

Halimi bin Ahmad

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v

Jothi Lingam a/l Radhakrishnan & Anor

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Sessions Court, Ipoh – Summons No. A53KJ-110-04/2015
D Sunita Kaur Jessy scj

[4] Quantum – Abrasion and laceration – Abrasion over cornea of both eyes and subconjunctival haemorrhage with conjunctivitis and nummular keratitis – Abrasion wound over left cheek – Laceration wounds over left periorbital region and forehead – 5 cm x 6 cm laceration wound deep into muscle layer with skin loss over upper eyelid – Head – Frontal bone fracture – Left subarachnoid haemorrhage with temporal base contusion – Loss of consciousness with Glasgow coma score of 9/15, retrograde amnesia and vomiting – Left zygomatic arch fracture and left zygoma fracture – Left superior orbital wall fracture – Nasal bone fracture – Upper limb – 2 cm open wound over posterior aspect of right elbow resulting in infected bursa – Grade II right acromioclavicular joint disruption – Skin – Full thickness skin grafting – Multiple scars

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Date of accident

September 9, 2013

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Date of grounds of judgment

May 4, 2016

Judgment received

July 20, 2017

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Brief description of plaintiff's injuries

1. 2 cm open wound over the posterior aspect of the right elbow resulting in an infected bursa
2. 5 cm x 6 cm laceration wound deep into the muscle layer with skin loss over the upper eyelid
3. Abrasion over the cornea of both eyes and subconjunctival haemorrhage with conjunctivitis and nummular keratitis
4. Abrasion wound over the left cheek
5. Frontal bone fracture
6. Grade II right acromioclavicular joint disruption
7. Laceration wounds over the left periorbital region and forehead
8. Left subarachnoid haemorrhage with temporal base contusion
9. Left superior orbital wall fracture
10. Left zygomatic arch fracture and left zygoma fracture
11. Loss of consciousness with Glasgow coma score of 9/15, retrograde amnesia and vomiting
12. Nasal bone fracture

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1 **Disabilities**

1. Difficulty in carrying extremely heavy objects
2. Difficulty in doing manual work, cooking and driving
3. Long term inability to close the left eye completely causing exposure of
5 the lower part of the left cornea leading to chronic corneal erosions which
causes persistent irritation, deterioration of quality of vision as well as
debilitating glare
4. Mild tenderness over the right AC joints
5. Numbness over the left side of the face
6. Multiple scars
10 (a) 3 cm x 1 cm post laceration scar over the right calf
(b) 3 cm x 1 cm scar over the left upper eyelid
(c) 3 cm x 2 cm post laceration scar over the right elbow

Plaintiff's age

- 15 (a) As at date of accident : NA
(b) As at date of hearing : NA

Plaintiff's occupation

- 20 (a) As at date of accident : Cook
(b) As at date of hearing : Cook

Plaintiff's earnings

- 25 (a) As at date of accident : NA
(b) As at date of hearing : NA

Liability

100% against the first defendant; second defendant vicariously liable

Award (Based on 100% liability)

- 30 1. *General damages*
- (a) 2 cm open wound over the posterior aspect of
the right elbow resulting in an infected bursa – RM 3,000.00
 - (b) 5 cm x 6 cm laceration wound deep into the
muscle layer with skin loss over the upper
eyelid, abrasion over the cornea of both eyes
35 and subconjunctival haemorrhage with
conjunctivitis and nummular keratitis
(Note: The plaintiff as a result suffers from
long term inability to close the left eye
completely causing exposure of the lower
40 part of the left cornea leading to chronic
corneal erosions which causes persistent
irritation, deterioration of quality of vision
as well as debilitating glare) – RM40,000.00

