

**LOSS OF INHERITANCE OR SAVINGS:
A PROPOSAL FOR LAW REFORM**



SINGAPORE ACADEMY OF LAW
LAW REFORM COMMITTEE

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About the Law Reform Committee

The Law Reform Committee (LRC) of the Singapore Academy of Law makes recommendations to the authorities on the need for legislation in any particular area or subject of the law. In addition, the Committee reviews any legislation before Parliament and makes recommendations for amendments to legislation (if any) and for carrying out law reform.

About this Paper:

In March 2007, Mr Michael Hwang, SC, an LRC member, first raised to the attention of the rest of the Committee a law reform proposal to allow for loss of savings or loss of inheritance to be taken into account in dependency claims. Recommendations for allowing such claims were discussed by the LRC and eventually approved in March 2008. These are now presented in this publication.

This paper reflects the authors' current thinking on the researched area of law and does not represent the official position of the Singapore Academy of Law or any governmental agency. The report has no regulatory effect and does not confer any rights or remedies.

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Executive Summary

1 A dependency claim arises when a breadwinner is killed by the tortious act of another, *eg* a car accident. The general measure of damages in dependency claims is assessed via an implied calculation based on the multiplicand and multiplier approach. This involves a measure of the annual or monthly sum given to the dependants and the number of years for which the moneys is expected to be given. However, this approach breaks down where there is a divergence between what one actually gives and what one can afford to give or where the deceased prefers to reinvest the moneys instead of disbursing it to his dependants.

2 In other common law jurisdictions which derive their legislation from the English Lord Campbell's Act,¹ a sum reflecting what the dependants could have expected to inherit or benefit from the deceased's savings had he lived his natural life ("the loss of savings or inheritance"²) is awarded as part of the dependency claim. Singapore's law of dependency as reflected in the Civil Law Act (Cap 43) is also derived from the English Lord Campbell's Act.

3 In Singapore, before 2005, savings may sometimes be taken into account by implication if a certain method of calculation is adopted. However, the legal position in Singapore today is reflected in the case of *Lassiter v To*,³ which decided in 2005 that Singapore would not follow the interpretation of the other jurisdictions and expressly stated that loss of savings or inheritance cannot be awarded in a dependency claim.

4 This means that, if a deceased killed in an accident in Singapore earns \$10,000 a month and gives his dependant only \$1,000, with the intention of saving the other \$9,000 for a rainy day (or bequeathing this sum to his family), the dependant might get only \$1,000 even though he might reasonably have expected that some part of the \$9,000 might come to him in the future had the deceased not been killed. The Court in *Lassiter v To* itself recognised that this would give rise to apparent injustice to a deceased who put away a lot of his income in investments or savings, but considered that it was bound by the Civil Law Act to decide in this manner.

5 The present position is unsatisfactory as it creates a gap which benefits tortfeasors or their insurers at the expense of dependants. There is a need to bring Singapore law back in line with the more persuasive position taken by the other common law jurisdictions which have similar legislation and expressly allow for loss of savings or inheritance to be taken into account in a dependency claim.

6 Today, differences in our system of social welfare compared to other countries, as well as an aging population, mean that Singaporeans save more to provide for various contingencies. When an actively-saving breadwinner is prematurely killed, the failure to recognise loss of savings on a head of claim means that dependants are not fully compensated for the full extent of their financial losses existing from the death of their breadwinner.

¹ Fatal Accidents Act 1846 (c 93).

² Whether it is called savings or inheritance is determined by the reference point of the assessment.

³ [2005] 2 SLR 8; [2005] SGHC 4.

