed to tow your vehicle, otherwise it may be a breach of a term in your motor policy, which entitles your insurer to repudiate liability if you subsequently claim "own damage" against your motor policy.
  - 5.7. **Call your insurer's hotline for advice if necessary**, as insurers may have different procedures for accident reporting and the subsequent steps. Some insurers may even despatch their accident response team to the accident scene.<sup>2</sup>
  - 5.8. **Bring your vehicle to the insurer's approved reporting centre or authorised workshop within 24 hours**, or if the accident occurred on a weekend, then by the next working day. **Request a copy of your accident report** (hardcopy or softcopy).
    - 5.8.1. This is **necessary regardless whether you wish to claim "own damage"** against your motor policy. Failure to report promptly may entitle your insurer to repudiate liability on the motor policy or a decrease in your 'No-Claim Discount' (also known as 'No-Claim Bonus'). Hence, report first, and subsequently decide whether to claim.

<sup>1</sup> GIA: <https://gia.org.sg/motor-insurance/22-premium-renewal-of-policy/349dos-and-don-ts-following-an-accident-dos-and-don-ts-following-an-accident.html>; NTUC Income: <https://www.income.com.sg/claims/motor-insurance/motor-claim>; Aviva: <https://www.aviva.com.sg/en/make-a-claim/what-to-do-in-car-accident/>

<sup>2</sup> For example, NTUC Income: <https://www.income.com.sg/value-added-services/orange-force>

- 5.8.2. In your accident report, **be as detailed as possible about the accident**, including the date, time and location of the accident, the road, light and weather conditions, travelling speeds, whether hazard lights or turn signal indicator was switched on, the number of impact/collision, the colour of the traffic light, the relative speed and position of the vehicles around you, the number of lanes, any visual indication of injury suffered by the other vehicle's driver and passenger(s), description of vehicular damage, any offer made by the other driver, any sign of alcohol or incoherence from the other driver, etc. Also, submit a copy of all photographs and in-vehicle recordings of the accident scene.
- 5.8.3. A **detailed and accurate accident report is important** because it is your first account of the accident. Thus, it generally holds a higher probative value than your subsequent accounts in court proceedings, because the latter may be argued to be susceptible to memory lapse or subconscious biasness. Also, your accident report is retrievable by others<sup>3</sup> and may be scrutinised during the claim process. Hence, a 'well written' report may affect how the insurers approach your matter.
- 5.9. In addition to the above accident report, you should also **lodge a Traffic Police report as soon as possible or within 24 hours of the accident** if the accident involves fatality, damage to government property, foreign vehicle, pedestrian or cyclist, hit-and-run case, or injury cases where at least one person was taken to hospital from the accident scene by an ambulance / self-conveyed, or any injured party obtained outpatient medical leave for 3 days or more. Again, it is important that your police report *be as detailed as possible*, and you may wish to submit the same account as your accident report. A **police report may be lodged online**.<sup>4</sup>

### **Possible options to pursue**

#### As claimant: claim own policy or other driver's policy, or private settlement

6. The first option is to **claim against your own insurance policy**.
- 6.1. **The pros:** a more 'fuss free' option because you do not incur direct costs, need not engage lawyers nor personally expend time and effort to pursue your claim. You need only submit documentation to your insurer and await their compensation. However, the motor policy usually states a fixed period from the accident (e.g. 7 days) within which a claim must be lodged against the motor policy, otherwise the claim is barred – please check the terms of your motor policy in this regard.
- 6.2. **The cons:** the compensation amount depends on the terms of your motor policy. Thus, you should check your policy wording for any exclusions or limits to compensation, or the definition of key terms. Sometimes the insurance payout may be insufficient to cover your full loss. Also, any insurance payout may affect your future premium or 'No-Claim Discount' ("**NCD**"), so you may bear indirect costs.
- 6.3. **Other things to note:** after the payout, your insurer will evaluate the matter and may decide to claim against the defendant to recoup the payout, if necessary. In such event, you may be required to assist your insurer in subsequent court proceedings, such as attending at the office of the lawyer appointed by your insurer for interview, providing to the lawyer all documents, photographs and video recordings pertaining to the accident, executing an Affidavit of Evidence-in-Chief (a court document setting out your account of the accident) or attending Court as a witness.

<sup>3</sup> <https://gia.org.sg/motor-insurance/22-premium-renewal-of-policy/359-motor-accident-report-purchase.html>

<sup>4</sup> <https://www.police.gov.sg/e-services/report/police-report>

7. The second option is to **claim against the defendant's motor policy**.
  - 7.1. **The pros:** as you are not claiming against your motor policy, your policy's future premium or NCD is unlikely to be affected. The compensation amount is not constrained by your policy wording, and you are entitled to claim for your full loss against the defendant, in accordance with the law.
  - 7.2. **The cons:** you have to personally expend time and effort to pursue the claim against the defendant's insurer, or engage lawyer to do so. Some tasks to be performed includes identifying the opposing insurer, issuing a letter of claim with the necessary information and documentation, quantifying and reasoning your claim, analysing the opposing insurer's offers, and several rounds of negotiation.
  - 7.3. **Other things to note:** if you **do not know the identity of the defendant's insurer**, you may try ascertaining it by retrieving the defendant's accident report<sup>5</sup> if any. If the **defendant is unknown** (e.g. hit-and-run) or **uninsured** (e.g. invalid policy), you may claim against the [Motor Insurers' Bureau of Singapore](#) (MIB), who will step in as though it is the defendant-insurer. Although you may handle the claim by yourself, it is advisable to engage lawyer because a lawyer can help you identify the proper party to claim against, advise on the merits and quantification of your claim, and negotiate on your behalf to increase the odds of a favourable outcome.
8. The third option is to **directly negotiate with the other driver for private settlement**.
  - 8.1. **The pros:** as you are not claiming against your motor policy, your policy's future premium or NCD is unlikely to be affected. The process is likely to be faster than the two other options above, if the other driver is also keen to settle, without the need to engage lawyers.
  - 8.2. **The cons:** you will have to expend time and effort to convince the other driver to agree to your proposed settlement quantum. Further, you may not be aware of the true value of your claim that you are entitled to under law.
  - 8.3. **Other things to note:** if a private settlement is successfully reached, ensure that the settlement terms are evidenced in writing to avoid any subsequent dispute. Also, if an accident report has been lodged, notify your insurer of the private settlement and request that they do not affect your future premium or NCD. Some insurers may require both drivers to complete a form recording the terms of private settlement.

As defendant: private settlement or claim own policy

9. If **claimant's damage is minor**, try to *swiftly* engage the claimant *onsite* to secure his in-principle agreement to **settle privately** instead of insurance, and follow-up keenly with him. Otherwise, if the claimant claims against your motor insurance, the matter will go 'by the book' which likely result in a full-blown claim. Also, if the claimant visits his own workshop, there are widely reported<sup>6</sup> risks of malpractices by claimants, workshops and/or third-party agents who exaggerate the property damage and file inflated claim against the defendant's motor policy, which is commercially difficult to detect or challenge. If you suspect that the other party's claim is inflated or fraudulent, immediately inform your insurer with supporting evidence. You may also report to GIA at 1800-44-37283 (1800-GI-FRAUD) under its **GIA Insurance Fraud Tip-off (GIFT) scheme**, which rewards individuals up to \$10,000 for reporting insurance fraud cases that lead to successful conviction.<sup>7</sup> Also, when negotiating directly with the claimant, expressly state that your settlement offers are without prejudice, so that your offers cannot be used against you as an admission of liability.

---

<sup>5</sup> <https://gia.org.sg/motor-insurance/22-premium-renewal-of-policy/359-motor-accident-report-purchase.html>

<sup>6</sup> <https://www.straitstimes.com/singapore/more-cases-of-motor-insurance-fraud-reported-as-police-and-insurers-intensify-efforts>; <https://www.straitstimes.com/forum/letters-in-print/a-long-way-to-go-in-weeding-out-inflated-and-fraudulent-claims>; <https://www.straitstimes.com/forum/letters-in-print/greater-transparency-needed-in-motor-insurance-claims>; <https://www.straitstimes.com/forum/letters-in-print/why-was-claim-paid-out-when-car-was-not-damaged>

<sup>7</sup> <https://gia.org.sg/motor-insurance/22-premium-renewal-of-policy/358-motor-insurance-fraud.html>

10. If **claimant's damage is significant**, request the claimant to claim against your motor policy. Your NCD would be affected, but it would still be cheaper than personally paying compensation or engaging lawyer to defend the claim. Subsequently, if you receive any letter of claim or court papers, you should **immediately notify your insurer**. Your insurer will handle the matter and engage lawyer if necessary, and you may be required to assist.
11. On occasions, the **insurer may repudiate or disclaim liability** on the motor policy, which means that the claim does not fall within or is excluded from the policy cover. Examples of common grounds for repudiation are set out below:
  - 11.1. Driving under the influence of alcohol, drugs or medication.
  - 11.2. Vehicle was unregistered or has illegal modifications.
  - 11.3. Vehicle was driven by someone without valid driving licence.
  - 11.4. Number of passengers in the vehicle exceeds the legal seating capacity.
  - 11.5. Failure to promptly notify the insurer about the accident or notice of any proceedings.
  - 11.6. Failure to assist the insurer in defending the claim.
  - 11.7. Insured or driver had prejudiced the claim by admitting responsibility.
12. **If you are a defendant and your motor insurer has repudiated policy liability, it means that you must defend the claim on your own or engage your own lawyer.** This also means that you will ultimately have to bear the full compensation payable to the claimant (see paragraph 15 below on the insurer's liability in the event it repudiates policy liability). **If you wish to dispute the decision of your motor insurer to repudiate policy liability**, you may wish seek legal advice or approach the [Financial Industry Disputes Resolution Centre Ltd](#) to adjudicate the dispute (see paragraph 31.1 below for the process). Even after repudiating policy liability, the insurer may still apply to Court for permission to intervene<sup>8</sup> in the court proceedings to contest the claim. This is not to defend the defendant, but for the practical reason that the insurer is ultimately liable under the law to pay on any unsatisfied judgment against the defendant-insured for death or personal injury<sup>9</sup>, but the insurer is likely to claim indemnity against the defendant-insured subsequently.

### **The legal claim process**

#### Whom to sue

13. The term motor "accident" may be a misnomer because its ordinary plain meaning suggests that the event occurred through no fault of anyone, by sheer 'accident'. However, legally speaking, a motor accident claim is a claim in **tort of negligence** against the errant driver for his mismanagement of vehicle (i.e. the errant driver was at 'fault' because he has breached the standard of care expected of him). Hence, the **primary person** to be sued is the **errant driver** as tortfeasor (also known as the "**defendant**").
14. It would generally not be viable to sue the **owner of the vehicle** as he did not cause the motor accident. However, if the defendant was driving a company vehicle *in the course of employment*, it may be possible to sue the **employer-company** for **vicarious liability**, in addition to suing the employee-driver. This may be for strategic reasons, e.g. the employer-company may have deeper pockets than the employee-driver to pay compensation.
15. In Singapore, all users of motor vehicles are required to have an insurance policy covering third party risks for any liability in respect of death or bodily injury arising out of the use of motor vehicle in Singapore and West Malaysia.<sup>10</sup> Motor insurers are required to satisfy any judgment obtained against their insured for liability in respect of death or bodily injury (but not for property damage), even if the insurers validly repudiate policy liability against the insured-defendant.<sup>11</sup> This also applies even if the defendant is insured by a Malaysian insurer, if the accident occurred in Singapore.<sup>12</sup> This means that after the claimant has obtained final judgment against the defendant, the claimant must first try to claim against

<sup>8</sup> Via Order 15 rule 6 of the [Rules of Court](#).

<sup>9</sup> [Motor Vehicles \(Third-Party Risks and Compensation\) Act](#) (Cap. 189) ("**MVTPCA**"), Sections 4(1)(b), 8 and 9.

<sup>10</sup> MVTPCA (footnote 9), Sections 3 and 4(1)(b).

<sup>11</sup> MVTPCA (footnote 9), Sections 4(1)(b), 8 and 9.

<sup>12</sup> *Pacific & Orient Insurance Co Bhd (formerly known as Pacific & Orient Insurance Co Sdn Bhd) v Motor Insurers' Bureau of Singapore* [2013] 1 SLR 341; [2012] SGHC 202 at [60].

the defendant by serving the final judgment on the defendant and demanding payment of judgment sum. If the defendant fails to pay judgment sum, the claimant then looks towards the defendant's insurer, to demand payment of the judgment sum, which the defendant's insurer is obliged to pay. The claimant will only receive one set of judgment sum (there can be no double recovery), either from the defendant or from the defendant's insurer. If the defendant's insurer has repudiated policy liability, the defendant's insurer will have to first pay the judgment sum to the claimant and subsequently seek indemnity from the defendant (as their insured) – but this is a matter between the defendant and his insurer, and does not affect or involve the claimant.