(c) Abrasion wound over the left cheek	– RM 2,000.00	1
(d) Frontal bone fracture	– RM17,000.00	
(e) Full thickness skin grafting	– RM15,000.00	
(f) Grade II right acromioclavicular joint disruption (Note: The plaintiff as a result suffers from mild tenderness over the right AC joints, difficulty in carrying extremely heavy objects, doing manual work, cooking and driving)	– RM22,000.00	5
(g) Laceration wounds over the left periorbital region and forehead	– RM 2,000.00	
(h) Left subarachnoid haemorrhage with temporal base contusion	– RM25,000.00	10
(i) Left superior orbital wall fracture	– RM 8,000.00	
(j) Left zygomatic arch fracture and left zygoma fracture (Note: The plaintiff as a result suffers from numbness over the left side of the face)	– RM30,000.00	15
(k) Loss of consciousness with Glasgow coma score of 9/15, retrograde amnesia and vomiting	– RM10,000.00	
(l) Multiple scars (3 cm x 1 cm post laceration scar over the right calf, 3 cm x 1 cm scar over the left upper eyelid and 3 cm x 2 cm post laceration scar over the right elbow)	– RM 5,000.00	20
(m) Nasal bone fracture	– RM 8,000.00	
2. Special damages		
(a) Cost of topical lubricants (RM60.00 x 28 years x 12)	– RM20,160.00	
(b) Cost of repairs to motorcycle (RM1,561.00 x ½) (agreed)	– RM 780.50	25
(c) Eye specialist consultation (RM180.00 x 28 years)	– RM 5,040.00	
(d) Loss of earning capacity	– RM10,000.00	
(e) Loss of overtime allowance (RM450.00 x 2 months)	– RM 900.00	30
(f) Travelling expenses incurred by the plaintiff for outpatient treatment (agreed)	– RM 300.00	
(g) Travelling expenses incurred by the plaintiff's family whilst visiting the plaintiff at the hospital (agreed)	– RM 300.00	35

Note

An appeal was lodged by the defendants at the High Court against the Sessions Court's finding on quantum.

1 **Interest**

- (a) 2.5% per annum on special damages from date of accident until date of judgment.
- (b) 5% per annum on general damages from date of service of summons until date of judgment.
- (c) 5% per annum on total judgment sum from date of judgment until date of full settlement.

Cases referred to by the court

- 10 *Amat b Majid v Azmi b Kamat & Anor* [2009] 1 PIR [23], sc
Anis Aqilah bt Othman (seorang yang tak berkeupayaan (pesakit) di bawah s 3(1) Ordinan Sakit Otak 1952 mendakwa melalui sahabat wakil, Nor' Azidah bt Haji Idris v Mohamed b Don & Anor (Halidi b Mahmud – Third Party) [2011] 1 PIR [27], sc
Azami Ahmad & Anor v Mohd Yunan Che Ya [2009] 2 PIR [45]; [2009] 1 LNS 851, HC
- 15 *Kanan Subramaniam & Anor v Aman Syah Abadzyuid* [2002] 1 AMR 831; [2002] 6 CLJ 34, HC
M Kumaresan a/l Muniandy v Gan Yew Peng [2011] 2 PIR [35], sc
Mariam bt Mansor v JD Peter [1975] 1 MLJ 279
Mawan ak Hasar @ Asar & Anor v Lee Beng Ho & Anor [2009] 1 PIR [15], sc
- 20 *Muhamad Amirul Syazani b Md Zaharan & 2 Ors v Md Sahak b Hamzah & Anor* [2009] 2 PIR [58], sc
Musa b Jusuh v Mazlan b Bidin & Anor [2009] 1 PIR [8], sc
Ng Aik Kian & Anor v Sia Loh Sia [1997] 2 AMR 1996; [1997] 2 CLJ (Supp) 218, HC
Norazira bt Adnan & Anor v Abd Hadi Kamil b Mukhtar & Anor [2011] 1 PIR [7], sc
- 25 *Norhayati bt Mohd Hussin & Anor v Rosli b Makmor* [2014] 1 PIR [9], sc
Ong Ah Long v Dr S Underwood [1983] CLJ 300
Sabri b Anjang v Suthagaran a/l Krishnan & Anor [2014] 1 PIR [21], sc
Salamat (Selamat) b Abu Bakar v Fuzi b Othman & Anor [2009] 2 PIR [9], sc
Tay Tong Chew & Anor v Abdul Rahman Hj Ahmad [1984] 1 CLJ (Rep) 389; [1984] 2 CLJ 227
- 30 *Topaiwah v Salleh* [1968] 1 LNS 161, FC
United Plywood & Sawmill Ltd v Lock Ngan Loi [1970] 2 MLJ 237; [1970] 1 LNS 164, FC

Other references

- 35 *Compendium of Personal Injury Awards*

Solicitors

- SV Namasoo and Shabnam Haseena Mohd Hanif* (SV Namasoo & Co) for plaintiff
Subashini Gunasegran and Baljeet Kaur (VT Singham, D Gunasegran) for defendants
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D Sunita Kaur Jessy scj

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[1] Liabiliti diputuskan dalam tindakan ini pada kadar 100% terhadap defendan (defendan kedua bertanggung secara vikarius) dan tuntutan plaintif terhadap defendan adalah dibenarkan. Defendan tidak berpuashati dan mengemukakan rayuan terhadap isu kuantum sahaja.