7 The driving principle behind the law of dependency claims is to compensate dependants for all reasonable expectation of pecuniary benefit. The test of “reasonable expectation of pecuniary benefit” is applied by all the common law jurisdictions which derive their legislation from Lord Campbell’s Act. The other jurisdictions have held that such reasonable expectation should include the dependant’s expectation of benefiting from the future savings of the deceased. There is no reason why Singapore’s interpretation of the same test should be different. In fact, loss of future Central Provident Fund (“CPF”) contributions, a type of enforced savings, has already been expressly awarded to dependants as a reasonably expected pecuniary benefit. Accordingly, the loss of other types of savings should be similarly awarded, less the necessary discounts for acceleration due to early receipt of a capital sum, tax and other contingencies.

8 England, Australia and Malaysia have taken savings into account as part of the value of the dependency by either including savings when calculating the annual value of the dependency or by way of an additional sum. Canada and the United States award a separate sum for loss of inheritance in a dependency claim. Hong Kong takes into account savings in the award of an accumulation of wealth in an estate claim. Similarly, Singapore should not deprive dependants of the amount of lost future savings/inheritance which they would have been given by or inherited from the deceased had he not died prematurely.

9 The fact that the Hong Kong, US and Canadian courts have been explicitly awarding sums as accumulation of wealth or loss of inheritance for at least the past decade demonstrates clearly that such awards reflect a calculable and estimable pecuniary loss that dependants can demonstrate would have accrued to them and which they have therefore lost as a result of their breadwinner having been prematurely killed. The Hong Kong cases clearly show that even cleaners and construction workers (the man on the street) are capable of establishing a savings pattern from which a loss of savings or inheritance can be calculated. The fact that insurance premiums may be affected has not prevented these jurisdictions from awarding full and fair compensation to innocent dependants.

10 The concern in *Lassiter v To* which resulted in Singapore law taking a different position was that an award of the portion of savings that a dependant could reasonably expect to inherit could not be awarded owing to a statutory prohibition in the Civil Law Act against the recovery of loss of income after death by the estate (s 10 of the Civil Law Act). However, s 10 of the Civil Law Act was only intended to bar double recovery by both dependants and the estate for the same loss. It was not to bar all recovery. An award for loss of savings/inheritance in a dependant’s claim is different in nature from an estate claim for loss of income as it is based on the probability of the dependant inheriting or receiving the benefit of the deceased’s savings. Only the portion of the deceased’s future savings that a dependant could reasonably expect to benefit from or inherit will be awarded to him. Taking our example above, the deceased might have spent \$7,000 on his personal enjoyment and medical care during retirement and intended to give the remainder of \$2,000 to his dependant either towards the end of his life or after he died. The dependant should then be awarded the present value of the expected \$2,000 discounted for probability of inheritance or probability that dependant

would not benefit (*eg* likelihood of dependant surviving the deceased assuming the deceased had lived, or likelihood that dependant would cease to be dependent), tax *etc.*

11 The award of loss of savings or inheritance would not necessarily result in a large increase in sums awarded to dependants as shown by the table “Sums courts have awarded for loss of savings/inheritance” illustrating the practice of courts in other jurisdictions (see Appendix 1).

12 Any residual danger of double recovery by the estate and dependants is eliminated in Singapore as dependency and estate claims can be subsumed in one action, so that any overlap in recovery would be obvious to the judge. Probabilities and various contingencies can be assessed in a holistic manner by the judge.

13 Another reason why the law in this area should be clarified is that the Singapore courts currently use two different calculation methods interchangeably, where one of the methods impliedly takes into account the loss of savings or inheritance and the other method does not.⁴ This does not provide for a consistent or fair treatment of dependency claims. There is a need for the Legislature to correct this injustice by passing legislation stating that savings or inheritance can be expressly recognised in dependency claims.

⁴ See elaboration in Section I below.

I. The Legal Background

A. *The existing method of calculation: failure to take into account the loss of savings creates a gap which benefits tortfeasors or their insurers*

14 In Singapore, traditionally, damages for the loss of dependency are calculated pursuant to s 20 of the Civil Law Act (Cap 43) using a multiplicand and multiplier method. In practice, what is done is that the court takes the value of the material benefits for dependants which the deceased would have provided out of his earnings for each year in the future during which he would have provided for them, had he not been killed.⁵ This determines the multiplicand, which represents the annual value of the dependency, taking into account various contingencies.