16. If the **defendant is unknown** (e.g. hit-and-run) or **uninsured** (e.g. invalid policy), then the [Motor Insurers' Bureau of Singapore](#) ("**MIB**") will step in as though it is the defendant-insurer, and it will pay the compensation, but this is also limited to liability in respect of death or bodily injury (but not property damage).<sup>13</sup>
17. The above compulsory motor insurance and the establishment of the MIB means that the Singapore legislature has ensured that **all motor accident victims are assured of compensation** for death and bodily injury (but not property damage) if liability is proven.
18. Insurers and lawyers are able to conduct a **search on the defendant-vehicle's registration number** with the Land Transport Authority's records, to obtain details of the **vehicle's owner and insurer**, as well as to apply to the Traffic Police for **the defendant's police report** (if any), upon payment of the respective fees. Anyone may **apply for the accident report** of the defendant from GIA<sup>14</sup> upon payment of fee.
19. In a **multi-vehicle collision**, the claimant is **entitled to claim against more than one driver** (tortfeasor) if the collision was due to the fault of more than one driver. For example, in a straight-line collision involving three vehicles, the claimant in the frontmost vehicle may sue the drivers of both the second and third vehicles behind. However, in practice, the claimant will usually sue only one driver, that is, the driver of the vehicle that appears to be the most responsible for the collision (e.g. the vehicle immediately behind the claimant's vehicle). This is because of the compulsory insurance for third party risks, such that a successful claim against one driver would allow the claimant to receive full compensation already (and there cannot be double recovery). Thus, there is no practical need for the claimant to incur further costs to pursue the second driver. However, **if you are one of two drivers responsible for the multi-vehicle collision**, and if the claimant has claimed against you only, then the onus is on you (or your insurer) to **claim contribution from the other defendant**, i.e. for the other driver to contribute to the total compensation amount payable by you to the claimant – this is called 'third party proceedings'.

#### Things to do before suing (Pre-Action Protocols)

20. Before commencing proceedings, a claimant must comply with the **Pre-Action Protocols** in the [State Courts Practice Directions](#), namely, **Appendix C** for Non-Injury Motor Accident ("**NIMA**"), or **Appendix E**<sup>15</sup> for Personal Injury Motor Accident ("**PIMA**"). **Non-compliance** without good reasons may result in '**cost sanctions against the breaching party**'<sup>16</sup>, i.e. the Court may reduce or increase the overall party-and-party costs<sup>17</sup> payable by the defendant to the claimant (if any at all) as 'penalty' for non-compliance.
21. The first step is to issue a **letter of claim**<sup>18</sup> to the defendant and copying his motor insurer. **Notifying the defendant's insurer is important**, otherwise, the insurer is not bound to satisfy the ensuing judgment against the defendant.<sup>19</sup> The letter shall set out **brief details**

<sup>13</sup> See *Motor Insurers' Bureau of Singapore and another v AM General Insurance Bhd (formerly known as Kurnia Insurans (Malaysia) Bhd) (Liew Voon Fah, third party)* [2018] 4 SLR 882; [2018] SGHC 39 at [17] to [23] for a background on the contractual arrangements between Malaysian motor insurers, Singaporean motor insurers, the MIB and the Minister of Finance of the Republic of Singapore.

<sup>14</sup> <https://gia.org.sg/motor-insurance/22-premium-renewal-of-policy/359-motor-accident-report-purchase.html>

<sup>15</sup> Appendix E also applies to personal injury claims that are not related to motor accidents. Hence, this guide is also largely applicable to other personal injury claims, such as personal accidents.

<sup>16</sup> Paragraphs 37 and 38 of the [State Court Practice Directions](#).

<sup>17</sup> For explanation on party-and-party costs, please refer to paragraphs 54 to 59.9 of this guide.

<sup>18</sup> See template for letter of claim in Form 3 in Appendix C, or Form 1 in Appendix E.

<sup>19</sup> MVTPCA (footnote 9), Section 9(3).



of the accident, a **quantification of claim amounts** and enclose copies of **all supporting documents** (e.g. photographs of accident scene, damage and injury, police report, medical documents, surveyor report, invoices, receipts, and proof of loss of income, if any).

22. Within **3 working days** of the accident, the claimant must issue **2 days' notice** to the defendant and his insurer to allow their **inspection of the claimant's vehicle before repair**.<sup>20</sup> If inspection is required, then parties have to provide their respective list of proposed surveyors for agreement on a single joint expert for inspection.
23. Thereafter, negotiations between the defendant's insurer and the claimant should follow. A claimant may commence legal proceedings only upon either of the following scenario<sup>21</sup>:
  - 23.1. **Insurer** failed to issue **acknowledgment letter within 14 days** of receipt of the letter of claim;
  - 23.2. **Insurer** failed to issue **substantive response within 8 weeks** of receipt of the letter of claim; or
  - 23.3. **Reasonable attempts at settlement has failed** and **after 8 weeks** of the insurer's receipt of the letter of claim. **Appropriate notice**<sup>22</sup> **must be given to the defendant's insurer** before commencement of proceedings.
24. The Pre-Action Protocols are, in essence, a **frontloading of some of the court processes**, such as the discovery of documents and quantification of general damages, which used to be disclosed later in the court proceedings but are now required in the letter of claim. The rationale for this frontloading is to allow the defendant's insurer an opportunity to assess the claim and make a settlement offer, so that parties may negotiate a settlement if possible, in order to avoid the costs of commencing legal proceedings. In fact, the Pre-Action Protocols have led to a significant one-third decrease in the number of motor accident claims filed in the State Courts, from 13,854 claims in 2011, to 9,160 claims in 2016.<sup>23</sup>
25. The Court will not impose costs sanctions if there are good reasons for non-compliance, for example, attempts to resolve the dispute via the [Singapore Mediation Centre](#) or the [Law Society of Singapore Arbitration Scheme](#), or if the claim is reaching the expiry of the applicable limitation period (see paragraphs 26 to 29 below).<sup>24</sup>

#### Suing within the limitation period

26. In Singapore, every legal claim has a **prescribed 'shelf life'**, including motor accident claims. This is called "limitation period", and every claimant must commence legal proceedings before expiration of the applicable limitation period, failing which, the defendant may apply to Court to strike out a claim that is time barred and/or plead the expiration of limitation period as a complete defence against the claim.
27. For **PIMA claims** (i.e. with personal injury), the **limitation period is 3 years** from the accident date, or 3 years from the earliest date on which the claimant has the knowledge required for bringing an action for damages in respect of the relevant injury, *whichever is later*.<sup>25</sup> The latter scenario is, for example, where the claimant suffers internal or latent injuries which did not manifest until after 3 years from the accident.

<sup>20</sup> Paragraph 2.2 of Appendix C, or paragraph 2.1 of Appendix E.

<sup>21</sup> Paragraphs 4.4, 4.9 and 8.3 of Appendix C, or paragraphs 4.2, 4.5 and 10.2 of Appendix E.

<sup>22</sup> 10 clear days' notice if NIMA, or 2 clear days' notice if PIMA – see footnote 21.

<sup>23</sup> <https://www.straitstimes.com/singapore/motor-accident-claims-now-more-likely-to-be-settled-out-of-court>

<sup>24</sup> Paragraphs 14.2 and 15.2 of Appendix C and paragraphs 13.1 and 13.2 of Appendix E.

<sup>25</sup> Section 24A(2) and (4) of the [Limitation Act \(Cap. 163\)](#). However, if a claimant commences a single suit against a defendant for various causes of action, the 3-year limitation period only applies to the particular cause(s) of action claiming damages for personal injury; it does not apply to the entire suit. For example, in *Yan Jun v Attorney-General* [2015] 1 SLR 752; [2014] SGCA 60, the claimant sued the police (through the Attorney-General) for various causes of action, including (1) assault, (2) battery, (3) excessive use of force, (4) infliction of emotional distress, (5) false imprisonment, (6) malicious prosecution and (7) defamation. The Court held in *obiter* that (1) to (4) were claims for personal injury and thus caught by the 3-year limitation period, whereas (5) to (7) were not claims for personal injury and would fall under the general 6-year limitation period, and thus the suit may continue for the latter causes of action. It was also held that, in any event, the Court has

28. For **NIMA claims** (i.e. property damage only), the **limitation period is 6 years** from the accident date, or 3 years from the earliest date on which the claimant has both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, *whichever is later*.<sup>26</sup>
29. The above is subject to an **overriding time limit of 15 years** from the accident date.<sup>27</sup>
30. Sometimes, the claimant may need more time to either obtain more information before deciding whether to sue a suspected defendant (because if the defendant successfully defends the suit, the claimant has to pay costs to the defendant for suing the wrong person), or to conclude ongoing settlement negotiation. However, if the limitation period is fast expiring, the claimant will have no choice but to commence court proceedings before the expiry date, in order to preserve his claim. In such situation, the claimant may instead consider requesting the suspected defendant to **agree to extend or suspend the limitation period** for a fixed period of time. Alternatively, the claimant may take out a **'protective writ'** before the expiry date, which is to file the Writ of Summons (the very first court document to kick-start proceedings) but does not serve it on the defendant yet until the claimant is certain that he wishes to continue with the proceedings. However, the Writ of Summons must be served within 6 months from the date of issuance or the claimant must seek leave of Court for an extension of time for the validity of the Writ.<sup>28</sup>

#### Commencing civil action in the correct forum and level

31. If a claimant wishes to commence civil action, it should be commenced in the appropriate forum and level, depending on the quantum and nature of the claim:
- 31.1. For **NIMA claim less than \$3,000**<sup>29</sup> (i.e. property damage only), the claim shall first be lodged with the [Financial Industry Disputes Resolution Centre Ltd](#) ("**FIDReC**"), instead of the Court, subject to limited exceptions<sup>30</sup>.
- 31.1.1. Under the NIMA scheme, the FIDReC Case Manager mediates the dispute and gives the 'Mediator's Indication' on liability and/or quantum, which is non-binding and on a 'without prejudice' basis (i.e. what was said or adduced cannot be used as evidence in Court, which is to allow frank discussions for settlement negotiation)<sup>31</sup>. If no settlement is achieved, the case will then be heard and adjudicated by a FIDReC Adjudicator. However, for other disputes outside the NIMA scheme, they are resolved through the general FIDReC dispute resolution process, which is a 2-stage mediation and adjudication process, but there is no Mediator's Indication, and the cost structure differs from the NIMA scheme.
- 31.1.2. **No lawyers are allowed in FIDReC proceedings, and parties shall present their own case in person.** The purpose is to provide low cost resolution of claims. The FIDReC Adjudicator's decision is final and binding on the financial institution (e.g. motor insurer) but not on the claimant (e.g. motor accident victim).<sup>32</sup> Hence, if the claimant is dissatisfied with the decision of the FIDReC Adjudicator, he may commence court proceedings *thereafter*, without incurring cost sanctions.
- 31.1.3. Alternatively, in lieu of FIDReC proceedings, claimants may also attempt to resolve their dispute via the [Singapore Mediation Centre](#) or the [Law Society of Singapore Arbitration Scheme](#) without fear of cost sanctions.<sup>33</sup>

---

the discretion to allow the claimant to amend his statement of claim to abandon his claim for damages for personal injury such that his suit will not be struck out for being time barred. See [82] to [87] of judgment.

<sup>26</sup> Section 24A(3) and (4) of the [Limitation Act \(Cap. 163\)](#).

<sup>27</sup> Section 24B of the [Limitation Act \(Cap. 163\)](#).

<sup>28</sup> Order 6 rule 4(1)(b) of the [Rules of Court](#).

<sup>29</sup> This quantum excludes survey fees, interests, costs and disbursements.

<sup>30</sup> Paragraph 37(1)(c) of the [State Court Practice Directions](#) and paragraph 12 of Appendix C. See the exceptions to FIDReC proceedings in paragraph 13.1 of Appendix C.

<sup>31</sup> <https://fidrec.com.sg/website/howfidrecworks.html>

<sup>32</sup> <https://www.fidrec.com.sg/website/faq.html>

<sup>33</sup> Paragraph 14.2 Appendix C and paragraph 13.1 of Appendix E.



- 31.2. For **all other claims (PIMA or NIMA)**, the appropriate level of court is as follows:

Quantum of claim	Level of Court
Up to \$60,000	Magistrates' Court
More than \$60,000 and up to \$250,000	District Court
More than \$250,000 and up to \$500,000	Commence in High Court first, and case will be automatically transferred to District Court <sup>34</sup>
More than \$500,000	High Court

32. Commencing your case in the appropriate level of Court is important for various reasons:

- 32.1. **Each level of Court is only able to grant an award up to the monetary limit<sup>35</sup>** set out in the above table. For example, if the true value of the claim is more than \$60,000, but action was commenced in the Magistrates' Court, then the claimant would be awarded damages of up to \$60,000 only. However, parties may **sign a memorandum to grant jurisdiction** to the District Court to award damages in excess of the monetary limit.<sup>36</sup> A claimant **may also choose to abandon part of his claim** to fall within the monetary limit of the District Court.<sup>37</sup>
- 32.2. Cases in a **lower court generally incurs lower court fees and lawyers' fees**. Further, if action is commenced in a higher court but the damages awarded is within the monetary limit of a lower court, the claimant would only be entitled to recover costs on the lower scale of the lower court.<sup>38</sup>
- 32.3. Any party to a court proceedings may apply to transfer the case to the appropriate level of court. If the defendant successful applies to transfer the case downwards, the **claimant may be ordered to pay costs of the application to defendant**. If the claimant applies to transfer the case upwards, he would incur court fees and legal fees for the application, with **no certainty of recovery of any costs from the defendant** because the claimant had commenced in the 'wrong' court.
- 32.4. Notwithstanding the above, there **may be strategic reasons to file a claim in the High Court**. One example is if it is anticipated that there will be **overseas enforcement** of the ensuing judgment<sup>39</sup> (e.g. foreign defendant/insurer). Another example is where the claim involves **novel issues of law**, or the claimant **wishes to challenge the case precedents from a higher level of court**, which would otherwise be binding on the lower court. In this regard, seeking legal advice from lawyer to strategise the best approach moving forward would be prudent.
- 32.5. Different levels of court may have different procedures applicable only to that level of court. For example, a motor accident case in the **Magistrates' Court is subject to upfront discovery procedure<sup>40</sup>**. Also, a case commenced in the **High Court does not enjoy the Court Dispute Resolution process** that the State Courts (comprising Magistrates' Court and District Court) have – see next section below.