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Kuantum (atas dasar 100%)

[2] Dalam sesuatu tuntutan kemalangan, jumlah award yang diberikan seharusnya munasabah dan bersesuaian dengan kecederaan yang dialami. Tujuan utama sesuatu award diberikan adalah untuk membolehkan seseorang plaintif menjalani hidup dengan lebih sempurna setelah mengalami kecederaan tersebut. Rujukan dibuat pada kes berikut:

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i. *Ong Ah Long v Dr S Underwood* [1983] CLJ 300:

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it must be borne in mind that damages for personal injuries are not punitive and still less a reward. They are simply compensation that will give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful act, so far as money can compensate.

ii. *Mariam bt Mansor v JD Peter* [1975] 1 MLJ 279:

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in considering what compensation the court shall award, it is impossible to arrive at an accurate figure, however, all the court can do is to award her a sum which would compensate her for pain and suffering she had undergone and will, in all probability, continue to undergo. I feel that the sum awarded should be a fair sum to compensate the plaintiff for the injuries suffered, but it should not be too excessive to constitute an injustice to the defendant. It is trite law that any claim for special damages must be specifically pleaded and strictly proved as opposed to general damages which is subject to assessment (see *Sam Wun Hoong v Kader Ibrahimshah* [1981] 1 MLJ 295 at 297; [1981] 1 LNS 103, FC). In *Yeap Cheng Hock v Kajima-Taisei Joint Venture* [1973] 1 MLJ 230 at 236; [1971] 1 LNS 155, Syed Agil Barakbah J held:

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“The general principle is that the plaintiff must be prepared to prove his special damages unless it has been agreed. It is not enough for him to write down the particulars and leave them for the court to decide. It is for him to prove them.”

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[3] Di dalam menentukan award bersesuaian, rujukan telah dibuat pada hujahan kedua-dua pihak, *Compendium of Personal Injury Awards* yang terkini dan menggunakan kes yang telah diputuskan sebagai panduan. Setelah mempertimbangkan perkara di atas, award yang diberikan adalah pada kadar 100%.

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[4] Gantirugi am yang dibenarkan terhadap plaintif adalah seperti berikut:

1 a) *Open wound 2 cm over the posterior aspect of the right elbow resulting in infected bursa – dibenarkan RM3,000.00*

5 [5] Plaintiff memohon agar dibenarkan RM4,000.00 namun mahkamah bersetuju dengan hujahan pihak defendan bahawa RM3,000.00 adalah lebih munasabah dan adil. Oleh itu dibenarkan RM3,000.00 sebagai satu award yang sesuai dengan kecederaan yang dialami memandangkan ini bukanlah suatu kecederaan yang begitu serius.

10 b) *Laceration wound 5 cm x 6 cm deep into muscle layer with skin loss over the upper eyelid with disabilities; and both eyes cornea abrasion and subconjunctival haemorrhage with conjunctivitis with nummular keratitis – dibenarkan RM40,000.00*

15 [6] Bagi kecederaan ini, mahkamah mengambilkira *laceration wound* dan juga kecederaan pada *cornea* dengan ketidakupayaan pada mata. Rujukan pada laporan pakar kedua-dua pihak menunjukkan keadaan mata plaintiff kini mengalami ketidakupayaan dan memerlukan rawatan serta ubat mata sepanjang hayat:

Jika diteliti laporan pakar plaintiff:

20 chronic exposure keratopathy of left eye secondary to lagophthalmos resulting from scarring of the left upper eyelid. As a result of injuries sustained during the motor vehicle accident, the left upper eyelid has suffered *traumatic scarring resulting in long term inability of the left eye to close completely*. This results in the exposure of the lower part of the left cornea leading to *chronic corneal erosions which cause persistent irritation, deterioration of quality of vision as well as debilitating glare*.
25 En Hilimi is also required to be on long term use of topical lubricants as well as regular reviews by an ophthalmologist to monitor for *possible complications such as infective keratitis*.

Laporan pakar defendan:

30 this resulted in traumatic scarring of the left upper eyelid and hence *inability to close the eye completely*. This *corneal exposure had caused punctate keratitis causing him discomfort, photophobia and tearing*. En Halimi is required to be on long term use of topical lubricants. He needs to be reviewed regularly by an ophthalmologist to *monitor for possible infections*. He may require to undergo reconstructive surgery of the left upper eyelid.

