

STRATEGY GUIDE ON MEASURING DAMAGES FOR INJURIES SUFFERED BY MIGRANT WORKERS

An Overview of The Avenues of
Redress in Singapore



Simmons & Simmons JWS

STRATEGIC LEGAL
RESEARCH SERIES

Justice
Without
Borders

AN INTRODUCTORY NOTE

This report examines how damages should be measured in foreign domestic worker (FDW) claims arising from physical or sexual abuse. In collaboration with Simmons & Simmons JWS, Justice Without Borders (JWB) presents this report with the aim of providing legal practitioners with a guide to predictably assessing the appropriate sum of financial compensation that they should demand on behalf of their clients. This guide draws from the limited relevant case law in Singapore, and then from other Commonwealth jurisdictions. It is meant to reflect the present state of the law.

Background

All employers are required to provide a safe working environment for FDWs they employ. Unfortunately, bad employers exist, and some FDWs fall victim to physical and even sexual assault. The trauma from the assault manifests not only in physical scars, but in emotional ones as well. Both can have long-lasting effects on the FDW.

While local authorities can and often do pursue criminal convictions in the more grave of these situations, there has been less private action by FDWs to pursue civil remedies, in no small part due to the difficulty in quantifying the amount of damages to be pursued. Further, as not all types of emotional harm are a “recognisable psychiatric illness” and claimable under current Singapore law, this comparative research hopes to shed light on claims that could be made, based on approaches taken in other relevant jurisdictions, to advance the course of getting civil compensation for victimised FDWs.

Thank you

JWB sincerely thanks Amanda LEES and her team from Simmons & Simmons JWS for undertaking this research and making this strategic work possible; and JWB’s Douglas MACLEAN, Shalini JAYARAJ, and JWB Singapore’s dedicated team of Legal Fellows, for their additional review and research support.

CONTENTS

1. CIVIL COMPENSATION 4

1.1. Intentional torts..... 4

1.2. Torts of negligence..... 4

1.3. Types of harm 6

1.4. Time limit for bringing a claim in tort 7

1.5. Damages for intentional torts and torts of negligence 7

2. PROTECTION FROM HARASSMENT ACT 2014..... 16

2.1. Harassment..... 16

2.2. Injury to feelings 16

3. CRIMINAL COMPENSATION 18

3.1. Criminal compensation orders..... 18

3.2. Section 359 of the current Criminal Procedure Code..... 18

3.3. Section 359 of the amended Criminal Procedure Code 18

3.4. General principles underpinning criminal compensation..... 19

3.5. Quantum of compensation orders 20

3.5.1. Compensation for medical treatment..... 21

3.5.2. Compensation for loss of earnings 21

3.5.3. Compensation for pain and suffering..... 21

3.5.4. Voluntary compensation paid by the defendant..... 22

3.6. Compensation orders and psychological abuse 22

APPENDIX 1 : Cases involving the tort of trespass to the person 24

APPENDIX 2 : Guidelines for the Assessment of General Damages in Personal Injury Cases 26

APPENDIX 3 : Damages awarded for psychiatric harm in negligence cases 30

APPENDIX 4 : English cases involving sexual abuse 33

APPENDIX 5 : Compensation orders granted in domestic worker abuse cases 38

APPENDIX 6 : Criminal prosecution for domestic worker abuse 40

Introduction

In Singapore, there are a number of possible ways to obtain financial compensation following an assault, whether it is sexual, physical or emotional. This report sets out the various ways of obtaining such compensation, which include:

- i. a civil claim against the tortfeasor or a company/ person that is liable or vicariously liable for the tort;
- ii. a claim under the Protection from Harassment Act; and
- iii. a compensation order under the Criminal Procedure Code.

The route to follow will depend on whether the offender has funds to pay damages to the victim. Pursuing the employer by way of a civil claim, provided the employer has sufficient funds and liability can be established, may be the best way of obtaining compensation.

In some cases, where there have also been criminal proceedings, the offender may be ordered to pay compensation to the victim as part of the sentence. The requirement to pay compensation is set out in section 359 of the Criminal Procedure Code, which is discussed in more detail below. Any subsequent civil claim will need to account for what has been received by way of the compensation order.

1. CIVIL COMPENSATION

The general aim of an award of damages in tort is to put the injured party in the same position as he or she would have been in if the tortious act had not occurred.

The remedies that are available to a plaintiff depend on whether the tort alleged is performed intentionally (intentional tort) or whether it is a result of a lack of reasonable care (tort of negligence).

1.1. Intentional torts

A key feature of an intentional tort is the state of mind of the wrongdoer – the tortious act must have been intentionally committed.

1.1.1. Trespass to the person

Trespass to the person involves the direct and intentional application or threatened application of force or interference to a person's body or liberty. There are three types of trespass to the person.

- Assault involves the apprehension of immediate, unlawful force which is created by the wrongdoer to the victim. No actual physical contact is required to establish the tort.
- Battery is the actual infliction of unlawful force on another person. There must be actual physical contact.
- False imprisonment is the restraint of liberty or confinement of a person.

The above torts are actionable per se i.e. the plaintiff does not have to prove any damage or injury suffered as a result of the trespass. This is important if there is no physical injury and no clinically recognised psychiatric injury. See **Appendix 1** for damages awarded for physical injuries caused as a result of the intentional tort of trespass to the person.

1.1.2. Other intentional infliction of physical harm

The case of *Wilkinson v Downton*¹ provides that where a wilful act or statement made by a person such as threats and intimidation, causes a plaintiff physical harm or a recognised psychiatric illness such as nervous shock, that person could be liable in tort.

In the Court of Appeal case *Ngiam Kong Seng v Lim Chiew Hock*² the court stated (in dicta) that *Wilkinson v Downton* is the authority in Singapore for the principle that wilfully communicating false information is actionable if it causes physical, including psychiatric, harm. While this case did not involve an intentional tort and the facts are not relevant to domestic worker abuse claims, this is the only reported case in Singapore in which the principle in *Wilkinson v Downton* is discussed.

1.2. Torts of negligence

The tort of negligence is the failure to exercise reasonable care that the circumstances demand, resulting in injury or damage. A plaintiff who suffers personal injury has the right to

¹ *Wilkinson v Downton* [1897] 2 QB 57

² *Ngiam Kong Seng v Lim Chiew Hock* [2008] SGCA 23 at [138]

make a negligence claim against the wrongdoer for compensation if the following elements of the tort of negligence can be established.

1.2.1. Requirements for the tort of negligence

The plaintiff has to prove, on the balance of probabilities, that:

- **Duty**: there is a duty of care owed by the defendant to the plaintiff in the particular circumstance, taking into account the factual foreseeability of damage or injury, the relationship of legal proximity between the plaintiff and the defendant, and policy considerations³ (i.e. whether it is fair, just and reasonable to impose such a duty).
- **Breach**: the defendant's conduct falls below the required standard of care; and
- **Causation**: the damage or injury is caused by the breach of the duty.

1.2.2. Employer's duty of care

An employer may, at common law, be made liable to an employee who sustains an injury in the course of employment in two ways. First, if the employer has breached his or her non-delegable duty of care to an employee to take care of his or her health and safety. Secondly, an employer can be liable for the negligence of another employee if the doctrine of vicarious liability applies.

Non-delegable duty of care

Employers owe a non-delegable common law duty of care to their employees for their health and safety and will be liable for any physical or recognised psychiatric injury suffered by an employee as a result of a breach of this duty. An employer cannot escape liability simply by asserting that another party was negligent and responsible for the employee's injury.

Employers are required to take reasonable care for the health and safety of their employees in all the circumstances of the matter.⁴ An employer is in breach of that duty if his or her conduct has fallen below the conduct of the reasonable and prudent employer taking positive thought for the safety of his or her workers in light of what he or she knows or ought to know. A domestic worker who is injured in the workplace or assaulted by a visitor, family member or another employee in the workplace may be able to bring a negligence claim against their employer. (The domestic worker can also bring an intentional tort claim against the person who assaulted her.) To succeed, the domestic worker will need to show that the employer has breached his or her duty of care for the domestic worker's health and safety and that this breach caused the injury.⁵

In *Chandran a/l Subbiah v Dockers Marine* the court stated that an employee is entitled to expect that an employer has taken reasonable care in evaluating all safety issues before work commences. The scope of "reasonable care" for the safety of the employee will depend on the circumstances of each individual case.⁶ The scope of the duty encompasses the provision of adequate and maintained equipment, adequately skilled workers, a safe system of work and a safe place of work. Relevant considerations in assessing the standard of care expected by the employer include the magnitude of the risk of harm, the likelihood of an accident, the seriousness of the consequences of the risk eventuating and the feasibility and practicality of

³ *Spandek Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] SCGA 37

⁴ *Chandran a/l Subbiah v Dockers Marine Pte Ltd* [2010] 1 SLR at [15]

⁵ *Chandran a/l Subbiah v Dockers Marine Pte Ltd* [2010] 1 SLR at [14-15]

⁶ *Chandran a/l Subbiah v Dockers Marine Pte Ltd* [2010] 1 SLR at [19]

taking adequate precautions.⁷ The court in this case noted that the fact that the employer “*may not own or control the workplace*” does not in any substantive way detract from the employer’s general duty to take reasonable care for the safety of its employees.⁸ The duty remains throughout the whole course of employment and extends to work on the premises of others.

Doctrine of vicarious liability

An employer is vicariously liable for a tort committed by its employees if the tort is committed in the course of employment. In determining whether vicarious liability should be imposed on an employer for torts committed by an employee during an unauthorised course of conduct, the courts will assess whether the conduct was so closely related to his or her employment that it was fair and just to hold his or her employer vicariously liable for such conduct (i.e. the “close connection” test).⁹ In coming to a decision, the court has to examine all the relevant circumstances, including policy considerations, and determine whether it would be fair and just to impose vicarious liability on the employer.¹⁰ This applies to all torts, including intentional torts and the tort of negligence.

In the case of *Joseph Poskey Patrick v Zouk Management*,¹¹ the plaintiff claimed that he was assaulted while being forcibly removed from a nightclub. The court held that the acts of assault were committed by the defendant’s security personnel in the course of ejecting the plaintiff from the defendant’s premises. These acts were clearly connected with or incidental to the ejection, which the defendant’s security personnel were authorised to do. Hence the court held that the defendant was vicariously liable for the excessive use of force by its employees in the course of the ejection.

While vicarious liability is likely to be less common in domestic worker abuse cases, there may be situations in which a domestic worker is assaulted by another employee of the employer (i.e. a gardener or another domestic worker). The challenge will be proving that the employer is liable for the acts of the other employee, i.e. that the harm was caused ‘in the course of employment’.

1.3. Types of harm

1.3.1. Physical harm

If a physical injury is sustained, the plaintiff can claim for financial compensation for personal injury. The plaintiff will be able to claim for the type of damages set out at 1.5 below.

