

REGENCY LEGAL LLP

Advocates & Solicitors

M. Mahendran
Advocate & Solicitor

Chitra Balakrishnan
Advocate & Solicitor

Our Ref : MM/6005-15/IA
Your Ref : MB-5-2017-N

14 September 2018

PUBLIC TRUSTEE'S OFFICE
45 Maxwell Road
#07-11
The URA Centre (East Wing)
Singapore 069118

BY FAX (62242858) ONLY
No. of pages: 07

ATTENTION : MR KEVIN GAN
ASSISTANT DIRECTOR (TRUST)
FOR THE PUBLIC TRUSTEE

Dear Sirs

ACCIDENT INVOLVING PEDESTRIAN & UNKNOWN LORRY ALONG LIM CHU KANG NEAR MURAI LODGE ON 14 SEPTEMBER 2015
PEDESTRIAN: MUTHAIAH SELVAMUTHU

We refer to the captioned matter and the Motor Insurer's Bureau's ("MIB") grounds of rejection to you dated 10 July 2017.

Our preliminary views are that the accident took place on a quiet road in the night. There was no one with the Claimant at the time. The police have classified this as a hit-and-run accident by an unknown vehicle. The corroborative evidence is the Claimant's injuries. There is no other corroborative evidence given the state he was in after he was knocked down. He was not able to walk. No one was around to assist him. His injuries could not have been caused by anything else in the present circumstances. Further, the Claimant's medical report on his condition after he was admitted to the National University Hospital would speak for itself.

We have not had sight of the Googlemaps screenshots that were referred to the Public Trustee. In any event, the description of the road conditions as set out in the MIB's letter in relation to "other documents" are consistent with the Claimant's description of the road conditions. It would explain why he was not able to identify the lorry or the driver.

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Our response to their grounds is as follows:-

(i) **Inconsistent versions**

(a) **Location– Near the Chicken Farm at Lamp Post 37**

The Claimant was knocked from behind. He would have seen an approaching vehicle had he been hit from the front. There would also have been injuries on the front of his body.

We are instructed by the Claimant that the police report that was lodged was taken by a police officer and that he was not fully conscious. He was in the process of recovery and was heavily sedated.

The Application Form was completed after an interview with the Claimant. He has confirmed the information as set out therein. There was no injury to his right shoulder. He was hit on his head as reported to the specialist orthopaedic Dr Selan Sayampanathan which he was not treated for at the National University Hospital of Singapore. It was not a serious injury as compared to the injury to his left leg.

It is not disputed that the Claimant was hit from behind at the said location.

(b) **Mechanism of Collision – Hit from behind, fell to the ground, run over**

The Claimant was hit on head. This is consistent with the fact that the unknown vehicle was driven close enough to have hit him on the head from behind.

Based on the medical reports, the Claimant also sustained an injury to his left elbow. His left elbow and left leg was on the road when he had fallen from being hit from behind by the unknown vehicle.

If the Claimant was knocked down and ridden over when he was on the grass patch, he would have sustained more injuries to the rest of his body. This was not the case.

It is not disputed that the Claimant was knocked on his head from behind, driven over by the unknown vehicle when he was lying on the road after he had been knocked down and run over on his left leg.

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(c) Position of Claimant – he was knocked from behind on his right side and run over on his left leg

After the Claimant was knocked down, his body was sprawled and laid partly on the road and the grass patch. The unknown vehicle was driven over his left leg only. There was no other injury that was caused by the wheels of the unknown vehicle.

It is not disputed that the Claimant was walking at the side of the road which converged with the grass patch. It is not disputed that the Claimant sustained injuries to his left leg and left elbow only.

(d) Contemporaneous Evidence

We submit as follows:-

- (i) The police report as instructed by the Claimant is not an accurate version of the accident as he was not fully alert or conscious when the report was made. The Application Form was completed with the instructions of the Claimant. There is no legal basis of the Questionnaire.
- (ii) The Claimant was hit by a vehicle he could not identify as he was hit from behind and had sustained an injury that resulted in massive blood loss, rendering him possibly semi-conscious and not alert as to his surroundings after he had been run over.
- (iii) The Claimant could not have been hit from the front. He would have sustained injuries to the front of his head and body. His left leg was run over when he had fallen down and lay on the ground. He did not fall forward. There are no injuries to evidence this.
- (iv) There is no clear articulation of the dispute by MIB in relation to the Claimant's version of the facts and manner in which the injuries were sustained. Our response was set out based on the objective facts that were disclosed.
- (v) There is no valid objection raised by MIB for the following reasons:-
 - (a) The MIB did not show that it was not possible for the Claimant to have sustained injuries to his left leg only. It is sufficient that the Claimant sustained an injury to his head as evidence that he was hit from behind. There is no explanation as to what

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problems to the head, neck and chest MIB expected the Claimant to suffer flowing from the injuries;