35 [7] Mahkamah mendapati kedua-dua pakar memberi penilaian yang hampir sama mengenai ketidakupayaan mata kiri plaintiff. Mata merupakan suatu anugerah yang mana sukar bagi mahkamah meletakkan suatu amaun yang bersesuaian. Oleh itu, memandangkan plaintiff kini disahkan mengalami ketidakupayaan kekal iaitu "*inability to close eye completely*" bersama komplikasi jangkitan yang memerlukan rawatan sepanjang hayat wajar dibenarkan award sejumlah RM40,000.00.

c) *Abrasion wound over the left side cheek – dibenarkan RM2,000.00*

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[8] Defendan menghujahkan agar dibenarkan RM2,000.00 bagi kecederaan ini dan mahkamah bersetuju dan membenarkan amaun tersebut sebagai adil dan bersesuaian memandangkan kecederaan ini bukan suatu kecederaan yang serius.

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d) *Laceration wound over the left periorbital region and forehead – dibenarkan RM2,000.00*

[9] Plaintiff memohon agar dibenarkan RM5,000.00 namun mahkamah berpendapat amaun ini adalah terlalu tinggi dan tidak munasabah. Kecederaan ini bukan serius dan merupakan suatu *laceration* sahaja. Oleh itu award sejumlah RM2,000.00 adalah memadai dan munasabah.

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e) *Right acromioclavicular joint disruption Grade II – dibenarkan RM22,000.00*

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[10] Bagi kecederaan ini, mahkamah merujuk pada laporan pakar kedua-dua pihak sebelum menetapkan award yang bersesuaian. Tarikh kemalangan adalah pada September 9, 2013 dan rujukan pakar dibuat pada tahun 2015 di mana kedua-dua pakar mengesahkan ketidakupayaan pada tangan plaintiff akibat kecederaan ini. Laporan pakar kedua-dua pihak:

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Laporan pakar plaintiff (tarikh pemeriksaan pada Januari 29, 2015):

disruption of right acromio-clavicular joint was treated conservatively. It has persisted with swelling over the right shoulder. The right should movements are painful and restricted. This is the cause of the difficulty in doing manual work, cooking and driving. All these are permanent features. He will have difficulty in doing any job which requires him to carry, push, pull or lift heavy objects with the right hand. He will also have difficulty in lifting objects above shoulder level with the right hand. These disabilities will affect his performance as a cook.

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Laporan pakar defendan (tarikh pemeriksaan pada Disember 2, 2015):

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right acromioclavicular joint disruption Grade II. This was treated conservatively. This is evidence as compared to the left side the right AC joint is wider. Compared to Dr Enjer his condition has improved. There is only mild tenderness over the right AC joints with full range of movements of the right shoulder. He will only have difficulty in carrying extremely heavy objects. Hence his performance as a cook will be affected to a certain extent.

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[11] Kedua-dua laporan di atas jelas memberi gambaran bahawa plaintiff kini mengalami kesukaran pergerakan tangan kanan beliau yang memberi kesan pada kerjanya sebagai seorang tukang masak. Rujukan pada *Compendium* juga menunjukkan lingkungan di antara RM11,000.00 sehingga RM19,500.00. Mahkamah berpendapat tuntutan ini wajar dibenarkan dengan

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1 amaun sejumlah RM22,000.00 sebagai munasabah setelah megambil kira
ketidakupayaan tangan kanan plaintif.

5 f) *Loss of consciousness with retrograde amnesia, vomiting and GCS 9/15 – dibenarkan
RM10,000.00*

[12] *Compendium* mengesyorkan bagi *loss of consciousness* suatu amaun pada
kadar RM5,500.00. Mahkamah benarkan award sejumlah RM10,000.00 adalah
merangkumi *loss of consciousness* dan juga *retrograde amnesia*. Rujukan pada
kes berikut menunjukkan award yang lebih tinggi hanya untuk kecederaan
10 *concussion*:

*Muhamad Amirul Syazani b Md Zaharan & 2 Ors v Md Sahak b Hamzah &
Anor* [2009] 2 PIR [58] at p 413 – where RM7,000.00.00 was awarded for
cerebral concussion

15 [13] Oleh itu award sejumlah RM10,000.00 yang merangkumi kedua-dua
di atas adalah berpatutan dan munasabah.