1.3.2. Psychiatric harm

If there is no physical injury, the plaintiff will need to show that the mental harm suffered amounts to a recognisable psychiatric illness in order to establish injury. Psychiatric injuries must be identifiable clinical conditions, such as post-traumatic stress disorder and depressive disorder, supported by medical evidence in order to be awardable. This was established in the Court of Appeal case of *Ngiam Kong Seng v Lim Chiew Hock*¹², in which the court held that damages for psychiatric injuries are only available where the harm suffered is a “*recognizable*”

⁷ *Chandran a/l Subbiah v Dockers Marine Pte Ltd* [2010] 1 SLR at [22-23]

⁸ *Chandran a/l Subbiah v Dockers Marine Pte Ltd* [2010] 1 SLR at [19]

⁹ *Skandinaviska Enskilda Banken AB, Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR at [75]

¹⁰ *Skandinaviska Enskilda Banken AB, Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR at [75]

¹¹ *Joseph Poskey Patrick v Zouk Management Pte Ltd* [2003] SGDC 42

¹² *Ngiam Kong Seng v Lim Chiew Hock* [2008] SGCA 23 at [97]

psychiatric illness”, which must be distinguished from normal emotions such as sorrow and grief.

However, there has been at least one instance in the past in Singapore where damages for mental distress, falling short of psychiatric injury, have been awarded in a tort action where there was also a physical injury.¹³ In this case, the judge referred to *Ngiam Kong Seng* and found that the plaintiff did not suffer from a “*recognizable psychiatric illness*”. Nonetheless, in light of the overall mental distress caused to the plaintiff, the judge awarded S\$2,000 in nominal damages “*for pain and suffering arising out of the plaintiff’s (non-clinically significant) depression and anxiety*”.¹⁴ This case is unique and, in our opinion, is an exception to the general rule. On the facts, it seems that the plaintiff was extremely distressed as a result of the incident and, although her distress did not reach the level of a recognised psychiatric illness, the judge felt that she should be compensated for the mental harm she suffered as well as her physical injuries.

1.4. Time limit for bringing a claim in tort

Under the Singapore Limitation Act, a tort action cannot be commenced more than 6 years after the cause of action occurs.¹⁵

An exception to this is that an action in tort for personal injury must be brought within 3 years from the date on which the cause of action occurred or 3 years from the earliest date on which the plaintiff had the knowledge required for bringing an action (whichever is the later date).¹⁶ The latter limb is relevant where the plaintiff does not become aware of the injury until a later date, i.e. the injury does manifest itself immediately.

1.5. Damages for intentional torts and torts of negligence

The basic principle underpinning an award of damages in tort is that the plaintiff should be compensated for the harm he or she has suffered as a result of the tort, i.e. he or she is entitled to be restored to the position that they would have been in had the tort not been committed.

Where a person has suffered personal injuries as a result of a tortious act there are two main categories of damages that are generally available to the injured party: special damages and general damages. These are discussed in more detail below.

1.5.1. Special Damages (Financial loss)

Special damages compensate the plaintiff for any financial losses that he or she has suffered as a result of the incident. These can include costs incurred for:

- (i) medical and hospitalisation bills;
- (ii) loss of income when the injured party is unable to work; and
- (iii) repair or replacement of damaged property.

The general rule set out in *Wee Sia Tian v Long Thik Boon*¹⁷ is that special damages have to be strictly proved otherwise they are not recoverable. As such, evidence of medical expenses, hospitalization bills and loss of income will need to be provided to the court.

¹³ *Sivakami d/o Sivanathan v Attorney-General* [2012] SGHCR 5

¹⁴ *Sivakami d/o Sivanathan v Attorney-General* [2012] SGHCR 5 at [30]

¹⁵ Limitation Act (Cap 163) section 6(1)

¹⁶ Limitation Act (Cap 163) section 24(A)(2)

¹⁷ *Wee Sia Tian v Long Thik Boon* [1996] 3 SLR 513

1.5.1.1. **Pre-trial financial loss**

A plaintiff can claim for pecuniary loss suffered from the date of the incident up to the date of the trial. Pre-trial financial loss would include loss of income and medical expenses incurred.

- The claim for loss of income includes wages and salary and other material benefits such as allowances.
- Medical and related expenditure have to be reasonably necessary to the treatment of the plaintiff. This includes transportation and travelling expenses incurred by the plaintiff.

In the case of *Joseph Poskey Patrick v Zouk Management*¹⁸ the plaintiff was awarded pre-trial loss of earnings of US \$28,560. This was calculated by multiplying the plaintiff's monthly salary (US \$4,080) by the period of time he was unable to work (7 months). The plaintiff needs to prove that he or she was unable to return to work as a result of the injury. The plaintiff is also required to mitigate his or her loss by finding employment elsewhere.

1.5.1.2. **Post-trial financial loss**

Future pecuniary loss, for example loss of earnings, medical expenses and expenditure on post-incident special accommodation and equipment needed, is assessed and awarded to the plaintiff in a lump sum.

When computing the total amount of compensation, the court would apply a multiplier to the plaintiff's expected net annual loss, taking into account the time for which the disability would last (in the case of personal injury where future medical care is needed) and/or the number of years the plaintiff would have continued to work but for the injury (in the case of loss of earnings).

Loss of future earnings

An award for loss of future earnings may be granted to a plaintiff who can no longer, as a result of an injury caused by the respondent, perform his or her present job or earn the same rate of earnings. In such a case, the plaintiff's loss will be calculated based on a multiplier (the monthly loss in pay) and a multiplicand (the period over which to calculate the loss). As set out in the English Court of Appeal case of *Fairley v John Thompson*, compensation for loss of future earnings will only be awarded where there is a "real assessable loss proved by evidence".¹⁹ If the plaintiff earns a post-injury income which is more than his or her pre-injury income, no award for loss of future earnings will be made. Damages for loss of future earnings can be high. For example, in *Shi Lin v Poh Che Thiam*²⁰, the plaintiff was awarded S\$192,000 for loss of future earnings due to the physical and psychiatric injuries she suffered in a road traffic accident.

Loss of future earning capacity

A plaintiff may also claim for loss of future earning capacity²¹ where, as a result of the injury caused by the respondent, there is a risk that he or she will be disadvantaged in securing an

¹⁸ *Joseph Poskey Patrick v Zouk Management Pte Ltd* [2003] SGDC 42 at [105]

¹⁹ *Pamela Jane Mykytowych v VIP Hotel* [2016] SGCA 44 at [140] citing *Fairley v John Thompson (Design and Contracting Division) Ltd* [1973] 2 Lloyd's Rep 40 at [42]

²⁰ *Tan Shi Lin v Poh Che Thiam* [2017] SGHC 219

²¹ While loss of future earning capacity is a category of general damages, it has been dealt with under special damages to illustrate the difference between loss of future earnings and loss of future earning capacity.

equivalent job in the open labour market. In effect, the purpose of this type of award is to compensate a plaintiff for the weakening of his or her competitive position in the labour market.²²

Awards for loss of future earnings and awards for loss of future earning capacity are distinct types of awards that are meant to compensate the plaintiff for different kinds of loss.²³ As set out above, an award for loss of future earnings addresses a situation where a plaintiff finds that he or she can no longer, as a result of the injury, earn his or her pre-injury rate of earnings. In contrast, loss of earning capacity addresses the loss arising from the weakening of the plaintiff's competitive position in the open labour market.

The distinction between loss of future earnings and loss of future earning capacity was expressed by the Court of Appeal in *Koh Chai Kwang v Teo Ai Ling*:

*"Normally, damages on the basis of LFE [loss of future earnings] are awarded when the injured party is unable to go back to his pre-accident employment and has to take on a lower paying job...In contrast, where the injured party does not suffer an immediate wage reduction...but there is a risk that he may lose that employment at some point in the future and he may, as a result of his injury, be at a disadvantage in getting another job or getting an equally well-paid job in the open market, then the LEC [loss of future earning capacity] would be the correct basis to compensate him for the loss."*²⁴

In situations where awards for both loss of future earnings and loss of earning capacity are plausible on the facts, the plaintiff is entitled to claim for both. Whether the court will: (i) grant both types of awards; (ii) grant an award for loss of future earning capacity while refusing to grant an award for loss of future earnings; or (iii) vice versa is dependent on and determined by the evidence before the court.²⁵

In making an award for loss of future earning capacity the court will award a global sum after taking into account all the factors which are relevant to the particular case.²⁶ The court in *Clark Jonathan Michael v Lee Khee Chung*²⁷ observed that an assessment of damages for loss of future earning capacity can be an exercise in speculation as the court often does not know the extent to which a plaintiff will be disadvantaged in the open employment market by his or her disabilities if he or she has to seek a new position. Ultimately, though, the court should arrive at a figure that it considers reasonable in the circumstances.²⁸

²² *Pamela Jane Mykytowych v VIP Hotel* [2016] SGCA 44 at [140] citing *Smith v Manchester Corporation* [1974] 17 KIR 1 at [8]

²³ *Pamela Jane Mykytowych v VIP Hotel* [2016] SGCA 44 at [140] citing *Teo Sing Keng v Sim Ban Kiat* [1994] 1 SLR(R) 340 and, more recently, *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 and *Lee Wei Kong v Ng Siok Tong* [2012] 2 SLR 85

²⁴ *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] SGCA 23 at [37]

²⁵ *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 at [21] and [24]

²⁶ *Moeliker v A Reyrolle and Co Ltd* [1977] 1 All ER 9 at [141-142]

²⁷ *Clark Jonathan Michael v Lee Khee Chung* [2010] 1 SLR 209 at [91]

²⁸ *A v The National Blood Authority* [2001] 3 All ER 289 at [58]

1.5.2. General Damages (Non-financial loss)

General damages include claims for non-financial losses suffered by the victim, the most common of which are pain and suffering and loss of amenities. Pain and suffering is awarded for physical and psychiatric injuries that the victim suffers.²⁹ Damages for pain and suffering and loss of amenities are often assessed together and made as a lump sum award.³⁰ In awarding damages, the court will compare the present case to previous cases that involve similar injuries, and consider special circumstances of the present case and special features of the plaintiff.

As compared to special damages, general damages are not easily quantifiable, and hence it can be challenging to accurately assess the amount of general damages that should be payable to a plaintiff. As a result, expert testimony and evidence from the plaintiff and their relatives/ friends will often be taken into account in deciding the sum that should be awarded within the constraints of the Guidelines (defined below).³¹

1.5.2.1. Pain and suffering

Damages are awarded under this head to compensate a plaintiff for the physical pain and mental distress suffered, pre-trial and in the future, as a result of the injury. This is a type of subjective loss since it depends on the plaintiff's awareness of his or her actual suffering. As established in the unreported Singapore cases *Au Yeong Wing Loong*³² and *Tan Kok Lam*³³, damages for shock, anxiety, fear frustration and anguish can be claimed under the heading of pain and suffering.

1.5.2.2. Loss of amenities

A plaintiff can claim for loss of amenities, which is a type of objective loss. It compensates the plaintiff for the curtailment of his or her enjoyment of life due to the inability to pursue the activities he or she pursued beforehand. The court would take into account hobbies and habits of a particular individual prior to the incident. This head of damages may cover various types of losses, including for example³⁴:

- (i) loss or impairment of one of the five senses;
- (ii) alteration of personality;
- (iii) loss of sexual function;
- (iv) interference with marriage prospects;
- (v) interference with leisure activities; and
- (vi) loss of congenial employment.