- (b) The MIB did not show that the alleged inconsistencies show on a balance of probabilities that the Claimant saw the face of the driver (which is not the same as seeing the licence plate of the unknown vehicle) and so probably knew either the identity of the driver and / or the licence plate of the unknown vehicle;
- (c) It is not clear what the MIB means by stating that “Given that the area is a farming area, it would also not have been within reasonable expectation of drivers at that time of the night to expect pedestrians walking on foot along the road.” This is a concession that the unknown vehicle then did hit the Claimant and run, and the Claimant was not likely to have been knocked had it not been for the lack of duty of care owed by the driver of the unknown vehicle for no good reason whatsoever;
- (d) It is not clear what MIB means in stating that “the Applicant would therefore have been taking considerable risks...”. The Claimant was not taking any more risks than any other reasonable pedestrian walking with his back facing oncoming traffic. There are no outstanding or egregious facts that were pointed out by the MIB to show the nature of the considerable risks that Claimant took;
- (e) The MIB did not make a finding on the facts that the Claimant had stepped on the path of the unknown vehicle. Instead, the MIB presumes that he probably did if MIB is to accept that he was indeed knocked from behind by the said unknown vehicle. It would appear that the MIB accepts that the Claimant was walking with his back against oncoming traffic;
- (f) The MIB has not refuted that the Claimant was walking on the side of the road which converged with the grass verge. The Claimant could not have stepped on to the path of the unknown vehicle just because he was hit on the head by the unknown vehicle as they did not take issue with where he was walking prior to the accident. The MIB does not raise any facts to suggest that he was walking in the path of the known vehicle at all.

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(ii) **Liability**

We note that the MIB proposes 50% liability to be borne by the Claimant.

We wish to highlight the following:-

- (a) There was a lamp post where the Claimant was knocked down. The purpose of providing lamp posts is to light up the road. The light provided by the lamp post would have been sufficient for the driver of the unknown vehicle to see the Claimant.
- (b) The driver of the unknown vehicle should have avoided him altogether instead of driving too close to the Claimant as he was clearly visible. The fact that the unknown vehicle was close to him meant that the driver would have seen him and either slowed down to come close to him or drove the said unknown vehicle away to avoid him.
- (c) The Claimant's back was to the unknown vehicle and he was walking along the section of the road where the grass patch converged with the road. The driver of the unknown vehicle should have been mindful that there was no proper pedestrian pathway and that he should be keeping to the centre of the lane markings dividing the traffic in opposite direction in the middle of the road. This would have ensured that the unknown vehicle did not steer too close to the Claimant and that he could manoeuvre and react fast in the interest of the safety of the Claimant or any other pedestrian for that matter.

Based on the above and the how the injury to the Claimant's left leg was caused, we maintain that liability should be 100% in favour of the Claimant.

(iii) **Quantum**

(a) **Loss of earning capacity**

The Claimant is disadvantaged in his future prospects in returning to work as a construction worker (or any other work which requires labour as a man of his capacity can do) in Singapore and any other part of the world. If the Claimant was to be compelled to re-enter the labour market, his disabilities would put him at a disadvantage. This includes the labour market in India. He was working in India prior to coming to Singapore to work as a construction worker.

However, a conservative amount should have been awarded for the Claimant's loss of earning capacity since there was an appreciably lower risk that he would be unable to get another job. Further, he could get a prosthetic leg to help his

Blk 101A Upper Cross Street #08-07 People's Park Centre Singapore 058358
Tel: (65) 6536 3081 Fax: 6536 0515 Email: regencylegal@singnet.com.sg

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Reg No: T11LL0452G

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walk and does not necessarily follow that the Claimant's condition would get worse.

The nature of the injury to the pelvic area of the Claimant is such that amputation is so close to the private area rendering it very difficult for him to sit upright at all.

We would propose a conservative amount of S\$40,000.00.

(b) Future medical expenses

In Rahman Lutfar, the judge accepted that the costs of medical expenses in the worker's native country may not necessarily costs less than the equivalent in Singapore. A discount would have to be applied selectively and not across the board. Where the discount could not be applied across the board, the judge would take the Singapore costs as the costs to be awarded.

We had taken a reasonable total amount of what we believed would be spent annually and submit that the Claimant would require S\$5,000.00 each for physiotherapy, check-ups, prosthesis, wheelchairs, medical reviews, etc at about S\$5,000 per year for about 20 years which amounts to S\$100,000.00.

We would like to propose S\$60,000.00. This would take into consideration the fact that all medical expenses would be incurred in India and that he would require at the very least the prosthesis which would in itself require treatment, medical consults and check-ups for a period of time. Further, the Claimant in currently in his late twenties and will require his medical expenses to cover for the most part of his life in order to work to support himself. He is not married and his prospects of marriage are clearly affected by the loss of a limb.

(iii) For the foregoing reasons, we humbly submit to the Public Trustee that liability should be found in favour of the Claimant that he be awarded damage as follows:-

(a)	Pain and suffering	S\$100,000.00
(b)	Loss of amenities	S\$5,000.00
(c)	Loss of future earnings	S\$84,000.00
(d)	Loss of earning capacity	S\$40,000.00
(e)	Future medical expenses	S\$100,000.00
(f)	Medical expenses payable to NUH	S\$119,443.60
(g)	Total	S\$448,443.60
(h)	Costs	S\$10,000.00
(i)	Disbursements	S\$3,496.55

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Please do not hesitate to contact us if you should have any questions.

Yours faithfully



REGENCY LEGAL LLP

cc

1. Client

2. M/s Withers KhattarWong **BY FAX (65351030) ONLY**
(Your Ref: LIH/KWO2063.0034[W-KW.FID65593])