<sup>34</sup> <https://www.supremecourt.gov.sg/news/media-releases/increase-in-state-courts-jurisdiction-for-certain-claims>

<sup>35</sup> Sections 19(4)(a) and 52(1A)(b) of the [State Courts Act \(Cap. 321\)](#).

<sup>36</sup> Section 23 of the [State Courts Act \(Cap. 321\)](#).

<sup>37</sup> Section 22 of the [State Courts Act \(Cap. 321\)](#).

<sup>38</sup> For example, Section 39 of the [State Courts Act \(Cap. 321\)](#).

<sup>39</sup> Explanation to Sections 54B and 54C of the [State Courts Act \(Cap. 321\)](#).

<sup>40</sup> Order 108 rule 2 of the [Rules of Court](#), and paragraph 18 of the [State Court Practice Directions](#).

Bifurcated proceedings in State Courts: liability first, then quantum

33. As the State Courts hear majority of motor accident cases, we shall examine the process there. Motor accident cases are **bifurcated into two stages**. After close of pleadings<sup>41</sup>, a motor accident case will automatically be referred to **alternative dispute resolution (ADR)** in the [State Courts Centre for Dispute Resolution \(SCCDR\)](#), which comprises two stages:
- 33.1. The **Court Dispute Resolution ("CDR")**, which focuses on **liability**, but in the appropriate cases, parties may also address quantum; and
- 33.2. The **Assessment of Damages Court Dispute Resolution ("ADCDCR")**, which focuses on **quantum**, after liability has been settled or determined.
34. The CDR and ADCDCR sessions are conducted **by district judges, who serve as mediators and neutral evaluators**, to facilitate negotiation between parties. This includes **giving timelines** for discovery of documents, filling of affidavits of evidence-in-chief, and for parties to provide or respond to a settlement offer. The CDR/ADCDCR judges also give an **indication on the liability and/or quantum**<sup>42</sup> that the claimant is likely to obtain if the case proceeds to trial. The indication is based on a cursory perusal of the available evidence submitted and brief oral submissions from lawyers. While the indication is **non-binding**, it is often useful for negotiation because the CDR/ADCDCR judges are experienced judges and thus able to credibly highlight the strengths and weaknesses of each party's case and provide a glimpse of the likely trial outcome. However, the indication is **not a guaranteed court outcome**, which depends on a multitude of factors, such as the full set of evidence adduced at trial, the 'performance' of witnesses under the heat of cross-examination at trial, and the full written and oral submissions from lawyers. The CDR/ADCDCR judges will not be the judges at trial because the CDR/ADCDCR sessions are conducted on a '**without prejudice**' basis, which means that all information discussed at CDR/ADCDCR is private and confidential and will not be made known to the trial judges, so as to facilitate settlement negotiation.
35. At the **CDR stage**, there are 3 possible outcomes:
- 35.1. If parties **agree on liability**, then they may enter into **Interlocutory Judgment by consent**<sup>43</sup>, which will state the percentage of liability that the defendant shall bear, and for damages, interest and costs to be assessed by the Registrar.
- 35.2. If parties **disagree on liability**, the CDR judge will give timeline for the case to progress to a **trial on liability**. At trial, the trial judge will hear all evidence and parties' submissions, and thereafter, determine the percentage of liability to be borne by the defendant, if any. The court determination will also result in the said **Interlocutory Judgment on liability**, but which is not entered by consent and instead determined on the merits of the case. The trial judge will also issue **oral and/or written grounds of decision**, which parties may scrutinise and consider whether to file an appeal.
- 35.3. If parties **agree on quantum** (not just liability), they may bypass the Interlocutory Judgment stage above, and leapfrog into recording final settlement or entering into consent Final Judgment for the agreed quantum, without having to specifically agree on any percentage on liability. The case is then complete, and need not

<sup>41</sup> In legal proceedings, the claimant is referred to as "plaintiff". The claimant states his cause of action (i.e. basis of his claim) and prayers for relief (i.e. what he is claiming for) in a 'Statement of Claim'. Thereafter, the defendant responds with his position in the 'Defence', and the claimant may respond with a 'Reply'. These court documents are called 'pleadings', which help parties identify what is the case that they have to meet at trial.

<sup>42</sup> In order to obtain an indication on liability or quantum, lawyers will have to submit the appropriate completed [court forms](#) to the CDR/ADCDCR judge: Form 9A (Liability Indication Form for Motor Accident Cases) and Form 9B for (Quantum Indication Form for Personal Injury Cases) respectively.

<sup>43</sup> Lawyers will have to submit to the CDR judge the completed [Form 9I of the State Courts Practice Directions](#) (Form to Record Settlement / Enter Judgment by Consent). However, it is unclear whether an interlocutory judgment by consent on liability allows a defendant to reserve his rights to contest causation and remoteness at the subsequent stage of assessment of damages (e.g. whether an injury was caused by the defendant's conduct or other causes or pre-existing) because theoretically in order to even establish liability for tort of negligence, the claimant will also have to prove that the loss claimed was caused by the defendant's conduct and it is not too remote a loss, i.e. these issues are not for assessment of damages, but liability itself.

proceed to the second stage below, which is the Assessment of Damages or ADCDR. The **advantage of recording a settlement** in Court instead of entering final judgment is that the settlement may be on a without admission of liability basis, such that if an individual search is conducted on the defendant, the search result would not record that a judgment was entered against the defendant, and would instead show that the claim was discontinued or settled. However, **a settlement recorded in Court may be extracted by the claimant as a Court Order**<sup>44</sup> if not duly complied with by the defendant, such that the extracted Court Order may be enforced against the defendant – this is also a standard term in CDR/ADCDR settlement agreements<sup>45</sup>.

36. **After liability is settled or determined**, the Court will give a timeline<sup>46</sup> for the claimant to bring the case to the next stage, which is the **Assessment of Damages**. After the claimant files the Notice of Appointment for Assessment of Damages, the case will automatically be referred to the **ADCDR process**. This is very similar to the CDR process, whereby the ADCDR judge (not the CDR judge) will mediate the dispute and facilitate parties' negotiation on quantum, including giving a non-binding indication. The quantum will take into account the percentage of liability in the Interlocutory Judgment from the previous stage.<sup>47</sup> If parties agree on quantum, they will enter into a **Final Judgment by consent**. If not, the case proceeds for an **Assessment of Damages hearing**, which is a trial on quantum. There, the trial judge (a different person) determines the case on its merits and issues a Final Judgment, which will specify the total amounts payable by the defendant to the claimant, and it typically comprises damages, interest and costs (see paragraphs 42 to 59.9 below).
37. On the other hand, the High Court does not have an equivalent CDR or ADCDR process, and parties seeking to mediate their dispute would have to seek private providers, such as the [Singapore Mediation Centre](#) or the [Law Society of Singapore Mediation Scheme](#).

#### Liability: how to assess likely outcome

38. The State Courts have published the **Motor Accident Guide ("MAG")**<sup>48</sup>, which sets out **common scenarios of collisions** and the **suggested liability** for each driver. The suggested liability outcomes are based on case precedents and general principles of law. The collision scenarios include junctions, u-turns, roundabouts, straight roads, carparks, opening of vehicle doors, front-to-rear collisions/reversing and chain collisions. It also has chapters on pedestrians, cyclists and passengers and general defences to a motor accident claim (e.g. contributory negligence, agony of the moment, inevitable accident, involuntary act and limitation period). The use of the MAG is specified in the Pre-Action Protocols<sup>49</sup>, and lawyers are required to indicate whether there is a relevant scenario<sup>50</sup> in the MAG in their brief submissions to the CDR judge for an indication on liability. The MAG is being 'upsized' of sorts, as the State Courts intend to launch an '**Online Simulator**'<sup>51</sup>, based partly on the data in the MAG, whereby users will answer a list of questions, and the system will generate a possible liability outcome based on the inserted answers. The Online Simulator will be publicly accessible by laypersons to facilitate negotiation even before 'lawyering up'.

<sup>44</sup> *Lock Han Chng Jonathan (Jonathan Luo Hancheng) v Goh Jessiline* [2008] 2 SLR(R) 455; [2007] SGCA 56.

<sup>45</sup> Standard term worded in the same Form 9I mentioned in footnote 43.

<sup>46</sup> Lawyers will have to submit to the CDR judge the completed [Form 9C of the State Courts Practice Directions](#) (Application for Directions under O37 for PIMA and NIMA).

<sup>47</sup> For example, if parties agreed or the Court determined that the defendant bears 80% liability, then Interlocutory Judgment for 80% liability will be entered, and the case proceeds to the Assessment of Damages. At this second stage, if parties agree or the Court determines that the claimant's total loss is \$10,000, then a Final Judgment will be entered, ordering the defendant to pay \$8,000 as damages, plus interest and costs.

<sup>48</sup> In 2015: <https://www.statecourts.gov.sg/cws/NewsAndEvents/Pages/Media-Release--Launch-of-The-Motor-Accident-Guide.aspx>; and 2017: [https://www.statecourts.gov.sg/cws/Mediation\\_ADR/Pages/Motor-Accident-Guide-and-Other-Publications.aspx](https://www.statecourts.gov.sg/cws/Mediation_ADR/Pages/Motor-Accident-Guide-and-Other-Publications.aspx).

<sup>49</sup> Paragraphs 4.6(f) and 8.1 in Appendix C and paragraph 2.1(b) in Appendix E.

<sup>50</sup> [Form 9A of the State Courts Practice Directions](#) (Liability Indication Form for Motor Accident Cases).

<sup>51</sup> <https://www.straitstimes.com/singapore/courts-crime/online-simulator-to-help-motorists-predict-possible-outcomes-of-accident>; timeline updated in paragraph 58 of the Chief Justice's speech on 7 January 2019, for the opening of the legal year 2019: <https://www.supremecourt.gov.sg/Data/Editor/Documents/chief-justice-sundaresh-menon--address-at-the-opening-of-the-legal-year-2019.pdf>

39. One common (partial) defence is **contributory negligence by the claimant**. This means that the claimant **did not in his own interest take reasonable care of himself and contributed, by his want of care, to his own injury**; it does not depend on any duty of care owed by the claimant to the defendant<sup>52</sup> (which is a necessary element to establish the tort of negligence). Examples of contributory negligence include not switching on the turn signals before filtering lanes, speeding, unnecessary sudden braking, swerving suddenly for no good reason, etc. Also, pedestrians may be found contributorily negligent even if they had crossed at signalised pedestrian crossing with the 'green man' light on, if they had crossed without proper lookout.<sup>53</sup> The Court will **reduce the defendant's liability by a percentage** proportionate to the severity of the contributory negligence of the claimant, if established.
40. For indication on liability, the CDR judge usually considers the following:
- 40.1. The available evidence at hand, such as **parties' accounts in their police report and/or accident report** (which are considered contemporaneous evidence and thus more reliable than parties' accounts in their subsequent court documents which may be tainted by hindsight), any **corroborative witness accounts**, and any **photographs or video recordings** of the accident.
- 40.2. Any **police action taken against the defendant**, such as the defendant's acceptance of composition of offence<sup>54</sup> (but not stern warning<sup>55</sup> nor conditional stern warning<sup>56</sup>) or the conviction of the defendant arising from the motor accident<sup>57</sup>. In this regard, a **criminal conviction is admissible evidence**<sup>58</sup> to prove the civil claim<sup>59</sup> if they both arise from the same facts – for example if the criminal court finds that the defendant had driven recklessly, the claimant may rely on this finding to prove his civil claim that the defendant had driven negligently, which caused loss to the claimant.
- 40.3. The **applicable MAG scenario** and its suggested liability outcome, case precedents submitted by lawyers, and any applicable defences such as contributory negligence, agony of the moment, inevitable accident, involuntary act or expiry of limitation period.
41. If parties are unable to agree on liability, they may nevertheless consider **negotiating on quantum, which may bridge the gap in parties' positions on liability**. This is because the difference in parties' positions on quantum may be narrower than the difference in parties' positions on liability. This is a result of the **reasonable range of possible quantum** that the Court may award for personal injuries, given that its damages assessment is not an exact science – the Court has to consider the extent and severity of the injuries, the attributes of the claimant and the particular circumstances of the case, which is a **qualitative process not capable of precise quantification**: see next section on how to quantify pain and suffering and other injury-related claims. This range of quantum gives room to parties to negotiate quantum to bridge any difference in opinion on liability. For example, if parties disagree on who to bear the final 10% liability gap in parties' positions, but this 10% liability amounts to only a few hundreds or low thousands, the difference may be 'absorbed' by the range of quantum, such that parties are nevertheless able to agree on overall quantum despite their differing positions on liability.

---

<sup>52</sup> *Yaw Kee v Tan Chee Yim and another* [1974-1976] SLR(R) 387; [1975] SGCA 6 at [6].

<sup>53</sup> *Asnah bte Ab Rahman v Li Jianlin* [2016] 2 SLR 944; [2016] SGCA 16: the defendant-driver's liability was reduced by 15% because the pedestrian had not kept a proper lookout when crossing the road (otherwise he could have averted the collision), even though the defendant-driver had 'beat' the traffic lights and the pedestrian had crossed at a signalised pedestrian crossing with the 'green man' in his favour.