20 g) *Left subarachnoid haemorrhage with temporal base contusion – dibenarkan
RM25,000.00*

[14] Plaintif mengalami kecederaan pada bahagian kepalanya iaitu
haemorrhage with temporal base contusion dan mahkamah bersetuju award dengan
syorkan pihak defendan iaitu sejumlah RM25,000.00 dan telah dibenarkan.
Mahkamah berpendapat award sedemikian adalah munasabah setelah
mengambil kira bahawa kecederaan ini adalah pada bahagian kepala plaintif.
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h) *Fracture of the frontal bone – dibenarkan RM17,000.00*

[15] Plaintif juga mengalami kecederaan pada bahagian kepala iaitu
fracture of the frontal bone dan membenarkan award yang berasingan daripada
kecederaan di perenggan (g) di atas. Ini adalah kerana kecederaan di atas
adalah merupakan jenis kecederaan pendarahan kepala manakala kecederaan
ini adalah kepatahan. Rujukan pada nas-nas perundangan berikut memberi
panduan dalam lingkungan award yang boleh diberikan:
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35 i. *Norazira bt Adnan & Anor v Abd Hadi Kamil b Mukhtar & Anor* [2011] 1
PIR [7] – where RM30,000.00 was awarded for mild head injury. The
plaintiff suffered from immediate loss of consciousness at the time of
accident as well as retrograde amnesia and post-concussion symptoms
like headache, giddiness, memory impairment, repetition of words
and insomnia.

40 ii. *M Kumaresan a/l Muniandy v Gan Yew Peng* [2011] 2 PIR [35] at p 187
– where RM15,000.00 was awarded for fracture of the right temporal
bone.

- iii. *Anis Aqilah bt Othman (seorang yang tak berkeupayaan (pesakit) di bawah s 3(1) Ordinan Sakit Otak 1952 mendakwa melalui sahabat wakil, Nor' Azidah bt Haji Idris) v Mohamed b Don & Anor (Halidi b Mahmud – Third Party)* [2011] 1 PIR [27] at p 113 – where RM15,000.00 was awarded for depressed fracture of the occipital bone.

[16] Mahkamah memberi penilaian pada nas-nas perundangan sebagai panduan dalam memberi award yang bersesuaian bagi kepatahan yang dialami. Rujukan pada kes berikut khususnya sebagai panduan dalam memberikan award bersesuaian:

- iv. *United Plywood & Sawmill Ltd v Lock Ngan Loi* [1970] 2 MLJ 237; [1970] 1 LNS 164, FC at p 238:

As has been said again and again, *the assessment of damages in cases of personal injury is one of the most difficult things for either a judge in the first instance or a Court of Appeal.* When a man has lost his arm there is no sum in the world that can in the world that can in the true sense compensate for it. *Yet compensation in the form of money is the only way in which he can be granted redress for the injury he has suffered. It is neither possible nor desirable for damages for the loss of an arm to be standardised or rigidly classified, as no two cases are ever alike.* But in order to maintain some semblance of uniformity, the amounts awarded in past cases, which bear reasonable comparison with the case under review, should serve as a useful guide. The general principle is that an appellate court can only interfere with an assessment if it is considered so inordinately high as to make the court exclaim. “Good gracious, is that the sum which has been awarded – that sum must be altered”, or if it is so much out of line with the discernible trend or pattern of awards in reasonably comparable cases that it must be regarded as a wholly erroneous estimate.

[17] Mahkamah berpendapat setelah rujukan pada nas-nas perundangan dan juga *Compendium*, suatu amaun sejumlah RM17,000.00 adalah wajar, adil dan bersesuaian dengan kecederaan kepala yang dialami.

i) Fracture of the left superior orbital wall – dibenarkan RM8,000.00

[18] Mahkamah memberi award sejumlah RM8,000.00 dan ini merupakan suatu amaun yang lazimnya dibenarkan oleh mahkamah. Rujukan pada nas-nas perundangan berikut:

- i. *Salamat (Selamat) b Abu Bakar v Fuzy b Othman & Anor* [2009] 2 PIR [9] at p 45 – RM8,000.00 was awarded for fracture of the right orbital wall
- ii. *Sabri b Anjang v Suthagaran all Krishnan & Anor* [2014] 1 PIR [21] – fracture floor of the right orbit RM8,000.00.

[19] Jumlah yang dibenarkan merupakan suatu amaun yang adil dan bersesuaian setelah mengambilkira kecederaan ini.

1 j) *Fracture of the left zygomatic arch and fracture of the left zygoma – dibenarkan RM30,000.00*

[20] Bagi kecederaan ini rujukan dibuat pada kedua-dua laporan pakar yang menyatakan – (pakar plaintif):

5 there is numbness over the left side of the face.

dan (pakar defendan):

10 the fracture have healed and the alignment is as shown.

[21] Rujukan juga dibuat pada nas-nas perundangan berikut sebagai panduan dalam menetapkan suatu amaun yang bersesuaian:

15 i. *Amat b Majid v Azmi b Kamat & Anor* [2009] 1 PIR [23] at p 137 – where RM8,00.00 was awarded for fracture of the left zygoma.

ii. *Sabri b Anjang v Suthagaran all Krishnan & Anor* [2014] 1 PIR [21] – fracture of the zygomatic complex RM15,000.00.