1.5.2.3. Approach in awarding damages for pain and suffering and loss of amenities

In awarding damages for pain and suffering and loss of amenities, the court will compare the present case to previous cases that involve similar injuries, and consider special circumstances of the present case and special features of the plaintiff. Generally, the two heads of damages are quantified together. It is only in extreme cases, such as where the plaintiff has been rendered blind, paraplegic or sexually incapable that a separate award will

²⁹ *Pang Koi Fa v Lim Djoe Phing* [1993] 3 SLR 317

³⁰ *Au Yeong Wing Loong v Chew Hai Ban & Anor* [1993] 2 SLR(R) 290 at [21]

³¹ See *inter alia*, *Tan Juay Mui v Sher Kuan Hock* [2012] SGHC 100

³² *Au Yeong Wing Loong v Chew Hai Ban & Anor* [1993] 2 SLR(R) 290 at [11]

³³ *Tan Kok Lam (next friend to Teng Eng) v Hong Choon Peng* [2001] SGCA 27 at [30]

³⁴ Chin, J. (2005). *Practitioners' library: Assessment of damages: Personal injuries and fatal accidents*. Singapore: LexisNexis, 5-35

be made for loss of amenities.³⁵

In practice, the courts will refer to the “*Guidelines for the Assessment of General Damages in Personal Injury Cases*” (the “Guidelines”), when deciding what damages to award. The Guidelines, which were published by the State Courts of Singapore, together with the Singapore Academy of Law, set out the estimated quantum of damages that can be expected from a comprehensive list of different types of personal injuries.

The ranges are based on actual awards given in local decided cases and are categorised depending on the severity of the injury: (1) Severe; (2) Moderately Severe; (3) Moderate; and (4) Minor. There is no single definition of what constitutes, for example, a “Severe” or “Moderately Severe” injury, instead the Guidelines set out a list of factors to be taken into account for each type of injury in order to determine the severity of the harm caused. See a diagram illustrating how the Guidelines are applied at **Appendix 2** below.

At present, the use of the Guidelines plays an important role in assisting the courts in their assessment of damages for pain and suffering and loss of amenities. For example, the Guidelines were referred to extensively by the judge in the High Court case of *Chang Mui Hoon v Lim Bee Leng*³⁶ in which the plaintiff claimed for general damages in respect of a whiplash injury to her neck, and alleged post-traumatic stress disorder and depression, which were suffered as a result of a motor car accident.

In cases where the harm or injury suffered is not listed in the Guidelines it might be a good tactic to refer to the English “*Guidelines for the Assessment of General Damages in Personal Injury Cases*”, as was done by counsel in *Goel Adesh Kumar v Resorts World at Sentosa*³⁷. In this case, the counsel for the plaintiff referred to both the English Guidelines together with precedents of awards that had been granted in similar cases.³⁸ The English Guidelines are likely to be persuasive in the Singaporean courts. Indeed, the Singapore Guidelines state in the preface that where no local case precedents were available for particular types of injuries, the working committee considered the ranges in the English Guidelines. On this basis, where there are gaps in the Singapore Guidelines, the English Guidelines may be used as a reference point.

Damages for physical harm

In assessing the quantum for physical injuries suffered, the court will refer to the Guidelines together with precedents of awards that have been granted in similar cases. The plaintiff may also be able to claim for aggravated and/or punitive damages. These types of damages are explained at 1.5.3 and 1.5.4 below and should be viewed as “additional” damages that can be awarded on top of general damages for pain and suffering.

Damages for psychiatric harm

The Guidelines set out the potential damages that should be awarded for a wide range of psychiatric injuries (see **Appendix 2**). As noted above, the level of damages awarded will depend on the severity of the injury. The plaintiff may also be able to claim for aggravated and

³⁵ *Sivakami d/o Sivanathan v Attorney-General* [2012] SGHCR 5

³⁶ *Chang Mui Hoon v Lim Bee Leng* [2013] SGHCR 17

³⁷ *Goel Adesh Kumar v Resorts World at Sentosa Pte Ltd (SATS Security Services Pte Ltd, third party)* [2015] SGHC 289

³⁸ *Goel Adesh Kumar v Resorts World at Sentosa Pte Ltd (SATS Security Services Pte Ltd, third party)* [2015] SGHC 289 at [39]

for punitive damages. The type of psychiatric injuries covered by the Guidelines and the range of damages are as follows:

Type of Injury	Range of damages (SGD)
General psychiatric injury	Severe: \$25,000–\$55,000 Moderately severe: \$8,000–\$25,000 Moderate: \$3,000–\$8,000 Minor: \$1,000–\$3,000
Post-traumatic Stress Disorder	Severe: \$25,000–\$50,000 Moderately severe: \$10,000–\$25,000 Moderate: \$4,000–\$10,000 Minor: \$2,000–\$4,000
Chronic Pain Syndrome	Severe: \$20,000–\$35,000 Moderately severe: \$10,000–\$25,000 Moderate: \$5,000–\$10,000
Reflex Sympathetic Dystrophy	Severe: \$25,000–\$50,000 Moderately severe: \$12,000–\$25,000 Moderate: \$5,000–\$12,000
Somatoform Disorder	In the region of: \$22,000

See **Appendix 3** for examples of cases where the court has awarded damages under the head of pain and suffering and loss of amenities to compensate the injured party for psychiatric harm caused by negligence.

Damages for sexual abuse

Civil claims for sexual abuse often contain a mix of damages. For example, this can include a claim for a physical injury and psychiatric injury. In certain circumstances, aggravated and punitive damages may also be awarded.

If a victim suffers a psychiatric injury (for example, Post-Traumatic Stress Disorder (“PTSD”)) as a result of sexual abuse, they can claim for the type of damages set out above at 1.5.1 and 1.5.2. A judge will look at the components of special and general damages for each injury and add them up in order to reach the total amount of the award.

There are no reported civil claims for sexual abuse in Singapore. As such, it is not clear what quantum might be awarded to victims of sexual abuse for pain and suffering/ loss of amenities. One tactic might be to refer to the damages awarded in sexual abuse claims brought before the English courts. A summary of awards in past sexual abuse claims brought before the English courts is available in **Appendix 4**. The only other reference point in Singapore is the criminal case of *PP v Ong Soon Heng*, in which the offender was convicted of rape and was ordered by the court to pay the victim S\$76 in compensation for out-of-pocket medical expenses.³⁹

³⁹ *PP v Ong Soon Heng* [2018] SGHC 58 at [171 to 179]

1.5.3. Aggravated damages

Aggravated damages provide compensation for mental distress or injury to feelings caused by the manner or motive with which a tort was committed, or by the tortfeasor's conduct subsequent to the wrong. In effect, aggravated damages comprise an additional sum to take account of the special humiliation suffered by the plaintiff due to the nature of the defendant's conduct in the commission of the wrong.

Aggravated damages are awarded where the defendant's conduct was so outrageous that an increased award is necessary to appropriately compensate injury to a plaintiff's 'proper feelings of dignity and pride' or where the wrong gave rise to 'humiliation, distress, insult or pain'.⁴⁰ Aggravated damages are primarily intended to augment the award of general damages when the conduct or motive of the defendant 'aggravates' the injury done to the plaintiff.

Examples of the sort of conduct which may give rise to aggravated damages include conduct which was offensive or which was accompanied by spite, malice, insolence or arrogance.⁴¹ In deciding whether or not to award aggravated damages, the court will take into account the defendant's behaviour up to the conclusion of the trial, as well as the plaintiff's conduct (e.g. aggravated damages may be reduced if the plaintiff has provoked the defendant). In assessing aggravated damages, the court can take into account, amongst other things evidence of the manner and circumstances in which the tort was committed; and events up to and including the trial.

In the High Court case *Li Siu Lun v Looi Kok Poh*,⁴² the plaintiff claimed aggravated damages for mental distress, anguish and depression suffered because of the defendant's contumelious conduct in the commission of a wrong and its subsequent conduct in the proceedings.

The case involved a botched operation on the plaintiff's hand and a conspiracy to cover up the failed surgery. The plaintiff sued both the operating doctor and the hospital in the tort of conspiracy to injure by unlawful means. The doctor alleged that the plaintiff had consented to the surgery (and therefore the risk that it could go wrong) although it subsequently emerged that the doctor had forged parts of the consent form. The doctor settled the claim against the plaintiff, but the hospital defended the claim all the way to trial, where it agreed to an interlocutory judgment to be entered with damages to be assessed.

The plaintiff sought aggravated damages against the hospital for its role in assisting the doctor by helping to tamper with and conceal the forged consent form, and the manner in which it continued to defend the claim against it.

Referring to the test set out in *Tan Harry v Teo Chee Yeow Aloysius*,⁴³ the High Court held that before aggravated damages can be awarded, the plaintiff must show:

- (A) evidence of contumelious or exceptional conduct or motive on the part of the defendant in inflicting the injury;⁴⁴ and

⁴⁰ *Rookes v Barnard* [1964] AC 1129 at [1226 to 1227]

⁴¹ *Appleton v Garrett* (1995) 34 BMLR 23

⁴² *Li Siu Lun v Looi Kok Poh and another* [2015] SGHC 149

⁴³ *Tan Harry v Teo Chee Yeow Aloysius* [2004] 1 SLR(R) 513 at [82]

⁴⁴ *Li Siu Lun v Looi Kok Poh and another* [2015] SGHC 149 at [138]

- (B) that he/she (the plaintiff) has suffered an intangible loss (injury to personality, injury to feelings or some form of distress or mental anguish).⁴⁵

This case provides some useful guidance on the range of aggravated damages that may be awarded. For example, the judge stated that aggravated damages should bear some semblance of proportionality to the basic award,⁴⁶ typically not exceeding twice the amount of the basic damages awarded.⁴⁷

In the first instance, the assistant registrar awarded the plaintiff a total of S\$250,000 (S\$10,000 in compensatory damages for the time and effort he spent in pursuing his claim and S\$240,000 in aggravated damages for distress). Both parties appealed. The High Court revised the total figure down to S\$63,000. This comprised S\$21,000 as general damages and S\$42,000 as aggravated damages for the plaintiff's distress. The High Court held that on the facts, a multiplier of two over the general damages which the plaintiff was entitled to was appropriate given the outrageous conduct of the hospital and the injury suffered by the plaintiff.⁴⁸

1.5.4. Non-compensatory damages

1.5.4.1. Nominal damages

As discussed, trespass to the person is actionable per se, which means that the plaintiff does not need to prove injury. Where a tort has been committed but the actual damage and injury could not be proved, the plaintiff may be able to recover a nominal sum of damages. Nominal damages are usually small.

1.5.4.2. Punitive damages

Distinguishable from aggravated damages, punitive damages are punitive in nature and may only be awarded in limited circumstances. Punitive damages are amounts of damages which go beyond what is necessary to compensate the aggrieved party for its losses. The aim of awarding punitive damages is to punish the party in breach, and to discourage similar behaviour by both it and others in the future.

Following the recent Singapore Court of Appeal decision in *ACB v Thomson Medical*⁴⁹ the availability of punitive damages in tort is no longer restricted to the three categories set out in the English case *Rookes v Barnard*. In *ACB v Thomson Medical*, the court set out the following principles in relation to punitive damages:

- Punitive damages may now be awarded in tort where the totality of the defendant's conduct is so outrageous that it warrants punishment, deterrence, and condemnation.⁵⁰
- Proof of intentional wrongdoing or conscious recklessness is not a prerequisite to the award of punitive damages in tort.⁵¹

⁴⁵ *Li Siu Lun v Looi Kok Poh and another* [2015] SGHC 149 at [138 and 164]

⁴⁶ *Li Siu Lun v Looi Kok Poh and another* [2015] SGHC 149 at [160]

⁴⁷ *Li Siu Lun v Looi Kok Poh and another* [2015] SGHC 149 at [193]

⁴⁸ *Li Siu Lun v Looi Kok Poh and another* [2015] SGHC 149 at [193 -194]

⁴⁹ *ACB v Thomson Medical Pte Ltd and others* [2017] SGCA 20 at [176]

⁵⁰ *ACB v Thomson Medical Pte Ltd* at [176]

⁵¹ *ACB v Thomson Medical Pte Ltd* at [201]

- A punitive award may also be made where the wrongdoing was as a result of the defendant's negligence.⁵²
- It is available even in circumstances when the defendant has already faced disciplinary or criminal sanction. While the fact that the defendant has already been punished is a weighty factor to be considered when deciding whether to award punitive damages, it is neither determinative nor conclusive.⁵³

In light of the decision in *ACB v Thomson Medical*, it would be a good tactic to argue for punitive damages for claims relating to physical or sexual abuse of domestic workers, in particular where the defendant's conduct is so outrageous that it warrants punishment, deterrence, and condemnation.