<sup>54</sup> An offence which has been compounded can be taken into account for sentencing purposes: see *Public Prosecutor v Ong Heng Chua and another appeal* [2018] 5 SLR 388; [2018] SGHC 95 at [39] to [47].

<sup>55</sup> *Wham Kwok Han Jolovan v Attorney-General* [2016] 1 SLR 1370; [2015] SGHC 324 at [33] to [34].

<sup>56</sup> *GCO v Public Prosecutor* [2019] SGHC 31 at [78].

<sup>57</sup> E.g. reckless or dangerous driving, or driving without due care or reasonable consideration – Sections 64 and 65 of the [Road Traffic Act \(Cap. 276\)](#); or rash or negligent driving – Section 279 of the [Penal Code \(Cap. 224\)](#).

<sup>58</sup> Section 45A of the [Evidence Act \(Cap. 97\)](#).

<sup>59</sup> A motor accident may give rise to criminal and civil proceedings. In criminal proceedings, the Attorney-General's Chambers (AGC) prosecutes the criminal charges against the errant driver (accused person) with the predominant purpose of punishment. Whereas in civil proceedings, the motor accident victim (claimant) sues the errant driver (defendant) for compensation. The two proceedings are heard by different judges.

Quantum (assessment of damages): 'checklist' of claims to consider

42. **'Damages'** is the legal term for the quantum awarded by the Court to compensate the claimant's losses due to the accident. There are two categories of damages:
- 42.1. **Special damages:** losses or expenses incurred due to the accident. It includes medical and transport expenses, vehicle repair costs, loss of income during recovery, etc. Their quantum is relatively easier to calculate, based on documents such as invoices, receipts and salary slips. Hence, the dispute on special damages typically relates to the claimant's *entitlement* rather than the calculation method.
- 42.2. **General damages:** damages that are 'at large' and have to be assessed by the Court because they are difficult to calculate precisely. It includes pain and suffering for personal injuries and disabilities, loss of amenities, loss of future earnings, loss of earning capacity, future medical and transport expenses, etc. The dispute on general damages typically relates to be *both* entitlement and calculation method.
43. Within each of the above 2 categories of damages, there are various claims to consider. The general purpose of awarding damages in personal injury cases is to compensate the victim and not to punish the tortfeasor<sup>60</sup>, i.e. the award focuses on putting the claimant back in the position had the accident not occurred, regardless of how egregious the defendant's conduct was. As such, in principle, all losses suffered by the claimant *as a result* of the accident is claimable. We set out below some of the common claims, so that you may use it as a 'checklist' to consider whether you are eligible for such claims.
44. A very common claim is for personal injury, which include bodily and psychiatric injuries. The proper terminology is a claim for **pain and suffering** from the injury. The Court is concerned with the **physical and psychological pain** that the claimant has already endured and what he will have to endure in the future.<sup>61</sup> The guiding principle is "reasonable and just" and "fair" compensation, which need not be "absolute" or "perfect".<sup>62</sup>
- 44.1. Bluntly put, **every injury has a price tag**, which varies depending on its nature. The relevant factors include the injury's location, size, severity, recovery period, how much it affects the claimant's everyday life and whether there are permanent disabilities or long-term effects. The injury is quantified based on case precedents, i.e. the Court will look at how much previous cases have awarded for injuries of a similar nature, and apply an uplift or discount depending on whether the injury in question is more or less severe. An uplift on the amount may also be applied if the case precedent is 'outdated', to take into account **changes in purchasing power** since the date of the decision.<sup>63</sup>
- 44.2. **Compilations of case precedents** have been published, which set out descriptions of the injuries and amounts awarded by the Court, and the reader tries to match the injury in question to the most factually similar case precedent in the compilations. Some of these useful compilations include:
- 44.2.1. [Guideline for the Assessment of General Damages in Personal Injury Cases, Academy Publishing, 2010](#), by the Subordinate Courts (as it was then called). It provides a range of figures for each category of injuries, grouped according to location and severity. However, it does not go into details of each case precedent, and it is thus for broad-brush assessment.
- 44.2.2. [Practitioners' Library, Assessment of Damages: Personal Injuries and Fatal Accidents \(Third Edition\), LexisNexis, 2017](#), by the State Courts. It gives a summary of the various areas of law and procedure for personal injury

<sup>60</sup> *TV Media Pte Ltd v De Cruz Andrea Heidi and another appeal* [2004] 3 SLR(R) 543; [2004] SGCA 29 ("**TV Media**") at [165].

<sup>61</sup> *Lua Bee Kiang (administrator of the estate of Chew Kong Seng, deceased) v Yeo Chee Siong* [2019] 1 SLR 145; [2018] SGCA 74 ("**Lua Bee Kiang**") at [48]; and *TV Media* (footnote 60) at [166].

<sup>62</sup> *Lua Bee Kiang* (footnote 61) at [9].

<sup>63</sup> *Quek Yen Fei Kenneth (by his litigation representative Pang Choy Chun) v Yeo Chye Huat and another appeal* [2017] 2 SLR 229; [2017] SGCA 29 ("**Quek Kenneth**") at [41].



claims, and a compilation of case summaries of the various awards for different types of injuries of varying severity. As the publication has specific case precedents for comparison, it enables a finer assessment than the first compilation above. The case summaries also contain awards for complicated damages, such as loss of future earnings, loss of earning capacity and loss of amenities.

- 44.2.3. [Personal Injury: Quantum, Cases and Materials, Singapore: LexisNexis, 2014](#). This is similar to the second compilation above as it provides specific case precedents for various injuries, but the decisions may be slightly more dated.
- 44.2.4. [A Guide to the Assessment of Traumatic Injuries and Occupational Disease for Work Injury Compensation \(5<sup>th</sup> Edition\)](#), compiled by the Work Injury Compensation Medical Board, Ministry of Manpower. This is useful for comparison when assessing the severity of disabilities.
- 44.2.5. [Personal Injury Tables Singapore 2015 \(Tables for Calculation of Damages\), Sweet & Maxwell Asia, 2014](#). This provides useful actuarial data in Singapore for calculation of multipliers for loss of future earnings.
- 44.3. Where the **claimant suffered multiple injuries**, the Court applies a **two-stage analysis**. First is the '**component method**', where the loss arising from each distinct injury is accounted for and quantified. At this stage, the Court may refer to case precedents (including the above compilations) as *non-binding* guidelines. Second is the '**global method**', where the overall award must be adjusted to be reasonable and not excessive nor inadequate, by (1) accounting for 'overlapping' injuries which either together resulted in pain that would not have been differentially felt by the claimant, or together gave rise to only a single disability, and (2) considering the relevant precedents to reach a fair estimate and to ensure that like cases are treated alike.<sup>64</sup>
- 44.4. Where the injury has a **possible future onset of a medical condition** (e.g. arthritis, dementia, muscular dystrophy, etc.), the test for proving such future loss is not on a 'balance of probabilities' (because it is not possible to prove a future event as true) but whether there is an "appreciable risk". If such a risk exists, the Court evaluates it by beginning with an award for the full extent of that future loss, and then applying a discount to take into account the remoteness of that possibility and the chance that factors unconnected with the motor accident might have contributed to bringing about that future loss. The Court is not fixated with a precise percentage for the discount because the exercise is inherently imprecise. Instead, the Court seeks to achieve fair compensation by bearing in mind that the opposing probabilities must be weighed with sympathy and with fairness for the interests of all concerned and at all times with a sense of proportion.<sup>65</sup>
45. Where the personal injury results in residual disability, the claimant often also claims for **loss of amenities**, which is the **reduction in the enjoyment of life**<sup>66</sup> or quality of life. This is a distinct claim from pain and suffering.<sup>67</sup> This award is claimable even if the claimant is in a vegetative state, unlike pain and suffering<sup>68</sup>; in fact, being put into a vegetative state has been opined to be the greatest loss of amenities.<sup>69</sup> Some other examples of loss of amenities include: loss of marriage prospect<sup>70</sup>; partial penile impotence and impaired libido<sup>71</sup>; lower

<sup>64</sup> *Lua Bee Kiang* (footnote 61) at [13] to [18].

<sup>65</sup> *Lua Bee Kiang* (footnote 61) at [65], [66], [72] and [78].

<sup>66</sup> *Toon Chee Meng Eddie v Yeap Chin Hon* [1993] 1 SLR(R) 407; [1993] SGHC 56 at [21].

<sup>67</sup> *Lua Bee Kiang* (footnote 61) at [48].

<sup>68</sup> *Tan Kok Lam (next friend to Teng Eng) v Hong Choon Peng* [2001] 1 SLR(R) 786; [2001] SGCA 27 at [28].

<sup>69</sup> *Tan Juay Mui (by his next friend Chew Chwee Kim) v Sher Kuan Hock and Ors* [2012] 3 SLR 496; [2012] SGHC 100 at [30].

<sup>70</sup> *Au Yeong Wing Loong v Chew Hai Ban and another* [1993] 2 SLR(R) 290; [1993] SGHC 139.

<sup>71</sup> Award in *Tan Hun Hoe v Harte Denis Mathew* [2001] 3 SLR(R) 414; [2001] SGCA 68 and the various case precedents mentioned in [60] therein.

limb paralysis with loss of sexual function, bladder and bowel dysfunction<sup>72</sup>; liver transplant patient with lower immune system, risk of renal failure and skin cancer and pregnancy risks<sup>73</sup>; being blind, wheelchair-bound and unable to speak<sup>74</sup>; and loss of ability to pray or perform religious rituals<sup>75</sup>. However, it is not necessary that the Court will invariably award a separate quantum for loss of amenities; the Court may instead award loss of amenities together with pain and suffering in a single award by increasing its quantum.

46. If the personal injury affects the claimant's ability to work, there are **3 types of 'loss of earnings'** to consider claiming, which are independent from each other:

46.1. **Pre-trial loss of earnings:** compensates the actual loss of earnings suffered from the accident date to the date of the Court's assessment of damages. The claimant must prove (1) his pre-accident regular income and (2) that, since the accident, the claimant has either received no income or a reduced income, (3) and this was due to the injury suffered from the accident. Common documentary evidence to support such a claim includes (1) salary slips, letter from employer, CPF contributions or income tax statements to prove the claimant's pre-accident and post-accident earnings, (2) medical reports and medical certificates to prove that the claimant was medically unfit to work during the period which is claimed, and (3) if necessary, a letter from the employer to confirm that the claimant was re-designated to a lower salaried role or dismissed because of his inability or reduced ability to work as a result of this injury from the accident.

46.2. **Loss of future earnings:** compensates the difference between post-accident and pre-accident income or rate of income caused by the injury from the accident.<sup>76</sup> The calculation method is the 'multiplier-multiplicand' approach:

46.2.1. The **multiplicand** is the reduction of earnings that the claimant is expected to suffer at periodic intervals in the future. This is usually the average monthly income the claimant would have been expected to receive if the accident had not occurred, from the accident date to the rest of his remaining working years, *minus* his actual post-accident income.

46.2.2. The **multiplier** is the mathematical tool used to calculate the lump-sum present value of the stream of future periodic losses across the claimant's remaining working years.<sup>77</sup> The remaining working years is the prevailing statutory retirement age minus accident age.<sup>78</sup> Thereafter, the multiplier is derived by **applying a discount** on the remaining working years. The discount is to take into account the accelerated receipt of monies and contingencies including mortality and other vicissitudes of life.<sup>79</sup> Calculating the appropriate multiplier is a difficult task, and the Court uses case precedents as well as financial and actuarial data.<sup>80</sup> Where case precedents are used, **the discount rate** should be compared rather than the discount amount or multiplier awarded (see special formula in the case precedent in footnote).<sup>81</sup> A larger discount rate is applied in cases of long remaining working years, whereas a low or even zero discount rate is

---

<sup>72</sup> Award in *Lim Yee Ming v Ubin Lagoon Resort Pte Ltd and Others (Adventure Training Systems Pty Ltd, Third Party)* [2003] SGHC 134 and the case precedents mentioned in [79] therein for paralysis.

<sup>73</sup> *TV Media* (footnote 60) at [169].

<sup>74</sup> *Chen Qingrui v Phua Geok Leng* [2001] SGHC 64.

<sup>75</sup> *Rahman Lutfar v Scanpile Constructors Pte Ltd and another* [2016] SGHC 41.

<sup>76</sup> *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587; [2010] SGCA 22 ("**Chai Samuel**") at [20].

<sup>77</sup> *Quek Kenneth* (footnote 63) at [42].

<sup>78</sup> *Quek Kenneth* (footnote 63) at [52].

<sup>79</sup> This is because a lump sum award for loss of future earnings is in effect the present value of an *annuity* offering a rate of return that the claimant is assumed to be able to achieve by investing the lump sum, which is traditionally assumed to be rates of 4% to 5% per annum; but the Court is not precluded from adopting a lower or higher discount rate where appropriate: see *Quek Kenneth* (footnote 63) at [44] and [57] to [67].

<sup>80</sup> *Quek Kenneth* (footnote 63) at [62] and [67]. An example of actuarial data is in paragraph 44.2.5 above.