20 iii. *Norhayati bt Mohd Hussin & Anor v Rosli b Makmor* [2014] 1 PIR [9] – fracture of the zygomatic arch complex RM20,000.00.

[22] Lazimnya bagi kecederaan seperti ini, lingkungan award yang dibenarkan adalah antara RM8,000.00 sehingga RM11,000.00 (*Compendium*) atau sehingga RM20,000.00 menurut kes di atas. Di sini plaintif mengalami kepatahan pada *fracture of the left zygomatic arch and fracture of the left zygoma*. Kedua-dua pihak mengesyorkan RM30,000.00 sebagai award dan mahkamah bersetuju memandangkan ia suatu amaun yang munasabah. Oleh itu RM30,000.00 dibenarkan.

30 k) *Fracture of the nasal bone – dibenarkan RM8,000.00*

[23] Kedua-dua pihak dalam hujahan mengesyorkan amaun RM8,000.00 dan mahkamah bersetuju bahawa amaun ini adalah bersesuaian dengan kecederaan yang dialami. *Compendium* juga mengesyorkan amaun yang sama. Oleh itu dibenarkan RM8,000.00.

35 l) *Full thickness skin grafting – dibenarkan RM15,000.00*

[24] Laporan perubatan mengesahkan bahawa prosedur *skin grafting* dilaksanakan:

40 wound debridement, toilet and suturing and full thickness skin grafting done by plastic surgery team.

[25] *Compendium* mengesyorkan antara RM11,000.00 sehingga RM27,500.00. Rujukan pada nas-nas perundangan dari tahun 2009 sehingga ke tahun 2015 juga membenarkan lingkungan amaun sedemikian: 1

i. *Mawan ak Hasar @ Asar & Anor v Lee Beng Ho & Anor* [2009] 1 PIR [15] at p 70 – where RM15,000.00 was awarded for split skin grafting on the right arm; 5

ii. *Musa b Jusuh v Mazlan b Bidin & Anor* [2009] 1 PIR [8] at p 45 – where RM20,000.00 was awarded for skin grafting; 10

iv. *Awang b Mat & Anor v Marimuthu & Anor* [2015] 1 PIR [15] – skin grafting RM20,000.00.

[26] Oleh itu mahkamah berpendapat RM15,000.00 adalah wajar dan bersesuaian setelah merujukpakai nas-nas perundangan sebagai panduan. 15

m) Multiple scars – dibenarkan RM5,000.00

[27] Kesan parut yang dialami adalah seperti yang dinyatakan dalam laporan pakar: 20

3 cm x 1 cm scar over the left upper eyelid. 3 cm x 2 cm post laceration scar over the right elbow. 3 cm x 1 cm post laceration scar over the right calf.

[28] Bagi kesan-kesan parut ini, mahkamah berpendapat wajar dan sesuai dibenarkan RM5,000.00 sebagai suatu award yang munasabah. 25

[29] Gantirugi khas yang dibenarkan terhadap plaintif adalah seperti berikut:

Item (a) Kehilangan elaun lebih masa – dibenarkan RM900.00

[30] Kedua-dua pihak mempersetujui tuntutan ini pada kadar RM450.00 untuk dua bulan, oleh itu dibenarkan sejumlah RM900.00. 30

Item (b) Kehilangan keupayaan mencari mata pencarian (earning capacity) – dibenarkan RM10,000.00

[31] Plaintif dalam tindakan ini bekerja sebagai serorang tukang masak. Sejak kemalangan, beliau telah kembali bekerja semula. Pihak defendan mempertikaikan tuntutan ini memandangkan plaintif kini telah mendapat kenaikan gaji dan ini tidak menunjukkan kehilangan keupayaan dalam pekerjaan beliau. Tiada keterangan juga bagi menunjukkan jika plaintif akan kehilangan pekerjaan sebagai seorang tukang masak. Kehilangan keupayaan bekerja merujuk pada nas-nas perundangan wajar atau sesuai dibenarkan dalam keadaan di mana plaintif mungkin akan kehilangan pekerjaannya pada 35
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1 masa hadapan (*may lose his employment in future*). Dalam tindakan ini tiada
keterangan bagi menunjukkan sama ada plaintif akan kehilangan pekerjaannya
malahan daripada keterangan plaintif telahpun diberi kenaikan gaji setelah
kembali semula bekerja.