15 In determining a multiplier, the court then looks at the number of years that it is anticipated that the dependency would have lasted had the deceased not been killed, which will vary between dependants, taking into account the age, life span and expected working life of both deceased and dependant.⁶

16 The multiplicand is then multiplied by the multiplier to give the amount of the award.

17 In determining the multiplicand, there are two methods of calculation which take into account the loss of inheritance or savings, as well as a third method (the “traditional method”) which does not take into account the loss of inheritance or savings:

(a) the two-way split (loss of savings impliedly taken into account, also described as the percentage method in *Hanson Ingrid Christina v Tan Puey Tze (“Christina Hanson”)*⁷): take the deceased’s income, deduct his personal expenses (usually expressed as a percentage) and assume that the remainder would be for the benefit of the dependants;

(b) the three-way split (separate sum awarded for loss of savings): take the deceased’s income, deduct what he would have spent on his dependants annually, and add a separate sum reflecting what the dependants would have inherited or received from the deceased towards the end of his life;

(c) when there is no sum awarded for the loss of savings, and only a sum representing the benefits received by the dependents from the deceased is awarded, this is known as the “traditional method”, which has been applied both in *Lassiter v To*⁸ and most recently in *Christina Hanson*. When the separate sum in paragraph (b) is not added, the dependants will be under-compensated.

⁵ *Tan Say Moi v Mua Hin Poultry Farm Pte Ltd* [1992] SGHC 219.

⁶ *Assessment of Damages: Personal Injuries and Fatal Accidents*, Practitioner’s Library (Subordinate Courts and LexisNexis, 2005) at para 9-50.

⁷ [2008] 1 SLR 409.

⁸ *Supra* n 3.

18 Previously, the courts treated the two-way split (percentage method) and the traditional method as interchangeable, according to *Assessment of Damages: Personal Injuries and Fatal Accidents*:⁹

First, add up the financial benefits received by the dependants ... Non financial benefits can also be taken into consideration, such as services provided by the deceased ... Then, deduct from that sum the proportion that is attributable to the benefit of the deceased, eg his share of the food bill and electricity. The balance sum calculated on an annual basis will be the multiplicand. [the traditional method]

An alternative method is to take the deceased's net income [excluding entitlements from the employer like housing or overseas monthly allowance] and deduct from that figure the deceased's own expenses. The balance will presumably be for the benefit for the rest of the family. Yong CJ in *Ho Yeow Kim v Lai Hai Kuen* [1999] 2 SLR 246 at [22] commented that this is a rule of thumb which will not be applied where the facts clearly did not warrant so. [two-way split]

19 In *Tan Harry v Teo Chee Yeow Aloysius*, the Court on appeal explained the difference between the two-way split and the three-way split:

... savings is generally not mentioned as a factor to be taken into account in dependency claims because the usual approach is to split the deceased's income into what he would have spent on himself and on his dependants *ie* a two-way split instead of a three-way split which would then include savings. Indeed the *Practitioner's Library* recognises the two-way split as the alternative approach to adding up all the benefits received by dependants (see at 708).¹⁰ However, [in the present case] the AR had split Philip's income three ways including savings. ...¹¹

(See also quote from *McGregor on Damages*.¹²)

20 However, in the recent case of *Christina Hanson*,¹³ Judith Prakash J clarified that the two-way split (or the percentage method) is to be used only when a stable pattern has been established in a marriage and virtually all net earnings are spent on living expenses.

21 Other examples where the traditional method has been applied, *ie* the court has made an assessment of loss of dependency very largely based on the annual or monthly sum given to the dependants, are *Lee Kwan Kok v Wong Chan Tong*, *Sim Hau Yan v Ong Sio Beng*, *Ang Song Huay v Chu Yong Thiam*, *Tay Say Moi v Mua Hin*, *Lim Soh Neo Jane v Amirtham d/o Veeraperumal*.¹⁴

⁹ *Supra* n 6 at p 101.