<sup>81</sup> *Quek Kenneth* (footnote 63) at [60] to [62] for the rationale of using discount rate, [72] for the suggested formula to calculate discount rate, which is a non-exclusive calculation method per [75], and [98] on how to apply the discount rates from case precedents to the case at hand.

applied for very short remaining working years.<sup>82</sup>

46.2.3. For reference, a **sampling of case precedents** examined by the Court<sup>83</sup>:

Remaining Working Life	Multiplier for Loss of Future Earnings / Loss of Earning Capacity	Discount Amount	Discount Rate (Annual)
43 years	20 years	53%	4.27%
42 years	20 years	52%	4.21%
36 years	17 years	53%	5.00%
34 years	18 years	47%	4.35%

46.2.4. The Court may split the multiplier period and **apply a different multiplicand to each multiplier period** to take into account the different key junctures of the claimant's career where he may be expected to receive a significant increase in salary or career advancement had the accident not occurred.<sup>84</sup> However, this is not invariably done, and instead, the Court may also apply a single multiplicand but give an uplift on the amount to take into account the expected average income across the entire multiplier period.<sup>85</sup>

46.2.5. Compensation for loss of future earnings is awarded for "**real assessable loss proved by evidence**".<sup>86</sup> Hence, if no or insufficient evidence is adduced, no award will be granted. However, even if the claimant is a **young child or student who has yet to enter the labour market**, the Court may still be able to derive a multiplicand if there is sufficient objective facts or evidence to enable it to reasonably assess<sup>87</sup>, in particular, there must be a stream of future income that the claimant had a reasonable expectation of earning, for example, he must demonstrate that he had in fact been preparing to embark on a career.<sup>88</sup>

46.2.6. **Deductions for income tax** will be made because the claimant would have had to pay for income tax even if the accident had not occurred.<sup>89</sup>

46.3. **Loss of earning capacity:** compensates the risk or disadvantage which the claimant would suffer in the event that he loses his current job, in securing an equivalent job in the open employment market.<sup>90</sup> This is separate and distinct from loss of future earnings, and both heads of claim are claimable.<sup>91</sup>

46.3.1. Traditionally, even if the claimant would be disadvantaged in finding a similar paying job because of the injury and resulting disability, this was insufficient to warrant awarding loss of earning capacity, **unless there is**

<sup>82</sup> *Quek Kenneth* (footnote 63) at [64], that a long expected period of future loss allows the claimant to be more well placed to ride out the short-term volatility of higher-yield investments of the lump sum award and to avail himself of increases in interest rates in the future, as compared to very short expected period of future loss where there is less scope for investment in riskier assets or for drastic changes in interest rates.

<sup>83</sup> *Quek Kenneth* (footnote 63) at [98].

<sup>84</sup> For example: *Ho Yiu v Lim Peng Seng* [2004] 4 SLR(R) 675; *Tan Shwu Leng v Singapore Airlines Ltd & Anor* [2001] SGHC 51; and *Lai Wai Keong Eugene v Loo Wei Yen* [2014] 3 SLR 702.

<sup>85</sup> *Toh Wai Sie and another v Ranjendran s/o G Selamuthu* [2012] SGHC 33.

<sup>86</sup> *Teo Sing Keng and another v Sim Ban Kiat* [1994] 1 SLR(R) 340; [1994] SGCA 20 ("**Teo Sing Keng**") at [36].

<sup>87</sup> *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] 3 SLR 610 at [38].

<sup>88</sup> In *Quek Kenneth* (footnote 63) at [104] and [105], the Court was unable to calculate the multiplicand because the claimant had dropped out of school without completing Secondary Three and he had a very sketch employment history – he did not demonstrate a sustained interest in or aptitude for any trade, having been dismissed on grounds of tardiness from his employment. In contrast, in *AOD (a minor suing by his litigation representative) v AOE* [2016] 1 SLR 217 ("**AOD v AOE**"), it was undisputed that the 9-year-old claimant would have started work at 22 years old, and the Court calculated the multiplicand by pegging it to the national averages (by averaging the commencing salaries across the eight broad occupational groups in the Ministry of Manpower tables on median gross monthly income from full-time employment).

<sup>89</sup> *Teo Sing Keng* (footnote 86) at [34].

<sup>90</sup> *Chai Samuel* (footnote 76) at [20].

<sup>91</sup> *Chai Samuel* (footnote 76) and *Quek Kenneth* (footnote 63), where both awards were considered.

**a substantial or real risk that the claimant could lose his present job** at some time before the estimated end of his or her working life and that the claimant will, because of the injury, **be at a disadvantage in the open employment market**, which are a cumulative test.<sup>92</sup> However, in recent times, case law appears to have loosen this requirement, and have held that the question is not whether the claimant is at risk of losing his current, *post-accident* employment, but **whether he has been prevented from competing in the market for his pre-accident job**.<sup>93</sup>

- 46.3.2. The Court looks at the claimant's weaknesses "**in the round**".<sup>94</sup> Some cases have interpreted this to mean that the 'multiplier-multiplicand' approach (used for loss of future earnings) should not be used<sup>95</sup>, and instead, the Court merely undertakes a qualitative global assessment to award a lump sum amount, which would practically often result in a more conservative amount. However, there are also case precedents<sup>96</sup> suggesting that the 'multiplier-multiplicand' approach may nevertheless be applied, but presumably, the values for the multiplicand and the multiplier are assessed "in the round". In either method of assessment, the award for loss of earning capacity is usually lower than loss of future earnings.
- 46.3.3. **No income tax deductions** are applied because an award for loss of earning capacity is meant to compensate loss of a capital asset which is non-taxable.<sup>97</sup>

47. **Future expenses**, including **future medical treatment, caregiver and transport**, are also claimable if there is sufficient medical evidence to prove that the claimant requires them as a result of the accident. The **challenge** is often on the **reasonableness** of the **type** of expenses (e.g. whether surgery or medication alone is sufficient, or whether claimant requires domestic maid or nurse, etc.) and **the quantum** (e.g. even if the claimant requires a nurse, what is the appropriate price for nursing services).

47.1. The calculation method is the '**multiplier-multiplicand**' approach used above. However, for the multiplier, instead of using the "remaining working years", the "remaining life expectancy" is used, which is **pegged to the average life expectancy** in Singapore<sup>98</sup> (instead of retirement age), because the expenses are required for the rest of the claimant's life and not just his working life. However, the appropriate discount *rate* must still be applied on the remaining life expectancy.

47.2. For reference, a **sampling of case precedents** examined by the Court<sup>99</sup>:

Remaining Life Expectancy	Multiplier for Future Medical expenses	Discount Amount	Discount Rate (Annual)
53 years	20 years	62%	4.8%
51 years	17 years	67%	5.89%
35 years	17 years	51%	5.10%
34 years	18 years	47%	4.51%
32 years	17 years	47%	4.78%
30 years	15 years	50%	5.72%
27 years	14 years	48%	6.00%

<sup>92</sup> *Chai Samuel* (footnote 76) at [36].

<sup>93</sup> *Lua Bee Kiang* (footnote 61) at [50].

<sup>94</sup> *Chang Ah Lek and others v Lim Ah Koon* [1998] 3 SLR(R) 551; [1998] SGCA 61 at [31].

<sup>95</sup> As was suggested in *Pierre Gupson v Wong Kok Huay* [2014] SGHCR 9 at [53], and *Zhu You Gang v China Construction (South Pacific) Development Co. Pte Ltd Trading as China Construction Kay Lim JV and Another* [2008] SGDC 33 at [15].

<sup>96</sup> *Quek Kenneth* (footnote 63) at [42] where the Court noted that the "the multiplier-multiplicand approach formed the basis of the assessment of damages for FME and LFE/LEC for non-fatal personal injuries in Singapore", and subsequently applied this approach at [110] and [112] for loss of earning capacity. However, the issue of assessing it "in the round" and the cases in footnote 95 were not raised to the Court, and thus it may be said that this issue is still be open for argument.

<sup>97</sup> *Teo Sing Keng* (footnote 86) at [35].

<sup>98</sup> *Quek Kenneth* (footnote 63) at [52] and [68].

<sup>99</sup> *Quek Kenneth* (footnote 63) at [72].

- 47.3. For long-term nursing and caring services, the claimant is entitled to claim for such expenses even if he relies on a **gratuitous caregiver** (i.e. family members) rather than a professional caregiver (e.g. nurse). Quantum is calculated by reference to the gratuitous caregiver's loss of income and/or the commercial rates of professional caregivers with a suitable discount to be applied.<sup>100</sup> The Court may find that costs of a domestic helper is more appropriate than a private nurse<sup>101</sup>, or that the claimant requires more than one care-giver<sup>102</sup>.
48. **Medical expenses paid by the claimant's insurer are claimable** against the defendant, even though the claimant technically did not incur the expenses, but the claimant is obliged to pay the recovered monies to his insurer subsequently (which obligation may be waived by the insurer).<sup>103</sup> Similarly, expenses paid from the **claimant's MediSave or MediShield are also claimable** against the defendant, but the claimant is obliged to pay the recovered monies back into his MediSave account or Medishield Funds.<sup>104</sup>
49. Special damages such as medical and transport expenses and damage of personal effects should generally be proven by receipts or invoices. The **absence of receipts does not preclude an award** on pre-trial expenses or loss of personal effects, but the claimant **should furnish a reasonable basis** for the award (e.g. particularising the expenses/loss and estimating the costs), and the Court would usually apply a **conservative estimate**.<sup>105</sup>
50. If the **vehicle is damaged beyond economical repair**, compensation is measured by the market value of the destroyed vehicle. If there is no market value (e.g. vehicle no longer in production), the replacement costs of the vehicle is used, which is the fair approximation of its market value at the time of the accident and to be depreciated on a straight line basis over the number of years the vehicle was in use (having regard to the number of years its use was permitted) and taking into account the scrap value of the vehicle.<sup>106</sup>
51. A claimant is entitled to claim **either loss of use** of vehicle (if he did not rent an interim car) **or rental of an interim car** (with proof of rental) for the reasonable duration of repair of his damaged vehicle, including the 2 days' notice<sup>107</sup> for pre-repair inspection given to the opposing party if any. Loss of use is also claimable even if the vehicle was damaged beyond economical repair, in which event, the claimable duration is the reasonable time it takes to procure a replacement vehicle.<sup>108</sup> The benchmark rates issued by the State Courts<sup>109</sup> for rental and loss of use are set out below for reference:

Vehicle type	Daily rates		Factors to be considered
	Rental	Loss of Use	
Cars up to 1,600cc and 97kW (130bhp) [Category A of COE]	\$100 to \$120	\$60 to \$80	<ul style="list-style-type: none"> <li>No. of days refer to surveyor's reports or actual number of days of repair (whichever is shorter) and add Saturdays, Sundays and public holidays</li> <li>Luxury cars are dependent on make and model. They generally refer to cars with OMV of \$35,000 and</li> </ul>
Cars above 1,600cc or 97kW (130bhp) [Category B of COE]	\$120 to \$180	\$100 to \$120	
Luxury Cars and Super cars	\$220 or more	\$150 to \$240	

<sup>100</sup> *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85, and *AOD v AOE* (footnote 88).

<sup>101</sup> *Toon Chee Meng Eddie v Yeap Chin Hon* [1993] 1 SLR(R) 407.

<sup>102</sup> *AOD v AOE* (footnote 88).

<sup>103</sup> *Seagate Technology Pte Ltd and another v Goh Han Kim* [1994] 3 SLR(R) 836; [1994] SGCA 126 at [51]; *The "Mara"* [2000] 3 SLR(R) 31; [2000] SGCA 47 at [28]; and *Chang Mui Hoon v Lim Bee Leng* [2013] SGHCR 17 at [59]. However, in *Rathanamalah d/o Shunmugam v Chia Kok Hoong* [2018] 4 SLR 159; [2017] SGHC 153 at [165] and *Quek Kenneth v Yeo Chye Huat* [2016] 3 SLR 1106; [2016] SGHC 96 at [95], the Court did not award for expenses paid by the claimant's insurance.

<sup>104</sup> *Hazwani bte Amin v Chia Heok Meng* [2018] SGHCR 2; *Mark Amaraganthan Selvaganthan v Cheung Man Wai* [2015] SGHC 253; and *Noor Mohammed Bin Yusoff Ali v Tan Chee Ning* [2004] SGHC 82.

<sup>105</sup> *Tan Hun Boon v Rui Feng Travel Pte Ltd and another* [2018] 3 SLR 244; [2017] SGHC 189 at [146] to [150].

<sup>106</sup> *Singapore Bus Service (1978) Ltd v Gwee Sok Ai (trading as Chuan Bok Wong Trading)* [1996] 3 SLR(R) 307; [1996] SGCA 62 ("**Gwee Sok Ai**"), at [15] to [21].

<sup>107</sup> As explained in paragraph 22 above.

<sup>108</sup> *Gwee Sok Ai* (footnote 106) at [22] to [24].

<sup>109</sup> Appendix F of the [State Court Practice Directions](#).