⁵² *ACB v Thomson Medical Pte Ltd* at [206]

⁵³ *ACB v Thomson Medical Pte Ltd* at [187]

2. PROTECTION FROM HARASSMENT ACT 2014

2.1. Harassment

Sections 3 and 4 of the Protection from Harassment Act 2014 (Cap 265A) (“PHA”) prohibit threatening, abusive, or insulting words or behaviour that cause harassment, alarm or distress. Section 5 prohibits threats to use unlawful violence or attempts to provoke other people to use unlawful violence. The PHA also allows a victim of harassment to bring civil proceedings against the perpetrator.⁵⁴ In such cases, the Court may award the victim damages on a discretionary basis.

If a domestic worker is bringing a civil claim for the intentional tort of trespass to the person, we recommend that a claim under the PHA is also brought against the perpetrator. In cases of trespass to the person, it is likely that the elements of the offences under sections 3, 4 or 5 of the PHA will also be made out.

2.2. Injury to feelings

2.2.1. The position in Singapore

In Singapore, damages for injury to feelings and emotional harm, which fall short of a recognised psychiatric injury, may be awarded for claims of unlawful harassment under the PHA.

When moving the PHA through Parliament, the Minister in charge of the Bill stated that in terms of damages under the PHA, the court could order whatever the common law allowed.⁵⁵ He also specifically stated that there was no prohibition against awarding damages for emotional distress.⁵⁶ There has been at least one occasion in the past in Singapore where damages for injury to feelings, falling short of psychiatric injury, have been awarded in a tort action.⁵⁷ In this case, the judge referred to *Ngiam Kong Seng* and found that the plaintiff did not suffer from a “*recognizable psychiatric illness*”. Nonetheless, in light of the overall mental distress caused to the plaintiff, the judge awarded S\$2,000 in nominal damages “*for pain and suffering arising out of the plaintiff’s (non-clinically significant) depression and anxiety*”.⁵⁸

At the moment there are no precedents so it is not clear whether damages for injury to feelings would be awarded under the PHA, but such an application could be made.

If damages can be awarded for injury to feelings, the next question is what the quantum of such damages might be. In Hong Kong, the English approach of assessing damages is generally followed by courts. However, the English law guidelines set out in *Vento*⁵⁹ (see 2.2.3 below) when compared to the Singapore Guidelines, seem higher or comparable. Therefore, it is unlikely that the English guidelines would be simply followed in Singapore.

2.2.2. The position in Australia

Under the Australian Human Rights Commission Act (“Australian HRCA”), it is possible to claim for injured feelings where there is no psychiatric damage, though such damages are not specifically referred to in the statute. This was established in the case of *Sidhu v Raptis*⁶⁰. In

⁵⁴ Section 11, Protection from Harassment Act 2014 (Cap 265A)

⁵⁵ See *Singapore Parliamentary Debates, Official Report* (13 March 2014), vol 91.

⁵⁶ See *Singapore Parliamentary Debates, Official Report* (13 March 2014), vol 91.

⁵⁷ *Sivakami d/o Sivanathan v Attorney-General* [2012] SGHCR 5

⁵⁸ *Sivakami d/o Sivanathan v Attorney-General* [2012] SGHCR 5 at [30]

⁵⁹ *Vento v Chief Constable of West Yorkshire* [2003] ICR 318

⁶⁰ *Sidhu v Raptis* [2012] FMCA 338 at [60]

this case, the plaintiff received compensation of AUD \$2,000 for emotional upset and injury to feelings caused as a result of a racial taunt made by the respondent.

It is also possible to claim aggravated damages for psychiatric injury and injury to feelings under the Australian HRCA even though such damages are not specifically referred to in the statute.⁶¹ However, if the factors taken into account are already accounted for under general damages, they cannot be claimed again under aggravated damages.⁶²

2.2.3. The position in the UK

Under the UK Protection from Harassment Act 1997 (“UK PHA”) damages may be awarded for (among other things) “any anxiety caused by the harassment and any financial loss resulting from the harassment”.⁶³ Unlike the Australian HRCA, the UK PHA directly refers to awarding damages for anxiety.

The leading case in relation to injury to feelings is *Vento v Chief Constable of West Yorkshire* (“*Vento*”).⁶⁴ The UK Court of Appeal in this case recognised that damages should be compensatory, but should not be so low so as to diminish the respect for the policy behind the statute. The court then laid down some guidelines for offering compensation for injury to feelings ranging from £500 to £25,000, depending on the impact and severity of the harm.⁶⁵ The amounts set out in *Vento* have since been increased following decisions in subsequent English cases.⁶⁶ A breakdown of the revised guidelines can be seen below. Though *Vento* itself was not decided under the UK PHA, it has been applied in relation to cases decided under the UK PHA.

- Highest band: £25,200 - £42,000⁶⁷
- Middle band: £8,400 - £25,200
- Lowest band: £800 - £8,400⁶⁸

As in Australia, it may be possible to claim aggravated damages⁶⁹ for injury to feelings in the UK, even though this is not expressly referred to in the statute. In the UK, aggravated damages may be claimed, for instance, when the defendant has behaved in a “*high-handed, malicious, insulting or oppressive manner*”⁷⁰ or, where the actions of the defendant with regards to the way in which the litigation and trial were conducted justify the imposition of such damages.⁷¹

⁶¹ *Jemma Ewin v Claudio Vergara* [2013] FCA 1311 at [676].

⁶² *Jemma Ewin v Claudio Vergara* [2013] FCA 1311 at [676].

⁶³ Section 3(2), Protection from Harassment Act 1997

⁶⁴ *Vento v Chief Constable of West Yorkshire* [2003] ICR 318

⁶⁵ *Vento v Chief Constable of West Yorkshire* [2003] ICR 318 at [65]

⁶⁶ *Simmons v Castle* [2012] EWCA Civ 1039 and 1288 and *De Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ 879

⁶⁷ For the most for most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race.

⁶⁸ Less serious cases, such as where the act of discrimination is an isolated or one off occurrence

⁶⁹ *KD v Chief Constable of Hampshire* [2005] EWHC 2550.

⁷⁰ *Alexander v Home Office* [1988] 2 All ER 118.

⁷¹ *KD v Chief Constable of Hampshire* [2005] EWHC 2550 at [186].

3. CRIMINAL COMPENSATION

Unlike in Hong Kong, the UK and Australia, there is no government funded compensation scheme available for victims of crime in Singapore.

Victims may receive compensation under section 359 of the Criminal Procedure Code (“CPC”) where the offender is convicted of an offence. A criminal compensation order is essentially a proxy for civil damages, and is viewed by the courts as a shortcut through which an injured victim can recover compensation where a civil suit is an inadequate or impractical remedy. In sum, it is a shortcut to the remedy that the victim could obtain in a civil suit against the offender.⁷²

However, an order for compensation does not affect the victim’s right to bring a civil claim against the offender.⁷³ The victim may claim for damages beyond the amount of compensation paid under the compensation order. The amounts awarded under a compensation order in criminal proceedings are likely to be less than the amounts awarded in civil proceedings where aggravated and punitive damages may be claimed. As such, we recommend that a civil claim is brought against the offender in conjunction with the criminal proceedings.

3.1. Criminal compensation orders

The recent amendments to the CPC via the Criminal Justice Reform Act 2018, which was passed in Parliament on 19 March 2018, include amendments to section 359 (criminal compensation orders). At present, these amendments have yet to come into force, but it is likely that they will be in force by the end of 2018. The changes to the criminal compensation regime and the general principles underpinning criminal compensation were helpfully set out in the supplementary judgment handed down by the High Court in the recent case of *Tay Wee Kiat and Another V Public Prosecutor* [2018] SGHC 114.⁷⁴

3.2. Section 359 of the current Criminal Procedure Code

The current version of section 359(1) of the CPC, which sets out the law in relation to criminal compensation, imposes two obligations upon a court where an offender is convicted of an offence: (1) to consider whether or not to make a compensation order; and (2) to make such an order if it considers it appropriate to do so.

3.3. Section 359 of the amended Criminal Procedure Code

The amended version of section 359 of the CPC, which is not yet in force, adds to the existing provisions. Like the current version of s. 359(1), the amended version also places a positive obligation on the court to consider whether or not to make a compensation order. However, the amended version goes further by requiring a court to give reasons if it chooses *not* to make a compensation order.⁷⁵ Should the issue of compensation escape the attention of the trial judge, the Prosecution and Defence should remind the judge of these obligations.⁷⁶

Another change to s. 359 is that the amended provision specifically refers to the right of dependents of a deceased victim to receive compensation.⁷⁷ Section 359(1)(1A) states that compensation may only be made in respect of:

⁷² *Soh Meiyun v. Public Prosecutor* [2014] SGHC 90 at [56]

⁷³ Section 359(4) of the Criminal Procedure Code (Ch. 68)

⁷⁴ *Tay Wee Kiat and Another V Public Prosecutor* [2018] SGHC 114

⁷⁵ Section 359(2A) of the amended Criminal Procedure Code (not yet in force)

⁷⁶ *Soh Meiyun* at [60]

⁷⁷ Section 359(1)(c) of the amended Criminal Procedure Code (not yet in force)

- (i) any damages for bereavement that may be claimed under section 21 of the Civil Law Act; and
- (ii) any funeral expenses incurred by the dependent.

The provision also states that compensation can be ordered regardless of whether an action is brought under section 20 of the Civil Law Act for the benefit of the dependent.

3.4. General principles underpinning criminal compensation

The nature and purpose of the court's power to order compensation under s. 359 of the CPC has been very helpfully discussed in the cases of *Public Prosecutor v Donohue Enilia* [2005] 1 SLR(R) 220 ("Donohue Enilia") and *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 ("Soh Meiyun"). A review of those and other cases reveal the following principles which will guide the courts in their assessment of when it is appropriate to make such an order, whether under the present s. 359 or under the amended s. 359.