5 [32] Majikan plaintif memberi keterangan bahawa plaintif kini mengalami
kesukaran mengangkat, menolak serta menarik barangan yang berat di dapur.
Sebagai seorang tukang masak beliau memerlukan tenaga tangan yang kuat
bagi menjalankan kerja-kerja di dapur khususnya kerana beliau ditugaskan
10 memasak bagi sejumlah 800 ke 1,000 orang. Kini beliau memerlukan bantuan
seorang tukang masak lain bagi melakukan kerja-kerja berat di dapur.
Mahkamah juga mengambil kira keterangan pakar dalam hal ini – pakar
plaintif yang menyatakan:

these disabilities will affect his performance as a cook

15 dan ini disokong oleh keterangan pakar defendan yang menyatakan:

hence his performance as a cook will be affected to a certain extent.

[33] Lanjutan dari ini, mahkamah membenarkan award kehilangan
20 keupayaan bekerja memandangkan terdapat keterangan dalam kedua-dua
laporan pakar yang menyokong keadaan plaintif yang mengalami kekurangan
dan ketidakupayaan akibat kecederaan sebagai seorang tukang masak. Setelah
merujuk pada pada semua keterangan, mahkamah benarkan suatu amaun
yang munasabah dan wajar bagi kehilangan ketidakupayaan bekerja dengan
25 jumlah RM10,000.00.

Item (c) Kos membaiki motorsikal – dibenarkan RM780.50 (dipersetujui)

[34] Kedua-dua pihak telah mempersetujui sejumlah RM780.50 iaitu separuh
daripada jumlah penuh RM1,561.00.

30 *Item (d) Kos perbelanjaan keluarga melawat pihak plaintif di hospital – dibenarkan
RM300.00*

[35] Kedua-dua pihak bersetuju dengan amaun sejumlah RM300.00, oleh
itu tuntutan ini dibenarkan.

35 *Item (e) Kos perbelanjaan plaintif semasa menjalani rawatan pesakit luar – dipersetujui
RM300.00*

[36] Kedua-dua pihak bersetuju dengan amaun sejumlah RM300.00, oleh
itu tuntutan ini dibenarkan.

40

Item (f) Kos membeli topical lubricants – dibenarkan RM20,160.00

1

[37] Rujukan pada kedua-dua laporan pakar menyatakan dengan jelas plaintif memerlukan *topical lubricants* akibat kecederaan pada matanya:

Laporan pakar plaintif:

5

En. Halimi will be required to use topical lubricants for the rest of his life as his eye condition is not expected to recover. At current prices, the cost of the topical lubricants would amount to RM60 per month. He should also attend regular reviews every 4 months at an approximate cost of RM60 per consultation at current rates.

10

Laporan pakar defendan:

This has resulted in traumatic scarring of the upper eyelid and hence inability to close the eye completely. This corneal exposure had caused punctate keratitis causing him discomfort, photophobia, and tearing. En. Halimi is required to be on long term use of topical lubricants. He needs to be reviewed regularly by an ophthalmologist to monitor for possible infections.

15

[38] Kedua-dua pakar telah mengesahkan bahawa plaintif memerlukan ubat ini sepanjang hayat beliau dengan kos RM60.00 sebulan. Kiraan yang dibenarkan adalah seperti berikut:

20

70 (jangka hayat seorang lelaki) – 28 (usia plaintif ketika kemalangan) = 42 tahun (ditolak dengan $1/3$) = 28 tahun. Dibenarkan RM60.00 sebulan x 28 tahun x 12 = RM20,160.00.

25

Item (g) Kos hadiri konsultasi pakar mata – dibenarkan RM5,040.00

[39] Menurut pada keterangan seperti dalam laporan pakar yang mengesyorkan amaun RM60.00 untuk setiap kali konsultasi bagi tempoh tiga kali dalam setahun, maka dibenarkan seperti berikut:

30

RM60.00 (3 kali setahun = RM180.00) iaitu bagi rujukan rawatan konsultasi pakar mata bagi tempoh sepanjang hayat. Kiraan sepanjang hayat seperti di atas: (RM60.00 sebulan x 3 kali setahun = RM180.00) dan dibenarkan RM180.00 x 28 tahun = RM5,040.00.