¹⁰ Also quoted by *Assessment of Damages: Personal Injuries and Fatal Accidents*, *supra* n 6 at para 9-50.

¹¹ [2003] SGHC 275; [2004] 1 SLR 513 at [36].

¹² Reproduced at p 16 below.

¹³ *Supra* n 7.

¹⁴ *Lee Kwan Kok v Wong Chan Tong* [2004] SGHC 211; *Sim Hau Yan v Ong Sio Beng* [1996] SGHC 256; *Ang Song Huay v Chu Yong Thiam* [1995] SGHC 116; *Tay Say Moi v Mua Hin*, *supra* n 5; *Lim Soh Neo Jane v Amirtham d/o Veeraperumal* [1993] SGHC 43.

22 The traditional method is acceptable if the monthly sum is close to what the deceased can afford to give his dependants or is determined by the deduction of the deceased's personal expenses from his total income (since savings are impliedly taken into account). However, taking only the monthly sum or annual sum is unacceptable if one were to exclude savings, because there is a divergence between what the deceased actually gives, and what he can afford to give. If a dependant meets with an unexpected mishap, or illness (for aged parents), or even a fortunate incident (opportunity to go overseas, marriage, *etc*) there may be a possible lump sum expenditure by the deceased not taken into account if only the monthly or annual expenditure is awarded.

23 In other jurisdictions, the inadequacy of taking only the monthly sum handed over by the deceased to his dependants is recognised by Clark, Boardman and Callaghan, *Recovery for Wrongful Death & Injury*:

In the common situation where the beneficiary claimants are the wife and children of decedent, the loss of inheritance element of damage sometimes comes in through the back door when the court acknowledges that the reasonable expectation of contribution from a husband and father equals the sum total of his income minus his expenses. In some cases where decedent was a wage-earner, this shorthand measurement ... will be a true measure of the claimant's loss of support. Where the husband is, however, in fact, accumulating money or wealth, the modern approach discussed in this section will also encompass his prospective accumulations.

... If [a] man brings home ... \$10,000 [monthly, he is not going to hand his dependants the \$10,000]. He may give [them] \$1,000 and put the rest away in the bank or in annuities or stocks or bonds ... He left an estate fat enough [for the dependant] ... if you tortiously cut down that bread-winner ... and cake-winner, you deprive the [dependants] of not only contributions, what he handed over from time to time, but also of the reasonable value of the accumulations to his estate. This is the loss of inheritance.¹⁵

24 In Australia, Luntz comments:

It is possible to arrive at the lump sum by calculating separately the loss suffered by each of the claimants and then to add up the amounts so assessed. It is more common to assess the loss to the family as a whole and then to apportion the damages among the claimants afterwards. ... The family's dependency may be calculated by taking the probable earnings (in money and in kind ...) ... after tax and deducting therefrom what would have been spent on the deceased himself [and other non-claimants].

... In *Pannel v Fischer* [1959] SASR 77 (FC) it was argued that the method of assessment which, after allowance for the deceased's expenses, treated the balance as going to the wife and children, is appropriate only where the deceased's income was insufficient to allow for any saving. ... *While the court agreed with this argument, it pointed out that, where the income exceeded what was necessary for support, the family are entitled to claim also what the deceased would*

¹⁵ New York, service updated 22 November 1995.

*have saved and ultimately left to them. If the deceased was thrifty and devoted to his family, to deduct the deceased's own expenses from the earnings and allow the balance to the family would ... be a short-cut to the same solution.*¹⁶

[emphasis added]

25 In the US and Canada, the award for loss of inheritance is expressly recognised as a separate head (*ie* the three-way split). England sometimes applies the percentage method or also separately awards a sum reflecting loss of savings.

26 There is a need for the Legislature to decide whether the loss of inheritance or savings is to be expressly recognised as a head of loss to be awarded to the dependants in Singapore.