Motorcycles [Category D of COE]	-	\$20 to \$50	above on first registration and/or engine capacity exceeding 3,000 cc <ul style="list-style-type: none"> <li>• Usage e.g. travelling salesman</li> <li>• Possibility that rental receipts may be inflated</li> </ul>
Normal Taxis	Included	\$110 to \$150	<ul style="list-style-type: none"> <li>• Inclusive of driver's income. If income tax returns show more than \$60-\$80 per day, rates can be increased</li> </ul>
Limousine Taxis	Included	\$150 to \$220	<ul style="list-style-type: none"> <li>• Inclusive of driver's income. If income tax returns show more than \$80-\$100 per day, rates can be increased</li> <li>• Limousine taxis are generally defined as 5 to 13 seater big Cabs. Examples include Maxi Cab, London Cab, Space MPV and Chrysler Cab</li> </ul>
Vans & pick ups	\$80 to \$150	\$60 to \$120	<ul style="list-style-type: none"> <li>• Consider the size of vehicle and type of usage</li> </ul>
Private Non hire Bus	\$200 to \$350	\$90 to \$180	
Lorry	\$200 to \$350	\$90 to \$180	

#### Interest claimable on quantum

52. When negotiating a settlement, parties should bear in mind that **in addition** to the quantum for the various claim items in the preceding section (called 'damages'), **interest** is also claimable on these damages, and thus, appropriate interest should be negotiated as well.
53. The Court has the power to award **interest** on damages.<sup>110</sup> The purpose is to compensate the claimant for the '**time value**' of money<sup>111</sup>. The interest rate and applicable period vary on different components of the judgment sums, as follows:
- 53.1. Special damages: interest rate at **half of 5.33% p.a.**<sup>112</sup> from the **date of accident** to the date of judgment or settlement agreement.
- 53.2. General damages: interest rate at **5.33% p.a.** from **date of Writ** (i.e. start of court proceedings) to the date of judgment or settlement agreement, except that no interest is payable on loss of future earnings and loss of earning capacity.<sup>113</sup>
- 53.3. Post-judgment interest: interest on the total judgment sum (excluding interest) at **5.33% p.a.** from the **date of judgment** to date of full payment.<sup>114</sup>

#### Legal costs (recoverable from defendant vs. payable to own lawyer)

54. There are two types of costs:
- 54.1. **Party-and-party ("P&P") costs:** the amount that the 'losing' party is ordered by the Court to pay to the 'winning' party to help defray part of the latter's legal fees. The amount is in the discretion of the Court to decide<sup>115</sup>. P&P costs should be negotiated between parties, in addition to damages and interest. If parties are unable to agree, they may request the Court to either determine P&P costs or give

<sup>110</sup> Section 12 of the [Civil Law Act \(Cap. 43\)](#).

<sup>111</sup> Illustration: \$100,000 cash today (or accident date) is likely to be worth more than 5 years later (or after judgment) because the cash could have been invested or saved to draw dividends, capital appreciation or interest, or its purchasing power simply decreases over time due to inflation.

<sup>112</sup> *Tan Hun Boon v Rui Feng Travel Pte Ltd and another* [2018] 3 SLR 244; [2017] SGHC 189 at [151], following *Teo Sing Keng* (footnote 86) at [50] to [55].

<sup>113</sup> See footnote 112

<sup>114</sup> Order 42 rule 12 of the [Rules of Court](#), as varied by the [Supreme Court Practice Directions No. 1 of 2007](#).

<sup>115</sup> Order 59 rule 2(2) of the [Rules of Court](#).

an indication on P&P costs for parties to negotiate further.<sup>116</sup>

- 54.2. **Solicitor-and-client (“S&C”) costs:** the actual legal fees and disbursements payable by the claimant to his lawyer. This does not involve the defendant, as it is a matter for agreement between the claimant and his lawyer. However, before a claimant’s lawyer is paid his S&C costs, the amount must be approved by the Public Trustee or ‘taxed’<sup>117</sup> by the Court if the relevant amount exceeds \$5,000.<sup>118</sup> An agreement on legal fees between a lawyer and his client for motor accident matters is still subject to approval by the Public Trustee.<sup>119</sup> This serves as a sort of public welfare protection of motor accident victims, to ensure that they are not overcharged by their lawyers. For more information on Public Trustee’s involvement in motor accident cases, please refer to paragraphs 79 to 81 below.
55. The appropriate amount for P&P costs and S&C costs is dependent on the specific facts of the case, including the following non-exhaustive taxation factors<sup>120</sup>:
- 55.1. the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
  - 55.2. the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the lawyer;
  - 55.3. the number and importance of the documents (however brief) prepared or perused;
  - 55.4. the place and circumstances in which the business involved is transacted;
  - 55.5. the urgency and importance of the cause or matter to the client; and
  - 55.6. where money or property is involved, its amount or value.
56. The above are in turn influenced by the level of resistance raised by the opposing party, the amount and difficulty of instructions given by the client, any language barrier with the client, number of witnesses required for the trial, etc.
57. The practical relationship between P&P costs and S&C costs is that **S&C costs are usually assessed as a percentage more than P&P costs**. Given that P&P costs are paid by the defendant to the claimant, the **actual legal fees** to be borne out-of-pocket by the claimant **is the percentage mark-up**. For example, if P&P costs are \$3,000 and S&C costs are assessed at \$4,000 (which is one-third more than P&P costs), that means the claimant only needs to pay \$1,000 to his lawyers because the balance \$3,000 in S&C costs would have been paid by the defendant as P&P costs.
58. In the past, the Public Trustee recommended the **percentage mark-up to be no more than 15%** for judgments or settlement agreements before 1 August 2014.<sup>121</sup> However, this recommendation was not retained in its subsequent practice circular, which is silent on the appropriate amount for S&C costs. In the view of the author, this silence is consistent with case law espousing the guideline that S&C costs are usually **one-third more**<sup>122</sup> than P&P costs (rather than 15% more). However, at the end of the day, much is dependent on the specific circumstances of the case.
59. The Court has issued various **guidelines on P&P costs**, which we have consolidated below for ease of reference (note the accompanying legend in the footnote<sup>123</sup>). These guidelines are useful not only to negotiate P&P costs between claimant and defendant, but also useful for a party to assess the likely legal fees he will incur or to negotiate the legal fees with his lawyers, given that S&C costs are usually assessed as a percentage more than P&P costs.

<sup>116</sup> Indication on P&P costs may be given by the Court when parties record settlement or enter into Final Judgment: see Form 9I mentioned in footnote 43.

<sup>117</sup> The word ‘tax’ is a legal term of art, which simply means to be assessed by the Court; it does not mean ‘tax’ in the layman sense of an imposition of a fee payable to the authorities.

<sup>118</sup> MVTPCA (footnote 9), Section 18(3) and (4). Same definition of “relevant amount” as footnote 159.

<sup>119</sup> *Wong Foong Chai v Lin Kuo Hao* [2005] 3 SLR(R) 74; [2005] SGHC 77 at [44].

<sup>120</sup> From Order 59 rule 31(1) paragraph 1(2) of the [Rules of Court](#).

<sup>121</sup> [Public Trustee’s Practice Circular 1 of 2004](#) at [20], in contrast with [Practice Circular 1 of 2014](#).

<sup>122</sup> *Lin Jian Wei and another v Lim Eng Hock Peter* [2011] 3 SLR 1052; [2011] SGCA 29 at [83]; and *Pegaso Servicios Administrativos SA de CV and another v DP Offshore Engineering Pte Ltd and another* [2019] SGHC 47 at [146].

<sup>123</sup> Note that (1) the figures are *exclusive* of interest, GST and disbursements, (2) a claim is ‘concluded’ by settlement or adjudication, and (3) the Court has residual discretion to depart from the costs guidelines.

Non-Injury Motor Accident (NIMA) claims

- 59.1. For NIMA claims concluded **before** commencement of **legal action**<sup>124</sup>:

Sum settled (excluding interest)	Costs
Less than \$1,000	\$300
\$1,000 to \$9,999	\$300 to \$700
\$10,000 and above	\$500 to \$1,000

- 59.2. For NIMA claims concluded *after* commencement of action in the **Magistrate's Court**<sup>125</sup>, the recommended costs are as follows:

Stage of proceedings matter is concluded	Sum settled or awarded (excluding interest)		
	Less than \$1,000	\$1,000 to \$9,999	Above \$9,999
Any stage before defence is served	\$1,000	\$1,000 to \$1,200	\$1,200 to \$1,500
Where defence is served	\$1,000	\$1,200 to \$1,500	\$1,500 to \$1,800
Where defence to counterclaim is served	\$1,000	\$1,500 to \$1,800	\$1,800 to \$2,100
Where affidavits of evidence-in-chief are exchanged	\$1,300	\$1,800 to \$2,800	\$2,300 to \$3,500
The 1 <sup>st</sup> day of trial	\$1,500 to \$2,000	\$3,200 to \$3,800	\$3,800 to \$6,000
Each subsequent day of trial	Add up to \$1,000	Add up to \$1,500	Add up to \$3,000

- 59.3. For NIMA claims commenced in the **District Court** (i.e. value of claim is above \$60,000 but less than \$500,000), there is no published guideline. Nevertheless, costs are likely to be between the range for Magistrate's Court and High Court.
- 59.4. For motor accident claims commenced in the **High Court**<sup>126</sup>:

Stage of proceedings matter is concluded	Costs
Liability settled at close of pleadings	\$5,000 to \$20,000
Liability settled after discovery	\$6,000 to \$35,000
Liability settled after exchange of Affidavits of Evidence-in-Chief	\$25,000 to \$50,000
Liability settled after trial has commenced	Costs for utilised hearing days is \$10,000 per day for 1 <sup>st</sup> to 5 <sup>th</sup> day, \$8,000 per day for 6 <sup>th</sup> to 10 <sup>th</sup> day, and \$6,000 per day for 11 <sup>th</sup> day on onwards.  In addition, costs for remaining unutilised hearing days is \$6,000 per day for 1 <sup>st</sup> to 5 <sup>th</sup> unutilised days, \$4,000 per day for the 6 <sup>th</sup> to 10 <sup>th</sup> unutilised hearing day, \$2,000 per day for the 11 <sup>th</sup> to 20 <sup>th</sup> unutilised hearing day, and \$1,000 per day for the 21 <sup>st</sup> unutilised day onwards.
Quantum settled after completion of discovery	\$3,000 to \$5,000

<sup>124</sup> Paragraph 9.1 of Appendix C.

<sup>125</sup> Part V, Appendix 2, Order 59 rule 31(2) of the [Rules of Court](#).

<sup>126</sup> Appendix G, [Supreme Court Practice Directions](#).

Quantum settled after exchange of Affidavits of Evidence-in-Chief	\$5,000 to \$10,000
Quantum settled after Assessment of Damages hearing has commenced (i.e. trial on quantum only)	Costs for utilised hearing days is \$5,000 per day for 1 <sup>st</sup> to 5 <sup>th</sup> day, \$4,000 per day for 6 <sup>th</sup> to 10 <sup>th</sup> day, and \$3,000 per day for 11 <sup>th</sup> day on onwards.  In addition, costs for remaining unutilised hearing days is \$3,000 per day for 1 <sup>st</sup> to 5 <sup>th</sup> unutilised days, \$2,000 per day for the 6 <sup>th</sup> to 10 <sup>th</sup> unutilised hearing day, \$1,000 per day for the 11 <sup>th</sup> to 20 <sup>th</sup> unutilised hearing day, and \$500 per day for the 21 <sup>st</sup> unutilised day onwards.

Personal Injury Motor Accident (PIMA) claims

- 59.5. For PIMA claims **less than \$20,000** concluded **before** commencement of **legal action**, the recommended costs are \$1,500 to \$2,500.<sup>127</sup>
- 59.6. For PIMA claims concluded *after* commencement of action in the **Magistrate's Court**<sup>128</sup>, the recommended costs are as follows:

Sum settled or awarded (irrespective of whether liability and quantum tried together or separately)	Costs
Up to \$20,000	\$3,000 to \$6,000 (see next paragraph)
\$20,001 to \$40,000	\$4,000 to \$12,000
\$40,000 to \$60,000	\$5,000 to \$18,000

- 59.7. **Within the first category of "Up to \$20,000" above**, the guideline further breaks down the recommended costs to as follows:<sup>129</sup>

Stage of proceedings	Costs
Upon filing of Writ	\$1,800 to \$2,800
Upon signing of Affidavit of Evidence-in-Chief	\$2,500 to \$4,200
Upon setting down for trial	\$3,000 to \$4,500
1 <sup>st</sup> day of trial or part thereof	\$4,000 to \$5,000
Subsequent day of trial of part thereof, or Assessment of Damages	Up to \$1,000 per day or part thereof

- 59.8. For PIMA claims commenced in the **District Court** (i.e. value of claim is above \$60,000 but less than \$500,000), there is no published guideline. Nevertheless, costs are likely to be between the range for Magistrate's Court and High Court.
- 59.9. The High Court costs guideline does not differentiate between NIMA and PIMA claims. Hence, the same range for NIMA claims in High Court above is also applicable for PIMA claims in High Court. However, it may be argued that PIMA claims are typically awarded higher costs than NIMA claims due to greater complexity in the former, such as the assessment of personal injury.

<sup>127</sup> Paragraphs 12.1 of Appendix E.

<sup>128</sup> Part IV, Appendix 2, Order 59 rule 31(2) of the [Rules of Court](#).

<sup>129</sup> Paragraphs 12.2 of Appendix E.