35

Item (h) Kos dokumen – dibenarkan di bawah kos tindakan

[40] Dalam sebarang tindakan tuntutan kehilangan gantirugi, amaun yang dibenarkan oleh mahkamah tidak seharusnya terlalu tinggi. Tuntutan gantirugi adalah bagi menampung kerugian, kecederaan, kecacatan atau ketidakupayaan yang dialami akibat kecederaan dalam kemalangan. Mahkamah akan meneliti semua laporan perubatan, laporan pakar dari kedua-dua pihak sebelum memutuskan dalam membenarkan suatu award yang munasabah. Pemberian

40

1 award oleh mahkamah tidaklah harus dilihat sebagai suatu ganjaran sebaliknya
ia berupaya membantu seseorang plaintif bagi meringankan beban akibat
kecederaan yang dialami. Rujukan pada kes berikut:

5 *Ng Aik Kian & Anor v Sia Loh Sia* [1997] 2 AMR 1996; [1997] 2 CLJ (Supp)
218, High Court Johor Bahru:

[3] Damages for personal injuries are not punitive and still less a reward. This
apart, it must also be borne in mind that an award under general damages
should be a global sum commensurate with the injury sustained and not a full
10 compensation which might result in ruinous consequences to the defendant.

Azami Ahmad & Anor v Mohd Yunan Che Ya [2009] 2 PIR [45]; [2009] 1 LNS
851, Mahkamah Tinggi, Kuantan, VT Singham J, Rayuan No. 12-35-2007
August 10, 2009 – di mana rujukan dibuat pada kes *Kanan Subramaniam
& Anor v Aman Syah Abadzyuid* [2002] 1 AMR 831 di 859; [2002] 6 CLJ 34
15 di 50 yang mengikut kes *Tay Tong Chew & Anor v Abdul Rahman Hj Ahmad*
[1984] 1 CLJ (Rep) 389; [1984] 2 CLJ 227, di mana mahkamah dalam kes
tersebut memutuskan:

Mahkamah ingin berkata bahawa sebarang award yang dibenarkan oleh
mahkamah bagi kecederaan plaintif memang tidak boleh membawa kaki yang
20 asal kepada plaintif sebelum kecederaan yang dialami di kemalangan tetapi
mahkamah harus berkonsisten (*there must be some consistency and certainty*)
atau satu ceiling di atas award supaya award itu tidak melampaui (*exorbitant*)
dan dipastikan bukan mengikut kesukaan seseorang peguam atau kesukaan
seseorang hakim Mahkamah Sesyen ataupun seorang majistret kepada sesuatu
individual tetapi harus mengikut “*trend of awards*” kepada sesuatu kecederaan
25 yang sama kalau tidak keseluruhan industri insuran akan jatuh (*collapse*) dan
akibat itu, ini mungkin akan membawa kelemahan kepada ekonomi atau tidak
sihat kepada ekonomi negara kita.

Rujukan pada kes *Topaiwah v Salleh* [1968] 1 LNS 161, Federal Court, Kuala
Lumpur, Azmi, FC CJ (Malaya); Suffian FCJ; Macintyre FCJ, Civil Appeal
30 No. X92 of 1966 March 11, 1968:

The difficulty of laying down the principles on which damages are awarded has
frequently been recognised. However, as Lindley LJ in *Rodocanachi v Mibburn
Brothers* [1887] 18 QBD 67 at 78 stated: “*It must be remembered that the rules
as to damages can in a nature of things only be approximately just, and that they
have to be worked out, not by mathematicians, but by juries.*” Or another way
35 of putting it – that it is a matter of assessment but not of calculation. So far as this
court is concerned we should, to paraphrase Greer LJ in *Flint v Lovell* [1935]
1 KB 354 at 360 be disinclined to reverse the finding of a trial judge as to the
amount of damages merely because we think that if we had tried the case in
the first instance we would have given a lesser sum. To justify reversing him,
we should be convinced that he acted upon some wrong principle of law, or
40 that the amount awarded was so extremely high or so very small as to make
it an entirely erroneous estimate of the damage. The assessments which the
courts have made over the years form some guide to the kind of figure which

is proper and which the appellate court will follow in the light of the special facts of each particular case.

[41] Mahkamah telah sebaik mungkin memberi award yang bersesuaian, adil serta munasabah setelah mengambilkira keterangan yang dikemukakan mengenai kecederaan dan ketidakupayaan kedua-dua plaintif. Dalam membenarkan suatu award yang bersesuaian mahkamah tidak boleh terpesong dari tujuan utama pemberian award iaitu bagi membantu plaintif dalam meringankan beban akibat kecederaan.

[42] Dalam tindakan ini kos dibenarkan pada plaintif dengan faedah bagi gantirugi khas pada kadar 2.5% p.a. daripada tarikh kemalangan sehingga tarikh keputusan. Gantirugi am pada kadar 5% p.a. daripada tarikh saman diserahkan sehingga tarikh keputusan dan selanjutnya 5% p.a terhadap jumlah yang diawardkan daripada tarikh keputusan sehingga penyelesaian penuh.