27 Another proposed amendment to the Civil Law Act concerns the right of a former spouse with a maintenance order against the deceased to recover damages. Presently, a former spouse with a maintenance order in his/her favour is not considered a dependant. This is unfair as a former spouse may still be dependant on the deceased at least for some time after the marriage has ended. Accordingly, a former spouse with a right to maintenance should be included in the definition of dependant.

28 This issue nearly arose in the recent case of *Christina Hanson*.¹⁷ Christina Hanson was the former wife of the late Sandy Eu and parties had filed for divorce before Sandy Eu's unfortunate death in a car accident. At the time of the accident, the decree *nisi* for divorce had been issued but not the decree absolute. The defendant applied to strike out Christina Hanson's claim on the basis that she was not Sandy Eu's lawful wife at the time of his death and not a dependant. However, the assistant registrar held that as decree absolute had not been issued, the legal form of the marriage remained intact. Christina Hanson was therefore still considered Sandy Eu's wife and could maintain her claim.

29 It is foreseeable that future cases may similarly involve a recent divorce but the divorce may be rendered absolute such that a former wife, who would have received maintenance had the deceased been living, would be barred from bringing a dependency claim due to his death. This is an unfair result which also needs to be corrected.

30 The Law Reform Committee therefore proposes that changes be made to the Civil Law Act as follows:

(a) That a sub-s 22(1A) be inserted after s 22(1) of the Civil Law Act which will read:

In assessing the damages under subsection (1), the court shall take into account any moneys or other benefits which the deceased would be likely to have given to the dependants by way of maintenance, gift, bequest or devise or which the dependant would likely to have

¹⁶ Harold Luntz, *Assessment of Damages for Personal Injury and Death* (Butterworths, 3rd Ed, 1990) at para 9.3.2.

¹⁷ *Supra* n 7.

received by way of succession from the deceased had the deceased lived beyond the date of the wrongful death.

(b) That s 20(8)(a) be amended to read:

(8) In this section, “dependant” means —

(a) the wife or husband of the deceased, *including any former wife; ...*

[amendment in italics]

B. The relevant statutory provisions for dependency and estate claims

(1) Section 20 of the Civil Law Act (dependency claims)

31 Section 20 of the Civil Law Act forms the basis for dependency claims. This section is based on the English Lord Campbell’s Act.

Right of action for wrongful act causing death

20. —(1) If death is caused by any wrongful act, neglect or default which is such as would (if death has not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

(2) Subject to section 21(2), every such action shall be for the benefit of the dependants of the person (referred to in this section and in sections 21 and 22 as the deceased) whose death has been so caused.

....

Assessment of damages

22. —(1) In every action brought under section 20, the court may award such damages as are proportioned to the losses resulting from the death to the dependants respectively except that in assessing the damages there shall not be taken into account —

(a) any sum paid or payable on the death of the deceased under any contract of assurance or insurance;

(b) any sum payable as a result of the death under the Central Provident Fund Act (Cap 36); or

(c) any pension or gratuity which has been or will or may be paid as a result of the death.

(2) Rationale and history of dependency claims (section 20 Civil Law Act)

32 Usually, a plaintiff injured in an accident would be able to claim for his loss of earning capacity or loss of future earnings.¹⁸ The recovery is made directly by the plaintiff, but indirectly it would also benefit his dependants which he would normally

¹⁸ *Halsbury’s Laws of Singapore*, vol 18 (LexisNexis Singapore, 2004 Reissue) at para 240.333.

have supported but for the injury. Where a plaintiff has died, the old common law rule used to say that the cause of action cannot survive a person's death. The dependants were left with the entire economic burden caused by the plaintiff's death.