In *Donohue Enilia*⁷⁸ and *Soh Meiyun*,⁷⁹ several principles underpinning criminal compensation were set out:

- A compensation order does not form part of the sentence, nor is it an alternative to a sentence.⁸⁰ Therefore, it should not be used as further punishment of a convicted person, and the amount of compensation ordered should not exceed the amount of damage caused. For that reason, aggravating factors relating to the offence should be dealt with in sentencing and not in the quantum of compensation ordered.⁸¹
- There must be a causal connection between the offence for which the accused is convicted and the personal injury, loss or damage in respect of which the compensation order is made.⁸² In other words, the court may make a compensation order only in respect of the injury or loss which results from the offence for which the accused is convicted.
- Compensation ought only to be ordered in clear cases where the fact and extent of the damage is either proved or agreed readily and easily on the evidence.⁸³ Though the court must consider the issue of compensation, this should not assume the proportions of a full-blown inquiry.
- The criminal court should adopt "*a broad common-sense approach in assessing whether compensation should be awarded*" and not allow itself to "*be enmeshed in refined questions of causation which may arise in claims for damages under contract law or tort law*".⁸⁴ This means that compensation will usually be inappropriate where it requires the determination of complex issues of apportionment of liability and precise quantification of multiple specific heads of losses.⁸⁵ In effect, the court should be able to say, with a high degree of confidence that the damage in question has been caused

⁷⁸ *Donohue Enilia* at [20] – [27]

⁷⁹ *Soh Meiyun* at [56]

⁸⁰ *Donohue Enilia* at [21]; *Soh Meiyun* at [56]

⁸¹ *Donohue Enilia* at [61]

⁸² *Donohue Enilia* at [22]

⁸³ *R v Vivian* [1979] 1 All ER 48

⁸⁴ *Donohue Enilia* at [22]

⁸⁵ *Donohue Enilia* at [23]–[24] and *Soh Meiyun* at [58]

by the offence under circumstances which would ordinarily entitle the victim to civil damages.

- The assessment of loss or damage must be based on evidence and not simply on representations by the Prosecution.⁸⁶
- The order must not be oppressive, but must be realistic in that the court must be satisfied that the accused either has the means available, or will have the means, to pay the compensation within a reasonable time.⁸⁷ This finds expression in s. 359(2B) of the amended CPC, which requires the court to have regard to the offender's means. Since criminal compensation is essentially a proxy for civil damages, the amount of compensation ordered should not exceed what would be reasonably obtainable in civil proceedings.

In *Soh Meiyun*, the judge stated that compensation orders are in effect a shortcut to the remedy that the victim could obtain in a civil suit against the offender and so are particularly suitable for victims for whom commencing a civil suit would be impractical. He added that compensation orders should generally be a matter of course where domestic worker abuse cases are concerned: “*I would think that where a maid has been a victim of abuse that would prima facie be a suitable case in which to make a compensation order.*”⁸⁸

Where judges decline to make compensation orders in domestic worker abuse cases, they would ordinarily be expected to provide reasons for not doing so.⁸⁹ This was reiterated in the supplementary judgment handed down in the recent case *Tay Wee Kiat and Another V Public Prosecutor*.⁹⁰ In this case, the court ruled that the domestic worker should be compensated for pain and suffering as well for loss of earnings (see a detailed review of the case at **Appendix 6**).

In cases that go to appeal, should the trial court fail to consider whether or not to make a compensation order in the first instance, the appeal court may make a compensation order itself.⁹¹ It does not matter whether the appeal is an appeal against conviction or sentence or both.

3.5. Quantum of compensation orders

In determining how much compensation should be payable, the court must consider both the loss and injury suffered as a result of the crime and the means of the convicted person to pay.⁹² In *Donohue Enilia*, Yong CJ was clear that the assessment of loss or damage must be based on some credible evidence and not simply on the Prosecution's representations.⁹³ For example, claims for medical expenses should be substantiated with the corresponding invoices. Where compensation is sought for the victim's unemployment, some credible explanation should be put forth for the duration of unemployment, bearing in mind that the victim of a tort ordinarily has a duty to mitigate. Any medical reports that are available should be tendered to the court, though the absence of medical reports will not necessarily prevent an order of compensation, particularly where the victim was unable to seek timely medical treatment.

⁸⁶ *Donohue Enilia* at [23]

⁸⁷ *Donohue Enilia* at [26] and *Soh Meiyun* at [57]

⁸⁸ *Soh Meiyun* at [57]

⁸⁹ *Soh Meiyun* at [60]

⁹⁰ *Tay Wee Kiat and Another V Public Prosecutor* [2018] SGHC 114

⁹¹ *Soh Meiyun* at [65]

⁹² *Donohue Enilia* at [24]

⁹³ *Donohue Enilia* at [23]

While the matter is ongoing, the Prosecution may direct the investigation officer (“IO”) of the case to obtain details of the loss or damage from the victim and guide the victim in compiling the necessary evidence to establish the injury suffered. After a compensation order is made, the IO will continue to be involved in facilitating payment from the accused to the victim.

The sums granted by the courts under a compensation order are based on the following heads of damage:⁹⁴

- (i) pain and suffering caused to the victim;⁹⁵
- (ii) medical expenses incurred by the victim;⁹⁶
- (iii) loss or damage to the victim’s property as a result of the offences; and
- (iv) prospective earnings, i.e., income that the victim would have earned but for her being unemployed pending the investigation and trial of the offences.⁹⁷

See **Appendix 5** for examples of where compensation orders have been granted in domestic worker abuse cases.

3.5.1. Compensation for medical treatment

Evidence of treatment or hospitalisation bills will be crucial before a compensation order is made. In the case of *Low Gek Hong*,⁹⁸ the judge said that he could not make a compensation order because the prosecution was unable to produce the relevant medical bills to support the computation of the compensation amount.

3.5.2. Compensation for loss of earnings

It will be necessary to provide evidence of the victim’s salary.⁹⁹ In *Public Prosecutor v Tong Chew Wei*, the victim, a domestic worker, received compensation for her loss of earnings before the trial. As a result of the investigation into the offences committed by the defendant, the victim had to remain in Singapore without income for 24 months. The court ordered that S\$6,480 be paid in compensation (being the domestic worker’s monthly salary of S\$270 multiplied by 24 months).¹⁰⁰

3.5.3. Compensation for pain and suffering

In the recent case of *Tay Wee Kiat v Public Prosecutor*, the court ruled that domestic workers who are subject to abuse should be compensated for pain and suffering. Justice See stated:

"We consider it appropriate to compensate (the victim) for the physical and psychological injuries inflicted by the offenders for which they would have been liable in tort."¹⁰¹

⁹⁴ *Tay Wee Kiat and Another V Public Prosecutor* [2018] SGHC 114 at [12]

⁹⁵ *Public Prosecutor v Foo Chee Ring* [2008] SGDC 298 at [260]

⁹⁶ *Public Prosecutor v Fok Jun Hong Johnson* [2016] SGMC 19 at [117]

⁹⁷ *Public Prosecutor v Foo Chee Ring* [2008] SGDC 298 at [260], *Public Prosecutor v Anpalaki Muniandy Marimuthu and another* [2016] SGMC 56 at [176] and *Tay Wee Kiat and Another V Public Prosecutor* [2018] SGHC 114

⁹⁸ *Public Prosecutor v Low Gek Hong* [2015] SGDC 192 at [103]

⁹⁹ *Soh Meiyun* at [59]

¹⁰⁰ *Public Prosecutor v Tong Chew Wei* [2009] SGDC 202 at [90]

¹⁰¹ *Tay Wee Kiat and Another V Public Prosecutor* [2018] SGHC 114 at [15]

Following the dismissal of their appeal, the appellants were ordered to pay compensation of S\$6,000 for the pain and suffering caused to the domestic worker as well as S\$1,800 for loss of earnings. In its submissions on compensation, the Prosecution suggested that the appellants should pay S\$500 for each incidence of abuse taking into account the physical and psychological harm suffered by the domestic worker. The court agreed.¹⁰² The first appellant had abused the victim 10 times and so was ordered to pay S\$5,000 in compensation, whereas the second appellant had abused the victim twice and so was ordered to pay S\$1,000 in compensation.

3.5.4. Voluntary compensation paid by the defendant

In situations where the defendant makes a voluntary compensation payment to the victim, this does not affect the sentence imposed on the defendant or the amount of compensation that the court may order to be paid to the victim.¹⁰³

In *Low Gek Hong*, the accused pleaded guilty to physically abusing her domestic worker over a sustained period of time. During the trial, the defence indicated that the accused was willing to make a voluntary payment of S\$5,000 as a goodwill gesture to the domestic worker, so that she would not be put to further loss and inconvenience arising out of the accused's offences. The court made clear that this lump sum payment of compensation would be considered as voluntary compensation and would have no bearing whatsoever on the final sentence.¹⁰⁴

In *Public Prosecutor v Ong Chin Chin*,¹⁰⁵ the accused pleaded guilty to two charges of causing hurt to her domestic worker and voluntarily paid compensation of S\$8,500. In this case, the Magistrate stated that whilst the voluntary compensation payment may be viewed as a mitigating factor, it should not lead to the impression that the victim can be 'bought' or that the accused can 'pay his or her way out of crime' and avoid any form of penal sanctions. The magistrate sentenced the accused to six weeks in prison.

3.6. Compensation orders and psychological abuse

In the High Court criminal case of *Tay Wee Kiat v Public Prosecutor*,¹⁰⁶ there is some useful commentary on how the courts should deal with domestic worker abuse cases where the harm suffered is both psychological and physical (see **Appendix 6** for more detail). The court observed that psychological abuse, in conjunction with physical harm, was what characterized egregious instances of domestic worker abuse and noted that the psychological harm and mental anguish domestic workers suffer can be just as acute and enduring as physical harm, if not more. The judge also noted that the emotional trauma resulting from psychological abuse is therefore a critical sentencing consideration in domestic worker abuse cases.

The commentary in *Tay Wee Kiat* is consistent with other Singapore cases in which maid abuse considered. In the Court of Appeal case of *Public Prosecutor v Kwong Kok Hing*,¹⁰⁷ the court stated that extreme psychological harm can be characterised as a form of "infirmary" within the definition of hurt contained in s. 319 of the Penal Code. For this reason, the judge stated the emotional trauma resulting from psychological abuse was a critical sentencing consideration where the abuse of domestic workers is concerned, particularly "where the abuse is deliberate and relentless."¹⁰⁸ Further, in *Public Prosecutor v Chong Siew Chin*, Yong

¹⁰² *Tay Wee Kiat and Another v Public Prosecutor* [2018] SGHC 114 at [19]

¹⁰³ *Public Prosecutor v Donohue Enilia* [2004] SGMC 9 at [4]

¹⁰⁴ *Public Prosecutor v Low Gek Hong* [2015] SGDC 192 at [103]

¹⁰⁵ *PP v Ong Chin Chin* [2005] SGMC 16 at [29]

¹⁰⁶ *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] SGHC 42

¹⁰⁷ *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [26]–[28]

¹⁰⁸ *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [69]

CJ stated that *"where mental abuse was calculatedly applied in conjunction with physical abuse to a domestic maid, this should be viewed as a serious aggravating factor"*.¹⁰⁹

¹⁰⁹ *Public Prosecutor v Chong Siew Chin* [2001] 3 SLR(R) 851 at [66]

APPENDIX 1 : CASES INVOLVING THE TORT OF TRESPASS TO THE PERSON

GOEL ADESH KUMAR V RESORTS WORLD AT SENTOSA PTE LTD (SATS SECURITY SERVICES) (2015)¹¹⁰

- The plaintiff was gambling at the defendant’s casino (the “Casino”) when he got into an argument with another patron. The dispute between the two men escalated and the plaintiff was removed to a side room by employees of the defendant. The plaintiff alleged that he was assaulted and falsely imprisoned by the employees of the Casino and the auxiliary police officers provided by SATS Security Services Pte Ltd (“SATS”). He sued the Casino for the assault he suffered, alleging that it was vicariously liable for the torts of its employees and the auxiliary police. The defendant joined SATS as third parties seeking an indemnity for any wrongs attributable to the SATS employees.
- The plaintiff claimed that he sustained serious injuries to his shoulder, which necessitated an arthroscopic operation and affected his quality of life and ability to work. The court found that he sustained a fracture to his right shoulder as a result of the incident but some of his other shoulder injuries were likely to have been pre-existing. The scuffles likely caused those injuries to worsen, which eventually required the operation.
- The plaintiff’s claim for loss of pre-trial earnings, aggravated and exemplary damages were dismissed. The court declined to award aggravated damages because it was not satisfied that the conduct of the casino officers during the material incident was so wrongful as to warrant an award of aggravated damages. The court also declined to award exemplary damages; this was merely a case where an employer was held vicariously liable for the torts that its employees had committed which were in turn due to poor judgment and the way events developed on the material day.