Strategic use of Offers to Settle (OTS) to negotiate

60. In negotiating liability and/or quantum, parties should consider, at appropriate juncture(s), leveraging on the statutory regime of **Offers to Settle** (“**OTS**”) under Order 22A of the [Rules of Court](#), which has consequences on the amount of party-and-party (“**P&P**”) costs<sup>130</sup> payable by one party to the other. An OTS is a **without prejudice** offer of settlement (i.e. not made known to the trial judge)<sup>131</sup>, and if used correctly, can help to significantly reduce a party’s legal fees (by increasing the P&P costs recoverable from the other party):
- 60.1. If a **claimant served an OTS** on the defendant, which is not accepted by the defendant, and the claimant receives an eventual judgment which terms are *not less favourable* than the terms of the OTS, then the claimant is entitled to costs on a *standard basis* up to the date the OTS was served, and costs on an *indemnity basis* from thereon.<sup>132</sup>
- 60.2. If a **defendant served an OTS** on the claimant, which is not accepted by the claimant, and the claimant receives an eventual judgment which terms are *not more favourable* than the terms of the OTS, then the claimant is entitled to costs on a *standard basis* up to the date the OTS was served, but the defendant is entitled to costs on an *indemnity basis* from thereon.<sup>133</sup>
61. Whether the judgment is more or less favourable than the OTS is **measured by their numerical value**. For example, if the judgment awards \$5,000 to the claimant, and the claimant’s OTS was to settle the claim at \$4,000 only, then the judgment is more favourable than the OTS, such that the indemnity basis consequence above is triggered.
62. The legal difference between ‘**standard basis**’ and ‘**indemnity basis**’ may be quite abstract<sup>134</sup>, but in practical terms, standard basis is the usual P&P costs awarded by the Court to the claimant if his claim is successful, whereas indemnity basis is estimated to be usually **one-third more**<sup>135</sup> than standard basis (i.e. “indemnity basis” does not mean full or literal indemnity but a higher measure of costs than the default standard basis<sup>136</sup>). It is in the interest of the party serving an OTS **to serve a realistic offer** that is close to or better than the anticipated judgment terms, so as to trigger the indemnity consequence, in order to receive about one-third more in P&P costs. It is also advantageous **to serve the OTS as early as possible** (it may be served anytime in the court proceedings, including after trial but before judgment is issued), so that the indemnity basis applies to a longer duration, which accrues more costs.
63. As the costs consequence of a triggered OTS is severe, **the formalities of an OTS is higher** than a settlement offer made orally or in a letter or email. The OTS must be **served in the prescribed Form 33** in the [Rules of Court](#); the offer therein **must not be withdrawn or have expired before judgment is issued**; any withdrawal of the offer shall be by way of serving a **Notice of Withdrawal in the prescribed Form 34** in the [Rules of Court](#) and **one day’s prior notice** of the intention to withdraw the OTS must be given to the other party (during which the OTS may still be accepted).<sup>137</sup> Given that an OTS may only be withdrawn in the above manner, this means that **if an OTS was rejected by the other**

<sup>130</sup> For explanation on party-and-party costs, please refer to paragraphs 54 to 59.9 of this guide.

<sup>131</sup> Order 22A rules 3 and 4 of the [Rules of Court](#).

<sup>132</sup> Order 22A rule 9(1) of the [Rules of Court](#).

<sup>133</sup> Order 22A rule 9(3) of the [Rules of Court](#).

<sup>134</sup> Explained in *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] 5 SLR 103; [2016] SGHC 167 at [17]: “When costs are taxed on the indemnity basis, all costs are allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred, and any doubts in these respects will be resolved in favour of the receiving party: O 59 r 27(3) of the [Rules of Court](#) ... This is to be contrasted to an order of costs on the standard basis, where the party in whose favour the costs order is made is allowed a reasonable amount in respect of all costs reasonably incurred, and any doubts are resolved in favour of the paying party: O 59 r 27(2). Order 59 r 27(4) establishes that where a costs order is made without an indication of the basis of taxation, costs will be taxed on the standard basis. This demonstrates that an order of costs on the indemnity basis is the exception rather than the norm and requires justification.” See also [23] on the non-exhaustive list of factors to justify indemnity costs.

<sup>135</sup> See footnote 122.

<sup>136</sup> *Maryani Sadeli v Arjun Permanand Samtani and another and other appeals* [2015] 1 SLR 496; [2014] SGCA 55 at [13]

<sup>137</sup> Order 22A rules 3(2) and (3), and Order 22A rules 9(1)(A) and 3(a) of the [Rules of Court](#).



party, it may still be accepted subsequently so long as the OTS is not withdrawn or expired.<sup>138</sup> Since the withdrawal and acceptance of an OTS are governed by the statutory regime above, the general contractual principle of offer-and-acceptance – that an offer may be withdrawn before it is accepted and that an offer lapses once it is rejected or a counter-offer is made – is not applicable in assessing whether an OTS has been validly accepted.<sup>139</sup>

64. The above thus far explains the scenario where a reasonable OTS is *not* accepted and the terms of the eventual judgment are either *not less* favourable (if OTS was served by the claimant) or *not more* favourable (if OTS was served by the defendant), such that the indemnity costs consequence is triggered. However, **if an OTS is accepted**, then there is an in-principle settlement agreement which parties *should* abide by. However, **the accepted OTS terms are not enforceable as of right**: the Court, in its discretion, may or may not incorporate any or all of the OTS terms into a judgment.<sup>140</sup> In considering whether the accepted OTS terms should be enforced, the Court would exercise its discretion having regard to ordinary contractual principles and general principles of fairness and justice.<sup>141</sup>
65. Some creative use of OTS includes the following:
- 65.1. Using the OTS to **offer settlement on liability only**<sup>142</sup>, or a dual offer<sup>143</sup> on liability or quantum, rather than the traditional offer on quantum only.
- 65.2. **Serving multiple OTS** to leverage on the fact that an OTS may only be withdrawn in the statutorily prescribed manner. As such, the serving of **a second OTS does not supersede the earlier OTS**, and the two OTS remain available for acceptance so long as they are not withdrawn or expired. This means that multiple OTS may be served on different terms at different junctures of the court proceedings, all of which are effective, and thus, there may be different applicable trigger dates for the indemnity basis consequence, and **the party who served the multiple OTS is entitled to the longest applicable duration for the indemnity basis**.<sup>144</sup>
- 65.3. Strategically choosing to **include or exclude interest and/or costs (on standard or indemnity basis) into the total settlement offer in the OTS** – e.g. offer to settle at “\$10,000 *inclusive* of interest and costs” versus “\$10,000 *plus* interest and costs” versus “\$10,000 *inclusive* of interest *plus* costs on an *indemnity basis*”.<sup>145</sup> Such specifications **affect the overall favourability of the OTS terms** vis-à-vis the judgment terms. A judgment usually provides for interest and costs (on a standard basis), which accrue up to the date of judgment, thereby increasing the overall favourability of the judgment over time vis-à-vis an OTS which interest and costs therein are included into a fixed lump sum amount such that the interest and costs components would not increase over time. Conversely, specifying “*plus costs on an indemnity basis*” in an OTS would, over time, result in the OTS’ costs outstripping the ‘standard’ costs in the judgment, thereby increasing the favourability of the OTS terms over time.
- 65.4. If a judgment is on appeal, and an OTS was served before the judgment (being appealed) was issued, the OTS remains valid for acceptance by the other party even during the appeal proceedings, such that the consequence of indemnity basis

<sup>138</sup> Order 22A rule 6 of the [Rules of Court](#).

<sup>139</sup> *Ong & Ong Pte Ltd v Fairview Developments Pte Ltd* [2015] 2 SLR 470; [2015] SGCA 5 (“**Ong & Ong**”) at [41] and [44] to [53].

<sup>140</sup> Order 22A rules 6(3) and 8 of the [Rules of Court](#), as explained by the Court in footnote 139 at [19(e)].

<sup>141</sup> *Ong & Ong* (footnote 139) at [64] to [69].

<sup>142</sup> *Ram Das V N P v SIA Engineering Co Ltd* [2015] 3 SLR 267; [2015] SGHC 74 (“**Ram Das**”) at [29], [57], [59] and [61]: Court recognised that OTS on liability only is permissible, especially in bifurcated proceedings.

<sup>143</sup> *Ong & Ong* (footnote 139) at [59] where the Court in *obiter* noted that an OTS could comprise “*separate offers for each of the claims constituting the package*”.

<sup>144</sup> *LK Ang Construction Pte Ltd v Chubb Singapore Pte Ltd (judgment on costs)* [2004] 1 SLR(R) 134; [2003] SGHC 263 at [18].

<sup>145</sup> See *NTUC Foodfare Co-operative Ltd v SIA Engineering Co Ltd and another* [2018] 2 SLR 1043; [2018] SGCA 56 (“**NTUC Foodfare**”) at [25] for various permutations of OTS terms (i.e. include, exclude or silent on interests and costs) and the Court’s approach in interpreting such OTS terms for the favourability requirement. Also, see Order 22A rules 9(2) and (4) on the non-provision of costs in the OTS, and the requirement to take into account interest accruing before the OTS was served when determining the favourability requirement.

(if triggered) **applies also to the duration of the appeal proceedings**<sup>146</sup>.

66. In summary, the purpose of the OTS regime is to facilitate the proper compromise of litigation via the **"carrot" and "stick" approach**: the "carrot" is the promise of indemnity costs to the party who had served a reasonable OTS in the event his OTS is not accepted, and the "stick" is the threat of the other party having to pay indemnity costs if he does not accept the reasonable OTS.<sup>147</sup> Hence, the OTS is a very useful tool to ensure that the other party seriously considers your settlement offer. The corollary of this is that if an OTS is served on you, **you should seriously consider the OTS terms and the anticipated terms of the eventual judgment.**
67. An OTS **should not be confused with "Calderbank offers"**. An OTS may only be served *after* legal proceedings have commenced and subject to the formalities mentioned in paragraph 63, whereas Calderbank offers are *pre-action* settlement offers that do *not* need to fulfil any prescribed formalities. As such, Calderbank offers do not attract the automatic indemnity basis consequence of OTS mentioned above. Whether costs on indemnity basis should be awarded on the basis of a more favourable Calderbank offer is in the general discretion of the Court, after considering the terms of the Calderbank offer, parties' conduct and the particular circumstances of the case.<sup>148</sup>

#### Whether to settle or fight

68. Settlement negotiation usually involves several rounds of back-and-forth offers and counter-offers. In deciding **whether to seriously contest liability all the way to trial**, parties should consider the **following non-exhaustive factors.**
69. First is the **legal merit of your case**, including the indication on liability by the CDR/ADCDR judge, and whether there are sufficiently convincing evidence and legal authorities in support of your case. This assists you to ascertain your chances of success.
70. Second is the **proportionality between the estimated monetary value of the difference in parties' position (on liability or quantum) and the estimated legal fees involved in going for trial.**
- 70.1. **Hypothetical scenario**: a claimant wishes the defendant to accept an additional 10% liability but the defendant refuses. This 10% liability amounts to an estimated \$5,000 more in compensation amount. For the trial on liability, parties will each incur an additional estimated \$10,000 in legal fees, and the estimated party-and-party costs<sup>149</sup> payable by the defendant to the claimant (if the claim is successful) is about \$5,000.
- 70.2. **Claimant's perspective**: in the best case scenario, *even if* the claimant succeeds in convincing the Court to find an additional 10% liability against the defendant, the \$5,000 more in quantum gained would be used to pay for the remainder of the legal fees of \$5,000 to his lawyers (being \$10,000 in full legal fees minus the party-and-party costs of \$5,000 received from the defendant), resulting in zero nett difference in monetary value for the claimant. Hence, it may not be commercially worthwhile for the claimant to push for trial.
- 70.3. **Defendant's perspective**: the defendant may potentially 'save' \$5,000 in compensation by going to trial on liability to contest the additional 10% liability in dispute. However, the defendant will incur \$10,000 in legal fees to his lawyers, and a further \$5,000 in party-and-party costs payable to the claimant (because ultimately the defendant is still liable for the accident, save that the percentage of liability is reduced). Hence, overall, in a bid to save the \$5,000 in compensation amount, the defendant incurs \$15,000, which may not be commercially worthwhile.

<sup>146</sup> *Ram Das* (footnote 142) at [67] and [71] - [73], endorsed in *NTUC Foodfare* (footnote 145) at [17].

<sup>147</sup> *Ong & Ong* (footnote 139) at [17]. See also [16] and [18] on the rationale of the OTS regime.

<sup>148</sup> *SBS Transit Ltd (formerly known as Singapore Bus Services Limited) v Koh Swee Ann* [2004] 3 SLR(R) 365; [2004] SGCA 26. See also footnote 134 on the common considerations in awarding indemnity costs.

<sup>149</sup> For explanation on party-and-party costs, please refer to paragraphs 54 to 59.9 of this guide.

71. Third is the **litigation risks of trial**. It is impossible to guarantee a court outcome even with a favourable CDR/ADCDR indication. Adopting the hypothetical scenario above, **if you are the claimant**, consider the possibility that the Court may not grant the additional 10% liability against the defendant, or worse, the Court may find you contributorily negligent and further reduce the defendant's liability. Also, *even if* the Court grants the additional 10% liability sought, at the Assessment of Damages stage, the Court may disagree with your quantification, such that the additional 10% liability achieved may result in compensation of \$500 more only, which is far less than your anticipated \$5,000 more in compensation, but you would have incurred significant legal fees for the trial. Conversely, **if you are the defendant**, consider the possibility that the Court may grant the additional 10% liability against you, or worse, the Court may find you more culpable, in excess of the disputed 10% liability. Also, the Court may assess the quantum of the 10% liability to be more than your assessment, resulting in you paying more compensation than anticipated.
72. Fourth is the non-commercial factors such as **time, effort and hassle** in preparing for and attending trial. As the claimant, you will have to spend time to 'revise' your account of the accident, prepare to be questioned on the witness stand, and attend all days of the trial to give instructions to your lawyers if necessary. The cross-examination by the defendant's lawyers can often become confrontational, draining and uncomfortable. There is also a risk that you may 'relive' the accident, and this may worsen any psychiatric condition.
73. Fifth is a reminder that the **proceedings are bifurcated**, such that even after a trial on liability, the case is not yet over and still has to undergo the Assessment of Damages stage, which **may be a repeat of the same process** as the CDR / trial on liability. Hence, you would effectively have spent twice the amount of time, effort and legal fees.
74. Sixth is to consider **whether an OTS was served** on you. As the OTS has significant consequences on the party-and-party costs payable by the defendant to the claimant or *vice versa*, the risk of the OTS being triggered should be factored into the weighing exercise of whether to settle the case or to fight all the way to trial (see preceding section on OTS).