33 With the industrial revolution, the use of trains and later motor vehicles, this position was considered to be unsatisfactory. Lord Campbell's Act (the Fatal Accidents Act) was then passed in 1846 to allow claims to be made for the death of the victim for the benefit of certain dependants (wife, husband, parent and child). Although there was no reference to dependants, Lord Campbell's Act (s 20 of our Civil Law Act) was considered to be for the benefit of dependants and not the estate. This was acknowledged by *Woo Bih Li J in Lassiter v To*.¹⁹

(3) *Rationale and history of the prohibition against recovery of loss of income after death in estate claims (section 10 Civil Law Act)*

34 Later, the Law Reform (Miscellaneous Provisions) Act 1934,²⁰ which provided that a cause of action survived a person's death was passed in England. English case law²¹ then gradually developed the proposition that the estate could claim for the loss of future earnings. This led to a danger of overlapping recovery if both the dependants could claim for loss of support (which was calculated on the basis that the deceased would have supported his dependants out of his future earnings), and the estate could also claim for loss of future earnings. The court in *Gammell* recognised this danger and called for legislative change.

35 Accordingly, the UK Parliament passed the Administration of Justice Act 1982²² to bar claims for lost years, in order to prevent this overlap. Following the amendments in England, Singapore similarly amended its legislation in 1987 to the present s 10 of the Civil Law Act for the same reasons:

Effect of death on certain causes of action

10. —(1) Subject to this section, on the death of any person, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate.

...

(3) Where a cause of action survives as specified under subsection (1) for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person —

(a) shall not include —

...

(ii) any damages for loss of income in respect of any period after that person's death;

...

¹⁹ *Supra* n 3 at [13].

²⁰ UK, c 41.

²¹ *Pickett v British Rail Engineering* [1979] 1 All ER 774; *Gammell v Wilson* [1981] 1 All ER 578.

²² UK, c 53.

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death except that a sum in respect of funeral expenses may be included.

...

(5) The rights conferred by this section for the benefit of the estates of deceased persons shall *be in addition to and not in derogation of any rights* conferred on the dependants of deceased persons by section 20 and so much of this section as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under that section as applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

[emphasis added]

C. *The explanation for the court's decision in Lassiter v To*²³

36 The case of *Lassiter v To* involved a hardworking father, Mr Lassiter, who plunged almost every single cent of spare income back into his property investment business. His family lived very modestly throughout his wealth-building period. Just as he was beginning to relax in his expenditure for himself and his dependants, he was killed by Ms To in a car accident. Mrs Lassiter sued as a dependant under s 20 of the Civil Law Act, claiming loss of inheritance and loss of support.

37 Loss of inheritance was a far larger claim than loss of support owing to Mr Lassiter's thrifty lifestyle just before his death. Ms To's lawyers relied on s 10 of the Civil Law Act, arguing that, since an estate's claim for damages for loss of income after a person's death was prohibited, a claim for loss of inheritance was also impliedly prohibited.

38 Woo Bih Li J acknowledged that a dependant's claim for loss of inheritance would not cause any of the three undesirable consequences²⁴ that Parliament had been concerned with when it had introduced the prohibition against the estate claiming for loss of income after death in 1987.²⁵ However, in that case, he was constrained by what the law in Singapore before the 1987 amendment was. Upon examination of the cases before 1987, he found that a claim for loss of inheritance or savings²⁶ did not exist in a dependency claim in Singapore.²⁷ He then concluded that a claim for

²³ *Supra* n 3.

²⁴ See para 73 below for an elaboration of the three undesirable consequences.

²⁵ At [30]–[31].

²⁶ In *Lassiter*, the court made a distinction between a loss of inheritance over and above earned income and loss of savings as part of earned income (at [72]). For the purposes of simplicity, this proposal will only deal with loss of savings, meaning the amount the deceased would have saved out of his net income (minus unearned income generated by assets inherited by the dependants). Effectively, savings during the lifetime of the deceased become inheritance upon his/her death. This is recognised by various authorities which talk about savings and inheritance or accumulations as part of the same topic, for example: *Adsett v West* [1983] 3 WLR 437; *Roads and Traffic Authority v Cremona* [2001] NSWCA 338; Queensland Law Reform Commission, *The Assessment of Damages in Personal Injury & Wrongful Death Litigation: Griffiths v Kerkemeyer, Section 15C Common Law Practice Act 1867* (Report No 45, October 1983) at pp 68–69, citing Balkin RP and Davis JLR, *Law of Torts*, 1991, at pp 391–392.