Type of Damage	Amount (S\$)	Remarks
<i>General Damages</i>		
False imprisonment	4,000	The plaintiff was held by the security officers for over an hour. The Casino did not prove that it had any lawful basis to detain the plaintiff.
Pain and suffering and loss of amenities for the shoulder injuries	25,000	The plaintiff suffered a fracture to his right shoulder and scuffles with the security officers likely worsened pre-existing injuries, which resulted in an operation.
<i>Special Damages</i>		
Pre-trial medical expenses	15,990.74	The pre-trial medical expenses and pre-trial transport expenses were not disputed by the casino.
Pre-trial transport expenses	925	
Total	45,915.74	

¹¹⁰ [2015] SGHC 289

JOSEPH POSKEY PATRICK V ZOUK MANAGEMENT PTE LTD (2003)¹¹¹

- In this case, the court held that the defendant's security personnel had assaulted the plaintiff in the course of ejecting him from the defendant's premises. The defendant's security personnel had lifted the plaintiff, pushed him onto the ground, assaulted him, dragged him to the head of a flight of stairs and thrown him down. The plaintiff's medical report indicated that he had sustained head injuries, contusion injuries to his neck, back and chest, and injury to his left knee. After reviewing precedent cases, the court awarded the below damages.

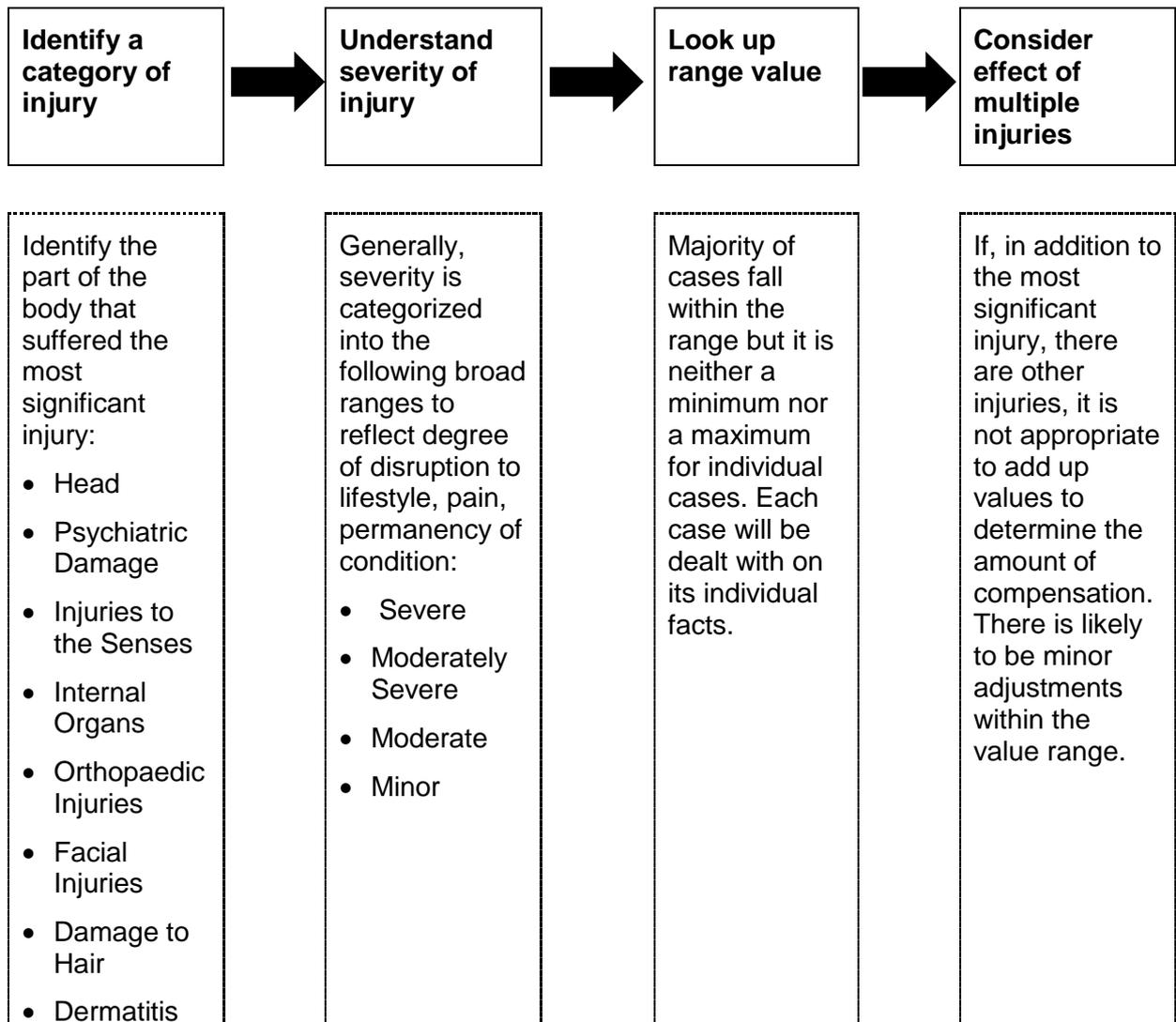
Type of Damage	Amount (S\$)	Remarks
<i>General Damages</i>		
Pain and suffering and loss of amenities	22,500	The plaintiff suffered minor injuries to his head, neck, back and chest and suffered a torn knee ligament.
<i>Special Damages</i>		
Pre-trial medical expenses	-	[Not reported]
Pre-trial loss of earnings	28,560	The plaintiff's income per month at US \$4,080 multiplied by 7 months (the period that the plaintiff did not work, taking into account a discount for the contract/ project nature of his work as a commercial driver).
Future medical expenses	-	[Not reported]
Total	51,060	

¹¹¹ [2003] SGDC 42

APPENDIX 2 : GUIDELINES FOR THE ASSESSMENT OF GENERAL DAMAGES IN PERSONAL INJURY CASES

The Guidelines contain a list of injuries and related values, distilled from reported cases, to give an indication as to the likely range of compensation for a particular injury. While the Guidelines have been graded to reflect the severity of the injury sustained, it is recognised that even within these grades the actual degree of severity can vary considerably and the same injury can have different consequences for different people.

Application of the Guidelines



1. Psychiatric Injuries

1.1 General Psychiatric Injury

There is a myriad of psychiatric conditions that could result from experiencing a traumatic event, i.e. depression, avoidant phobias, anxiety attacks, etc. They range in severity too, with the most severe psychiatric conditions debilitating a person to the extent that he is unable to cope with the activities of daily life.

The factors to be taken into account in valuing claims of this nature are as follows:

- (i) The person’s ability to cope with life and work in general as compared to his or her pre-trauma state;
- (ii) The effect on the person’s relationships with family, friends and those with whom he or she comes into contact with;
- (iii) Whether the person is suicidal as a result of his or her psychiatric condition;
- (iv) Whether medical help has been sought;
- (v) The extent to which treatment would be successful;
- (vi) The extent to which medication affects the person’s work and social life;
- (vii) Whether the person adheres faithfully to counselling sessions and takes his or her medication;
- (viii) The risk of relapse in the future; and
- (ix) The chances of full recovery in the future.

Level of harm	Explanation of classification	Damages (SGD)
Severe	The person suffers from marked problems with respect to factors (i) to (vi). Despite treatment, the prognosis remains very poor as the person is unlikely to be able to return to employment permanently or even take charge of his daily affairs.	\$25,000–\$55,000
Moderately severe	There are significant problems associated with factors (i) to (vi) above but the prognosis will be much more optimistic than in “Severe” above. However, the person may still have long-term problems coping with the stressors of work life and the demands of social life thus preventing a return to pre-trauma employment. He is however, able to perform the activities of daily life independently.	\$8,000–\$25,000
Moderate	In cases of moderate severity, the person experiences problems associated with factors (i) to (vi) above. However, he shows marked improvement with treatment. Prognosis is good for this category.	\$3,000–\$8,000
Minor	In this category, full recovery is achieved within a short period of time and the risk of relapse in the future is small. The person is able to return to previous employment with little or no residual disabilities. The level of the award takes into	\$1,000–\$3,000

Level of harm	Explanation of classification	Damages (SGD)
	consideration the relatively short length of the period of disability and the extent to which daily activities and sleep were affected.	

1.2 PTSD

The Guidelines define PTSD as a severe anxiety disorder that develops after exposure to a traumatic event. Formal diagnostic criteria (DSM-IV and ICD-9) require the symptoms to last more than one month and there is significant impairment in all aspects of a person’s life. Some of the symptoms of PTSD include: recurrent flashbacks; persistent nightmares; avoidance; and hyperarousal.

Level of harm	Explanatory notes	Damages (SGD)
Severe	In cases where the person suffers from severe PTSD, the effects are debilitating. He is unable to cope with daily life due to recurrent flashbacks and he is also tense and angry (hyperarousal) despite treatment. As a result, he is unable to gain employment. Prognosis is poor and the symptoms are likely to persist on a long-term basis.	\$25,000– \$50,000
Moderately severe	This category is distinct from “Severe” because of better prognosis. However, the effects are still likely to cause significant disability for the foreseeable future and the chances of the person being employed in his pre-trauma job is low.	\$10,000– \$25,000
Moderate	Recovery in cases of moderate severity is good. Although there are symptoms still persisting on a long-term basis, the person is able to cope with the demands of daily life and is likely to gain employment. However, he may not be able to cope with the demands of his pre-trauma occupation and may only be capable of a job that is less stressful.	\$4,000–\$10,000
Minor	Full recovery is achieved within one or two years with only minor symptoms still persisting. Prognosis is good.	\$2,000–\$4,000

1.3 Chronic Pain Syndrome (“CPS”)

This condition often develops after the person experiences acute pain such as an injury. CPS is defined as pain that lasts for longer than the expected time for recovery of the injured tissue/muscle/ bone, normally taken as three months.

Factors to be taken into consideration in deciding the quantum of the award include the following:

- (i) Pain intensity;
- (ii) Duration and persistence of pain;
- (iii) Disabilities as a result of the chronic pain; and
- (iv) Effectiveness of medication and cognitive behavioural therapy in controlling the pain.

Level of harm	Explanatory notes	Damages (SGD)
Severe	No explanation given in the Guidelines.	\$20,000–\$35,000
Moderately severe		\$10,000–\$20,000
Moderate		\$5,000–\$10,000

1.4 Reflex Sympathetic Dystrophy

This is a chronic progressive disease that is characterised by severe pain, swelling and changes in the skin. Moving or touching the limb (or affected area) often results in intolerable pain and the said pain is heightened by emotional stress. As a result, the injured person does not move/use the affected limb and eventually, the skin, muscle and bone atrophy from disuse. In mild cases, the person recovers spontaneously within a few months with no lasting disabilities.