#### Applying for interim payments if matter is long drawn

75. If the court proceedings appear to be long-drawn and the claimant is in **urgent need for money**, the claimant may consider requesting the defendant's insurer for interim payment. If the insurer refuses, the claimant may apply to Court for interim payment.<sup>150</sup> The purpose of interim payment is generally to alleviate the hardship between commencement of court proceedings and trial – though this is strictly not a legal requirement.<sup>151</sup>
76. There are various statutory requirements to be fulfilled, but usually, the main dispute is whether the claimant would, on the balance of probabilities<sup>152</sup> (i.e. more likely than not, or more than 50% chance), obtain judgment for substantial damages against the defendant at trial. The relevant evidence includes any police action or criminal conviction against the defendant, video recording of accident and corroborating independent witness statements. Even if a defendant alleges that the claimant was contributorily negligent, this is immaterial if, after deducting the quantum for the alleged contributory negligence, the claimant would still likely receive substantial damages at trial.<sup>153</sup> Also, even if the defendant is appealing his criminal conviction or other court decisions, this does not bar an award for interim payment because the Court will operate on the basis of the trial of the civil action taking place at the date of the application and not on the basis of what might happen on appeal.<sup>154</sup>

---

<sup>150</sup> Order 29 Rule 11 of the [Rules of Court](#).

<sup>151</sup> *Du Zhao Di (Suing as Committee of Person and Estate of Jian Hui Ping) v Lee Chee Yian (Mayban General Assurance, intervener)* [2007] SGHC 88 ("**Du Zhao Di**") at [45].

<sup>152</sup> *Du Zhao Di* (footnote 151) at [16]. See also [17] whereby the court will take into account the interlocutory nature of the application and that the matters has not undergone the rigours of a substantive trial.

<sup>153</sup> *Du Zhao Di* (footnote 151) at [20].

<sup>154</sup> *Test Claimants in the FII Group Litigation v Revenue and Customs Comrs (formerly Inland Revenue Comrs) (No 2)* [2012] 1 WLR 237 at [21], [37] and [38].

77. The interim payment **amount cannot exceed a reasonable proportion of the damages** which are likely to be awarded at trial.<sup>155</sup> Hence, so long as the interim payment application specifies an amount that is lower than the minimum amount the claimant is likely to be awarded at trial, then the sum requested should “*invariably be ordered*”.<sup>156</sup>
78. An order for interim payment is only a **temporary relief**, which does not affect the merits of the claim or defence. Hence, the interim payments may be clawed back by the defendant if the latter successfully defends the claim at trial, or the eventual judgment sum is lower than the interim payment amount awarded.

#### Involvement of Public Trustee after claim has concluded

79. After the motor accident claim is concluded between claimant and defendant, the Public Trustee<sup>157</sup> may have to be involved for various aspects, including the following 3 scenarios:
- 79.1. If the claimant is a *specified person*<sup>158</sup>, the compensation monies shall be paid to the Public Trustee as trustee for the claimant.
- 79.2. For Public Trustee’s approval on the adequacy of compensation amount if (1) the relevant amount exceeds \$5,000<sup>159</sup>, (2) compensation was agreed out-of-court, and (3) motor accident victim was not represented by a public officer or lawyer.<sup>160</sup>
- 79.3. For Public Trustee’s approval on the claimant’s solicitor-and-client (“**S&C**”) costs if the relevant amount exceeds \$5,000.<sup>161</sup> S&C costs are the legal fees and disbursements payable by the claimant to his lawyers. An agreement on legal fees between a lawyer and his client for motor accident matters is still subject to approval by the Public Trustee.<sup>162</sup>
80. The involvement of the Public Trustee serves as a sort of public welfare protection of motor accident victims, ensuring (1) proper handling of compensation monies for vulnerable claimants (or specified persons), (2) that claimants do not unknowingly strike a bad deal with the opposing side, and (3) that claimants are not overcharged by their lawyers.
81. In relation to the scenario mentioned in paragraph 79.3, if a motor accident claim culminates in a court judgment, the Public Trustee will require the wording of the judgment to state that the S&C costs and disbursements shall be determined by the relevant rules (i.e. to be approved by the Public Trustee or taxed<sup>163</sup> by the Court), and that such determined S&C costs shall be deducted from the judgment sums and paid directly by the defendant to the claimant’s lawyers, and thereafter, the balance judgment sums to be paid by the defendant to the claimant.<sup>164</sup> This means that for as long as S&C costs are not determined, the claimant will not receive any payment of judgment sums, and the claimant’s lawyers will also not receive any payment for S&C costs (but deposit is not prohibited). Hence, it is mutually beneficial for the claimant and his lawyers to work together and expeditiously apply for the Public Trustee’s approval on S&C costs or otherwise have them taxed by the Court. For more information on the guidelines for S&C costs, please refer to paragraphs 54 to 59.9 above.

<sup>155</sup> Order 29 Rule 11(1) of the [Rules of Court](#).

<sup>156</sup> *Du Zhao Di* (footnote 151) at [47].

<sup>157</sup> Visit their website: <https://www.mlaw.gov.sg/content/pto/en.html>

<sup>158</sup> MVTPCA (footnote 9), Sections 2 and 9(1)(b): specified person includes minors, persons lacking mental capacity, isolated in a hospital under the Infections Disease Act or under legal custody in a place of detention. See also [Public Trustee’s Practice Circular 2 of 2014](#) at [8] on the wording to be used for judgments.

<sup>159</sup> Relevant amount is assessed by the compensation directly relevant to the injury suffered by the motor accident victim, and it excludes costs of property damage, costs of vehicle repair, costs awarded and interest: see the [Public Trustee’s Practice Circular 1 of 2014](#) at [6], and MVTPCA (footnote 9), Sections 2, 6 and 9.

<sup>160</sup> MVTPCA (footnote 9), Sections 2 and 6(3), and the [Public Trustee’s Practice Circular 1 of 2014](#) at [4].

<sup>161</sup> MVTPCA (footnote 9), Section 18(3) and (4). Same definition of “relevant amount” as footnote 159.

<sup>162</sup> *Wong Foong Chai v Lin Kuo Hao* [2005] 3 SLR(R) 74; [2005] SGHC 77 at [44].

<sup>163</sup> The word ‘tax’ is a legal term of art, which simply means to be assessed by the Court; it does not mean ‘tax’ in the layman sense of an imposition of a fee payable to the authorities.

<sup>164</sup> [Public Trustee’s Practice Circular 2 of 2014](#) at [8]. See also the standard wording of “*Usual Consequential Orders*” in Form 9I mentioned in footnote 43.

Counterclaim by defendant against claimant

82. The above thus far has dealt with the situation where only the claimant has a claim against the defendant. However, in some situations, the defendant may also have a claim against the claimant, known as the defendant's "counterclaim". For example, the defendant's response to the claimant's claim may be that the collision occurred through no fault of the defendant, and instead, it was the claimant who was at fault for causing the collision (e.g. the claimant had suddenly swerved or filtered lanes without warning), which resulted in injury to the defendant and/or damage to the defendant's car. Therefore, **the defendant may wish to respond with a counterclaim (in addition to his defence against the claimant's claim), to claim against the claimant for the personal injury and/or property damage suffered by the defendant.**
83. Since a defendant's counterclaim may affect the claimant's claim, and both claims arise from the same set of facts, they should be resolved together. As such, under the Pre-Action Protocols (mentioned in paragraph 20 above), the claimant's letter of claim must specify a notice<sup>165</sup> to the defendant that should the defendant have any counterclaim, **full particulars of the counterclaim and supporting documents shall be submitted to the claimant within 8 weeks<sup>166</sup> of the defendant's receipt of the claimant's letter of claim.** The defendant must also comply with the timeline in the Pre-Action Protocols in relation to his counterclaim, or risk costs sanctions for non-compliance.
84. If the claimant has commenced court proceedings against the defendant, there are court procedures<sup>167</sup> for the defendant to file his counterclaim against the claimant, so that both claims may be determined within the same court proceedings to save time and costs. The defendant's counterclaim may then act as a setoff<sup>168</sup> against the claimant's claim (if both sides' claims are successful), or the defendant may be entirely successful in his defence, such that the claimant's claim fails, whereas the defendant's counterclaim succeeds, resulting in the claimant having to pay compensation to the defendant instead. Further, even if the claimant's claim in the court proceedings is withdrawn or discontinued, the defendant's counterclaim still survives and may be proceeded upon against the claimant.<sup>169</sup>
85. In summary, the **defendant effectively takes on the role as the claimant** in relation to pursuing his counterclaim, whereas the **claimant effectively takes on the role as defendant** in relation to defending against the counterclaim. As such, **the above chapters are also applicable for counterclaims**, albeit in the converse manner, i.e. a defendant seeking to pursue a counterclaim should read the above chapters from the perspective of a claimant and *vice versa* for a claimant defending against a counterclaim.
86. In the event of a counterclaim, also consider a **practical concern on insurance coverage.**
- 86.1. **If you are the defendant**, while your motor insurer would defend the claimant's claim pursuant to motor policy, the insurer is usually not obliged to also assist in pursuing your counterclaim. This is because your counterclaim is for your personal benefit (as you are seeking compensation for your losses), which requires your insurer to spend more legal fees to also pursue your counterclaim (e.g. engage lawyer to advise on the quantum of your counterclaim, gather supporting evidence and make submissions to Court). As such, you should discuss with your insurer, to come to a mutual agreement on whether the insurer will concurrently defend the claimant's claim and pursue your counterclaim. This may include highlighting to your insurer that your counterclaim essentially refutes the claimant's claim on liability and/or sets off the claim amount. Alternatively, you may consider claiming "own damage" under your motor policy instead of pursuing a counterclaim on your own, such that your insurer may then decide to pursue the counterclaim at the insurer's own expense, as a way to be reimbursed the insurer's pay-out on your "own damage" insurance claim. In the worst-case scenario, you may have to

---

<sup>165</sup> See standard wording of the claimant's letter of claim in Form 1 of Appendix E and Form 3 of Appendix C, of the [State Court Practice Directions](#).

<sup>166</sup> See paragraph 5.1 of Appendix E and paragraph 4.8 of Appendix C of the [State Court Practice Directions](#).

<sup>167</sup> Order 15 rule 2 and Order 18 rule 18 of the [Rules of Court](#).

<sup>168</sup> Order 18 rule 17 of the [Rules of Court](#).

<sup>169</sup> Order 15 rule 2(3) of the [Rules of Court](#).



engage your own lawyer to concurrently defend the claimant's claim and pursue your counterclaim.

- 86.2. Similarly, **if you are the claimant** who is faced with a counterclaim, you should immediately notify your insurer of the counterclaim. Thereafter, discuss with your insurer on whether your insurer is agreeable to pursue your claim while concurrently defending the counterclaim, or you may wish to claim "own damage" under your motor policy or engage your own lawyer.
- 86.3. **If you intend to claim "own damage" against your motor policy**, consider whether the policy limit is enough to compensate your full losses, and whether making such a claim would affect your 'No-Claim Discount' (also known as 'No-Claim Bonus'). These factors should be taken into account when you assess whether it is commercially more worthwhile to claim "own damage", or to incur time, effort and costs to pursue the claim and/or counterclaim on your own (with or without lawyer).

### **Conclusion**

87. While the above seeks to give a comprehensive overview of motor accident claims, every situation is unique, and is ultimately dependent on the particular circumstances of each case. **If there is any uncertainty, a prudent party should consult a lawyer for assistance.**
88. **Eversheds Harry Elias** regularly advises and acts for insurers, loss adjusters, claimants, defendants and third parties on a variety of **Personal Injury / Property Damage (PIPD) matters**, including motor and personal accidents, estate and dependency claims, civil actions with parallel criminal action, complicated damages such as loss of future earnings, loss of earning capacity, loss of amenities and future medical expenses. We are experienced in all stages of the claim process, such as internal assessment and advice, commencing or defending proceedings including trial on liability and assessment of damages hearing, negotiation, court or private mediation, enforcement of judgment and policy cover or liability. We provide **quality representation** to secure a just, fair and expeditious resolution.

**NOTE:** The contents herein are for general information only and do not constitute any form of legal advice. Please seek legal advice on your specific circumstances. The contents are the personal views of the author.

### **For further information, please contact the author:**

**KOK Yee Keong**  
Senior Associate  
Eversheds Harry Elias LLP  
Member, [PIPD Committee 2019](#), Law Society of Singapore

T: +65 6535 0550 F: +65 6438 0550  
[YeeKeongKok@Eversheds-HarryElias.com](mailto:YeeKeongKok@Eversheds-HarryElias.com)

 [www.linkedin.com/in/kokyeekong](http://www.linkedin.com/in/kokyeekong)



The [author](#) expresses his gratitude to his pupil-master, [Mr. Tan Chau Yee](#), for his invaluable advice in drafting this guide, his mentorship *and friendship*, and [Ms. Yasmeen J. Marican](#) for her guidance and giving the author extensive exposure to motor accident matters in his formative years of practice.

This guide is free and publicly accessible on our firm's website at:  
<https://www.eversheds-harryelias.com/content/e-briefing-motor-accident-guide>