²⁷ At [73].

savings/inheritance fell under an estate claim and that s 10 of the Civil Law Act in turn barred the estate from claiming for such a loss. Justice Woo’s reasoning and concerns are addressed in subsections (2) to (5) of section A and section B of Part III of this paper.

39 There was an appeal against Woo J’s decision but it was later withdrawn because parties settled the claim. The law was thus left in an unsatisfactory position. Justice Woo himself acknowledged that, on his interpretation of the law, the dependants of someone who gave himself and his dependants very little income at present and kept reinvesting his savings in the hope of a better future, like the plaintiff in *Lassiter*, would face “apparent injustice” under the current methods of calculation. However, he concluded that it was a matter for the Legislature to address such a problem.²⁸

40 Accordingly, there is a need to cure this injustice by way of legislation.

²⁸ At [75].

II. The need for reform

A. Policy reasons why loss of savings should be expressly recognised as part of a loss of dependency claim

(1) In the past, cases usually involved deceased who did not have much savings

The loss of inheritance element of damages was infrequently asserted by the designated statutory beneficiaries in the older cases. Most of the decedents involved in the older death cases were persons struggling to support their families and, therefore not in the category of accumulators of wealth. Moreover, the limitations on the amount of damages recoverable in older death actions were such that plaintiff's attorneys were generally well satisfied to recover a full measure of loss of contributions, without getting involved in the separate issue of loss of inheritance.²⁹

41 For example, in *Gammell v Wilson*,³⁰ Lord Diplock commented, "If one ignores the savings element, which in most cases is likely to be small ... [the dependency would be equal to total future earnings minus the amount the deceased would have spent on himself]".

42 The social context against which the early cases arose may be the reason why the English courts did not consistently emphasise that savings were to be part of the dependency claim. However, most common law jurisdictions which base their legislation on Lord Campbell's Act follow the English case of *Nance v British Columbia Electric Railway Company Ltd*³¹ which states that savings are to be taken into account.³²

(2) Differences in the saving habits of Singapore society as opposed to other societies resulting in savings forming part of the true value of the dependency

43 Singapore, like Hong Kong, has a very different way of providing for social welfare as compared to Europe or UK. As a result, the general population may have to save more to guard against contingencies. The CPF itself is a type of enforced savings scheme and the courts have already held that CPF may be taken into account in a dependency claim.³³ The need to save is not obviated by the existence of CPF. It is probably not uncommon for the man on the street to dip into his savings in the event his dependants are in need of money, or to be more financially generous with his dependants only at the later stages of his life.

44 Today, there is a proliferation of savings and investment instruments that encourage the general population to save and generate different streams of income. With an aging population, where dependants over 65 are increasing and young

²⁹ Clark, Boardman and Callaghan, *Recovery for Wrongful Death & Injury*, *supra* n 15.

³⁰ *Supra* n 21, at 583e.

³¹ [1951] AC 601.

³² See p 16.

³³ *Singapore Bus Service (1978) v Lim Soon Yong* [1982–1983] SLR 167.

dependants decreasing, the income-earning population may realise that there is a need to save more.

45 In 1993, the Singapore Department of Statistics observed that:

[w]ith the middle-ageing of Singapore's population and households, more households are likely to experience the 'mid-life squeeze'. As household heads reach their forties, they are likely to be faced with increasing household expenses for their children's education and health care costs for their ageing parents. However, they are also likely to be near or at the peak of their career and income-earning capacity and therefore cannot expect prolonged, substantial increases in income. Middle-aged households with children in school-going ages, who form one-third of Singapore households, are likely to be the hardest hit by this 'mid-life squeeze' in household expenses and income.³⁴

Faced with the prospect of the mid-life squeeze, it is submitted that the reaction of most households will probably be to save (or invest) more, before and during the "squeeze".