Level of harm	Explanatory notes	Damages (SGD)
Severe	No explanation given in the Guidelines.	\$25,000–\$50,000
Moderately severe		\$12,000–\$25,000
Moderate		\$5,000–\$12,000

1.5 Somatoform Disorder

This is a mental disorder that manifests itself in physical symptoms which mimics physical disease or injury or which there is no identifiable cause. The Guidelines state that damages awarded for this type of harm should be in the region of S\$22,000.

APPENDIX 3 : DAMAGES AWARDED FOR PSYCHIATRIC HARM IN NEGLIGENCE CASES

TAN SHI LIN V POH CHE THIAM [2017] SGHC 219¹¹²

- The plaintiff was involved in a road traffic accident with a bus while riding her motorcycle. The bus slammed into the left side of the plaintiff’s body causing her to fall off her motorcycle. In addition to physical injuries, the plaintiff was diagnosed with suffering from PTSD one year after the accident.
- The judge took the view that under the Guidelines, the plaintiff’s PTSD condition would be classified as “moderate”. Consequently, in the light of the fact that the recommended range for moderate PTSD is S\$4,000 - S\$10,000, the judge awarded the plaintiff the highest sum in that range: S\$10,000.

Type of Damage	Amount (S\$)	Remarks
<i>General Damages</i>		
Pain and suffering and loss of amenities (physical injuries)	235,000	The plaintiff suffered severe physical injuries to her feet, legs and lower back, which required her to have multiple toes amputated and caused chronic pain on her left side.
Pain and suffering and loss of amenities (PTSD)	10,000	The court concluded that the plaintiff suffered from a “moderate” level of PTSD in accordance with the Guidelines.
<i>Special Damages</i>		
Pre-trial medical expenses	9,408	Not disputed.
Pre-trial transport expenses	415	Not disputed.
Pre-trial loss of earnings	29,376	Not disputed.
Cost of repair of the plaintiff’s motorcycle	1,605	Not disputed.
Future medical expenses	5,131	
Future transport expenses	600	
Loss of future earnings	192,000	
Total	483,535	

¹¹² This case was appealed and the appeal was allowed in part. There is no discussion in the judgment as to whether any of the damages awarded in the first instance were reduced/ increased.

MS CHANG MUI HOON V MS LIM BEE LENG [2013] SGHCR 17

- The plaintiff was the front seat passenger of a car which was involved in a traffic accident. She suffered whiplash, PTSD and depression as a result. The plaintiff’s main symptoms were that she became fearful whenever she sat in a motor vehicle and would experience headaches and giddiness. She also had trouble sleeping and became easily irritable. Using the Guidelines and based on expert medical evidence given at the trial, the judge found that the plaintiff had suffered a high “moderate” to low “moderately severe” form of PTSD and at most a low “moderately severe” level of depression.
- Taking into account that there was some overlap between the plaintiff’s PTSD and depression, the judge awarded S\$20,000 for all the psychiatric conditions suffered as a result of the accident (i.e., S\$12,000 for PTSD, S\$10,000 for depression, and applying a discount of S\$2,000 for the overlap).

Type of Damage	Amount (S\$)	Remarks
<i>General Damages</i>		
Pain and suffering and loss of amenities (whiplash)	16,000	The plaintiff suffered whiplash from the incident.
Pain and suffering and loss of amenities (PTSD and depression)	20,000	Using the Guidelines and based on expert medical evidence given at the trial, the court found that the plaintiff had suffered a high “moderate” to low “moderately severe” form of PTSD and at most a low “moderately severe” level of depression.
<i>Special Damages</i>		
Pre-trial medical expenses	59,613	The respondent’s counsel raised an issue of double recovery in the sense that some of the medical expenses which the plaintiff incurred might be/ have been covered by her own insurance policy. The court rejected the respondent’s argument.
Future medical expenses	13,645	
Loss of future earnings	22,000	
Total	131,258	

GOH ENG HONG V MANAGEMENT CORPORATION OF TEXTILE CENTRE [2003] 1 SLR(R) 209

- The plaintiff was injured when the lift she was in fell 19 floors to the bottom of the lift shaft. She suffered severe injuries to her left leg. She was also diagnosed with PTSD. Her symptoms included insomnia, anxiety and difficulty concentrating.
- The plaintiff was awarded S\$40,000 for the PTSD she suffered, but this was reduced to S\$30,000 on appeal.

Type of Damage	Amount (S\$)	Remarks
<i>General Damages</i>		
Pain and suffering and loss of amenities (physical)	40,000	The plaintiff suffered from fractures to her shin, knee and ankle.
Pain and suffering and loss of amenities (PTSD)	30,000	The court found that the PTSD suffered by the plaintiff was not as severe as that suffered by the plaintiff in <i>Pang Koi Fa v Lim Djoe Phing</i> . As such, the award was reduced to S\$30,000 on appeal.
<i>Special Damages</i>		
Pre-trial medical expenses	-	[Not reported]
Pre-trial loss of earnings	72,600	
Future medical expenses	-	[Not reported]
Loss of future earnings	79,200	
Total	221,800	

APPENDIX 4 : ENGLISH CASES INVOLVING SEXUAL ABUSE

The cases listed below all relate to civil claims, either reached as a result of a trial or as a part of a settlement deal.

1. Sexual abuse/touching

LXC v DXA (ON BEHALF OF X, DECEASED) (2016)

- The claimant, a 52-year-old woman, received £295,000 for the psychological injuries she suffered after she was sexually abused as a child between 1971 and 1978. She suffered significant long-term mental health difficulties, was unable to complete her education and had not worked for over 15 years.

Type of Damage

General damages	£80,000
Aggravated damages	£10,000
Misc future costs	£50,000
Past care	£35,000
Misc past damages	£80,000
Interest	£40,000
Total	£295,000

ABC v WH 2000 Ltd v William Whillock [2015] EWHC 2687 (QB)

- The claimant was found to have been groomed by a teacher. Indecent photographs of C were found on WH's phone. It is alleged that C had also been raped and performed oral sex on WH. The judge found that she had been groomed, sexual abuse had occurred (including sexual touching), but that the rape and oral sex had not taken place.
- The claimant considered a Rhodes/ Wilkinson claim (intentional infliction of harm) had no physical assaults taken place (so solely on the basis of photographs/communications). The judge stated that even if he had found that no direct physical assault occurred, he would have still found that compensation should be awarded to the claimant on the basis of the indecent messages sent and photographs. He would have awarded her £16,000 had there not been a direct physical assault.
- The following damages were awarded:

Type of Damage	Amount
General damages	£35,000
Aggravated damages	none awarded
Special damages	£16,370
Total	£51,370

FKB v LAMPITT (2015)

- The claimant, a 23-year-old woman, received £166,320 for the psychiatric injuries sustained as a result of serious sexual, physical and emotional abuse suffered between 2002 and 2006. She suffered chronic dysthymia and chronic post-traumatic stress disorder, the symptoms of which were likely to be alleviated by psychological treatment. Age at injury: 10. The claimant was abused by her mother's partner, including being watched whilst she bathed, and inappropriate touching of breast and genitals. There was also digital penetration and forced penetration. The abuse occurred several times a week for 4 years and increased in severity.

Type of Damage	Amount
General damages	£65,000
Aggravated damages	£15,000
Past loss of earnings	£43,500
Past education costs	£17,895
Disadvantage on labour market	£20,000
Future loss of earning	£2,000
Future treatments costs	£2,925
Total	£166,320

NJB v (1) MXH (2) TSA (2014)

- The claimant, a 45-year-old man, received £350,000 for the sexual, emotional and physical abuse inflicted by the first defendant whilst he was a volunteer leader of a branch of the second defendant's organisation between 1980 and 1984. He suffered from PTSD and psychosis, and had an extensive history of self-harm and attempted suicide.

Type of Damage	Amount
General damages	£50,000
Future loss of earnings and medical care	£120,000
Past medical care costs	£30,000
Past loss of earnings	£150,000
Total	£350,000

EB V JOHN HAUGHTON (2011)

- In this case, which involved sexual assaults and inappropriate penetration of the vagina with the finger, the following damages were awarded:

Type of Damage	Amount
General damages	£28,000
Special damages	£3,640
Total	£31,640

C v D (2006)

- The claimant was abused by headmaster when he was 11-year-old. The abuse consisted of the headmaster touching the claimant's genitals whilst drying him with a towel for swimming lessons, staring at the genitals on one occasion and fondling the claimant's penis. The claimant did not suffer from anti-social personality disorder, but had some symptoms of it. He suffered from mental abnormality as distinct to emotional distress. There was a good prognosis with psychological treatment.

Type of Damage	Amount
General damages	£20,000
Loss of earnings	£15,000
Cost of treatment	£3,000
Loss of support	£5,000
Total	£43,000

RE S (CRIMINAL INJURIES COMPENSATION AUTHORITY) (2002)

- The claimant, a 34-year-old man, received £28,100 for the anxiety disorder suffered following sexual abuse by a teacher at his secondary school between 1980 and 1984. The claimant was disadvantaged in the open labour market and had underachieved during his career to date.

Type of Damage	Amount
General damages	£8,100
Special damages	£20,000
Total	£28,100

S V MEAH (1986)

- The claimant, a 34-year-old woman, received £12,610 for the severe psychological condition developed as a result of a sexual assault upon her. The claimant was subjected to a sexual assault by a family friend at knife point involving oral sex and lasting for two hours in the presence of her daughters.

Type of Damage	Amount
General damages	£10,000
Aggravated damages	£2,500
Special damages	£110
Total	£12,610

2. Rape

BDA v DOMINICO QUIRINO 2015

- The claimant, a 28-year-old woman, received £171,600 for the psychiatric injuries and physical abuse suffered as a result of systematic sexual abuse between 2001 and 2005.
- Age at time of injury: 14. The claimant suffered clinical depression, experienced psychosexual difficulties, and the probability of the recurrence of depression was 20% per year. The claimant was raped, groomed and touched by her Karate instructor.

Type of Damage	Amount
PSLA	£46,000
Aggravated	£9,000
Disadvantage in labour market	£30,000
Future treatment	£9,600
Past and future loss of earnings	£75,000
Other past costs	£2,000
Total	£171,600

B AND DAVID SUDLOW (2003)

- This case involved the claimant being raped by the Defendant whilst staying at her boyfriend's house:

Type of Damage	Amount
PSLA (incl. aggravated damages)	£40,000
Special damages	£3,263
Total	£43,263

3. **Attempted rape**

GUY V MINISTRY OF JUSTICE (2013)

- In this case, which was an attempted rape, the following damages were awarded:

Type of Damage	Amount
PSLA & physical injury	£64,000
Past care (7 years)	£14,000
Future care (10 years)	£10,000
Psychotherapy	£6,000
Total	£94,000

GLB v TH (2012)

- In this case, which involved abuse and attempted rape, the following damages were awarded:

Type of Damage	Amount
PSLA	£67,500
Aggravated damages	£15,000
Past loss of earnings	£45,000
Future loss of earnings	£40,000
Disadvantage on the labour market	£20,000
Total	£187,500

APPENDIX 5 : COMPENSATION ORDERS GRANTED IN DOMESTIC WORKER ABUSE CASES

TAY WEE KIAT AND ANOTHER V PUBLIC PROSECUTOR (2018)¹¹³

- The accused, a husband and wife, were convicted of various offences relating to the abuse of their domestic worker. The abuse was both physical (punching and slapping) and psychological. The court stated the Appellants had caused the domestic worker to suffer “*humiliating and degrading*” abuse.
- The court ruled that the domestic worker should be compensated for pain and suffering as well as for loss of earnings. The Appellants were ordered to pay compensation of S\$6,000 for the pain and suffering caused to the domestic worker as well as S\$1,800 for loss of earnings (S\$450 multiplied by the 4 months that she was unable to work). See **Appendix 6** for more details of this case.

PUBLIC PROSECUTOR V TONG CHEW WEI (2009)¹¹⁴

- The accused was found guilty of seven charges of voluntarily causing hurt to his domestic worker by hitting her with a broomstick, stamping on her feet, scalding her with a mug of hot water and punching her in the face, grabbing and pulling her hair and using his elbow to hit her back. The abuse occurred over a two month period.
- The district judge sentenced the accused to a total of 20 months’ imprisonment. In addition the judge ordered that S\$6,480 be paid in compensation to the domestic worker for loss of earnings. The judge calculated this figure by multiplying the domestic worker’s weekly salary (S\$270) by the number of months she was unable to work (24 months).

PUBLIC PROSECUTOR V FOO CHEE RING (2008)¹¹⁵

- The district judge sentenced the accused to a total of nine weeks’ imprisonment for voluntarily causing hurt to his domestic worker by slapping her in the face three times, kicking her lower limbs and banging her head against a wall three times.
- Prior to sentencing, counsel for the accused proposed a sum of S\$10,000 be paid in compensation to the domestic worker. However, the judge did not think that a compensation order for this amount was appropriate in the circumstances. Instead, the judge ordered the accused to pay S\$6,000 in compensation for loss of earnings. The domestic worker was unable to work in Singapore for 18 months pending the trial. The judge noted that a compensation order is not punishment for an offence nor is it an alternative to a sentence; it is instead a means of providing redress to a victim of crime.

PUBLIC PROSECUTOR V CHUNG YEE HOUNG (2007)¹¹⁶

- The accused pleaded guilty to two charges of voluntarily causing hurt to the domestic worker by slapping her once in the face and pulling her left ear. (Another four similar charges and a charge for wrongful confinement were also taken into consideration for the purpose of sentencing.) The domestic worker, who was medically examined on the same day of the slapping, was found to have sustained no injuries.

¹¹³ [2018] SGHC 42 and SGHC 114

¹¹⁴ [2009] SGDC 202 at [90]

¹¹⁵ [2008] SGDC 298

¹¹⁶ *Public Prosecutor v Chung Yee Hounng* (MAC 1412-8/2007, unreported)

- The accused made a voluntary compensation payment of S\$1,700 (which covered general compensation as well as the domestic worker's loss of income for a period of 20 days whilst she waited for a new employer following the making of the complaint). No compensation was stated in the reported judgment.

PUBLIC PROSECUTOR V ONG CHIN CHIN (2005)¹¹⁷

- The accused pleaded guilty to two charges of voluntarily causing hurt to her domestic worker. The first was for punching the domestic worker's chest and the second was for slapping both her cheeks.
- The domestic worker suffered bruising over her sternum and abrasions to the right side of her face. The accused was sentenced to three weeks' imprisonment on each charge. Three other charges of voluntarily causing hurt to the victim were taken into account for the purposes of sentencing. The domestic worker also received voluntary compensation of S\$8,500 from the accused.

¹¹⁷ [2005] SGMC 16

APPENDIX 6 : CRIMINAL PROSECUTION FOR DOMESTIC WORKER ABUSE

TAY WEE KIAT AND ANOTHER V PUBLIC PROSECUTOR [2018] SGHC 42 AND 114

Tay Wee Kiat (“Tay”) and his wife Chia Yun Ling (“Chia”) (together “the Appellants”) were convicted of various offences for abusing their domestic worker. Tay was sentenced to an aggregate of 28 months’ imprisonment and Chia to 2 months’ imprisonment. They both appealed against their convictions and sentences, while the Prosecution appealed against their sentences only.

The High Court upheld the Appellants’ convictions. Tay’s aggregate sentence was increased to 43 months’ imprisonment, while the appeals in relation to Chia’s sentences were dismissed.

1.1 The material facts and the charges

The victim was a 33-year-old Indonesian woman who worked as a domestic worker in the Appellants’ household.

Tay was convicted after trial of:

- 10 charges of voluntarily causing hurt to the victim for, amongst other things, slapping her, hitting her head with a bundle of three canes tied together, and pushing her head against a cabinet.
- 1 charge for contravening s.204B(1)(a) of the Penal Code, for offering to pay the victim’s full salary and send her back to Indonesia on condition that she abstain from reporting him for domestic worker abuse; and
- 1 charge for contravening s.182 of the Penal Code, for instigating the victim to lie to the police that he had not physically abused her.

Chia was convicted of two charges of voluntarily causing hurt to the victim, one for slapping her face and one for punching her forehead.

In addition to the physical abuse inflicted on the domestic worker, the Appellants had also caused her to suffer “*humiliating and degrading*” abuse as well. For example, on one occasion Tay forced the domestic worker to stand on one leg on a stool while holding another stool in her hand. She was made to maintain the position for half an hour, with a small plastic bottle shoved into her mouth.

The Appellants appealed both their convictions and their sentences. The court rejected these appeals.

1.2 Psychological abuse

Delivering the judgment of the Court of Appeal, Kee Oon J made some useful comments on the prevalence of psychological abuse in domestic worker abuse cases:

- “*The harm that ensues from the abuse of a domestic maid often but does not always consist solely in physical hurt. Psychological abuse, in conjunction with physical harm, is what characterises egregious instances of maid abuse and makes them especially abhorrent.*” [at 66]

- “The dimension of psychological abuse may be under emphasised in cases of maid abuse... It is perhaps best expressed in *Public Prosecutor v Chong Siew Chin* [2001] 3 SLR(R) 851. The offender in that case was convicted on three charges under s. 323 read with s 73 of the Penal Code for slapping the victim on her face on three separate occasions on the same day... The offender had also subjected the victim to a regime of threats and coached her to lie if she was ever questioned. The beatings and threats together created, in the victim, an “overwhelming fear” of the offender. Yong CJ stated at [42] that **“where mental abuse was calculatedly applied in conjunction with physical abuse to a domestic maid, this should be viewed as a serious aggravating factor”**.” (emphasis added) [at 64]
- “The infliction of mental abuse in conjunction with physical abuse was described as an aggravating factor in *ADF* at [91], and in *Public Prosecutor v Rosman bin Anwar and another appeal* [2015] 5 SLR 937 the court considered at [49] that:

“[T]he degree of pain and suffering endured by the complainant [was] not to be measured by reference only to the visible injuries and the severity of the assaults on her, but must take into account the prolonged nature of the abuse and the psychological and emotional toll that it took on her.”

- “The psychological harm and mental anguish that a domestic maid can suffer from being trapped in a situation of fear, abuse and oppression can be just as acute and enduring as physical harm, if not more. As observed by the Court of Appeal in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [26]–[28], extreme psychological harm can be characterised as a form of “infirmity” within the definition of hurt contained in s 319 of the Penal Code. **For this reason, the emotional trauma resulting from psychological abuse is a critical sentencing consideration where the abuse of domestic maids is concerned, particularly where the abuse is deliberate and relentless.**” (emphasis added) [at 69]

1.3 Sentencing

The court observed that psychological abuse, in conjunction with physical harm, was what characterised egregious instances of domestic worker abuse. The psychological harm and mental anguish they can suffer from being trapped in a situation of fear, abuse and oppression can be just as acute and enduring as physical harm, if not more. The emotional trauma resulting from psychological abuse is therefore a critical sentencing consideration in domestic worker abuse cases.

The court set out the following sentencing framework for cases of domestic worker abuse:

- (1) First, the court should determine whether the harm caused to the victim was predominantly physical, or both physical and psychological. In the former case, the court should consider the degree of harm and the aggravating and mitigating factors in determining the appropriate sentence, bearing in mind other domestic worker abuse precedents.
- (2) If the abuse was both physical and psychological, the second step was for the court to identify the degree of harm caused in relation to each charge. Psychological harm could be indicated by behaviour which was humiliating or degrading, or calculated to reinforce the offender’s authority and oppress and bully the victim into submission. The following indicative sentencing ranges would then apply:

	Less serious physical harm	More serious physical harm
Less serious psychological harm	3–6 months' imprisonment	6–18 months' imprisonment
More serious psychological harm	6–18 months' imprisonment	20–30 months' imprisonment

- (3) Third, the court would adjust each sentence in the light of aggravating factors (*i.e.*, use of a weapon; efforts to prevent the victim from accessing help; motive; deliberation; an intention to cause greater harm than resulted; past convictions) and possible mitigating circumstances (*i.e.*, remorse; cooperation with the authorities; contributory mental illness).

1.4 Compensation order

The court ruled that the domestic worker should be compensated for pain and suffering as well as lost wages. In its submissions on compensation, the prosecution suggested that the Appellants should pay S\$500 for each incident of abuse, taking into account the physical and psychological harm suffered by the domestic worker.¹¹⁸ The court agreed and the Appellants were ordered to pay compensation of S\$6,000 for the pain and suffering caused (S\$5,000 by Tay and S\$1,000 by Chia) as well as S\$1,800 for loss of earnings (S\$450 multiplied by the 4 months that she was unable to work). The total compensation awarded was S\$7,800.

The court stressed criminal compensation is generally to be made as a matter of course in domestic worker abuse cases, noting changes via the Criminal Justice Reform Act 2018 which further requires a court to give reasons if it chooses not to order compensation. In the supplementary judgment, Justice See stated:

"We also consider it appropriate to compensate [the victim] for the physical and psychological injuries inflicted by the offenders, for which they would have been liable in tort."

Summary of compensation ordered:

Type of Damage	Amount (S\$)	Remarks
Payable by Tay Wee Kiat:		
Hurt to the victim on 10 occasions	5,000	S\$500 per incident of abuse (with reference to <i>The Guidelines for the Assessment of General Damages in Personal Injury Cases</i>)
Compensation for four months of unemployment	900	Salary at S\$450 per month of unemployment
Payable for Chia Yun Ling:		
Hurt to the victim on 2 occasions	1,000	Same remarks as above
Compensation for 4 months loss of earnings	900	Same remarks as above
Total	7,800	

¹¹⁸ *Tay Wee Kiat and Another V Public Prosecutor* [2018] SGHC 114 [at 19]

Simmons & Simmons JWS

168 Robinson Road, #11-01 Capital Tower Singapore 068912
T +65 6831 5600 F +65 6831 5688

Justice Without Borders

*Because the right to just compensation
shouldn't end even when a victim returns home*

Singapore Office

16 Kallang Place
#07-01/02/03
Singapore 339156
Tel: +65 6871-8757

Hong Kong Office

Garage Collective, Shop 4-7
158A Connaught Road W
Sai Ying Pun
Hong Kong

Indonesia Office

CODE Margonda
Depok Town Square Mall
Lt. 2
Jl Margonda Raya, Depok

US Office

4615 Sedgwick Street NW
Washington DC 20016,
USA

✉ info@forjusticewithoutborders.org

🌐 www.forjusticewithoutborders.org

f [forjusticewithoutborders](https://www.facebook.com/forjusticewithoutborders)

🐦 4_jwb

in <https://www.linkedin.com/company/justice-without-borders>