46 When an income-earning member of the household is suddenly killed by the acts of a tortfeasor, their dependants may be left to face the mid-life squeeze. The failure to take into account the savings of the deceased may create the danger that the dependants are indirectly deprived of part of the true value of the dependency. A calculation based on the annual value of dependency may not adequately take into account any contingencies the dependant may have actually faced, the extent to which the deceased would have been prepared to help the dependant in that contingency, or the reasonable expectation of pecuniary benefit by the dependants. For example, in *Taylor v O'Connor*,³⁵ Lord Pearson recognised that the husband would be saving for the benefit of the family in the later years of his working life. The savings would have provided some present financial security not only for the husband but also for the dependants. In *Pym v The Great Northern Railway Co*,³⁶ the court recognised that a prudent parent would save from his income to provide extra advantages, such as social position, superior education and the greater comforts in life.

47 Accordingly, the failure to take into account the loss of inheritance/savings is not only a problem that would affect the minority of very rich entrepreneurs but also has the potential to affect the majority of the population, especially with the problem of an aging population. There is a need to adjust the law to cover this gap before the problem is driven home to the man on the street.

³⁴ Department of Statistics, Singapore, "Occasional paper on household statistics: Life cycle analysis of Singapore households", November 1993.

³⁵ [1970] 1 All ER 365.

³⁶ (1863) B&S 396; 122 ER 508.

III. The workability of allowing savings/inheritance in a dependency claim

A. Taking loss of savings into account in a dependant's claim is consistent with the existing law of dependency

(1) *The existing law of dependency aims to compensate dependants for all reasonable expectation of pecuniary benefit. This should include savings.*

48 In *Franklin v The South Eastern Railway Company*,³⁷ Pollock CD observed: “damages ... should be calculated in reference to a reasonable expectation of pecuniary benefit, as of right or otherwise, from the continuance of the life.”

49 This approach to assessing the value of dependency is the reason why the loss of services, pension and tax benefits are recoverable. While money can never truly replace the loss of a mother or father, the law tries to minimise the impact on dependants where it can, to the extent that such impact is financially quantifiable.

50 Lost savings, like loss of services, pension or tax benefits, are also part of the gaping hole a deceased leaves behind upon his unfortunate demise, rather than an additional surplus over the value of dependency. His savings would have formed a safety net for himself and his dependants to meet any unexpected contingencies.

51 Although Singapore authorities had not dealt directly with the issue of loss of inheritance/loss of savings, a claim for “loss of inheritance”:

- (c) is (apart from *Lassiter v To*³⁸) consistent with Singapore law;
- (d) is supported by English, Australian, Canadian and US cases applying legislation similar to Singapore's;
- (e) is supported by our local Singapore textbook, *Handbook on Damages for Personal Injuries and Death* by Michael Rutter³⁹ (“Rutter”); and
- (f) is supported by authoritative English textbooks such as *McGregor on Damages*, *Clerk & Lindsell on Torts*, *Winfield and Jolowicz on Tort*, and *Salmond and Heuston on the Law of Torts*.⁴⁰

52 The following authorities and cases from various jurisdictions⁴¹ expressly or impliedly recognise that loss of savings should be awarded because the dependants have a reasonable expectation of pecuniary benefit from those savings.

³⁷ (1858) 3 H&N 211 at 214; 157 ER 448.

³⁸ *Supra* n 3.

³⁹ Michael Rutter, *Handbook on Damages for Personal Injuries and Death* (Butterworths Asia, 2nd Ed, 1993).

⁴⁰ Modern editions, as well as those editions pre-dating the changes in the law in 1982 in England. See pp 15–16 below.

⁴¹ See paras 53–71 below.

(a) Academic opinion in Singapore

53 Michael Rutter, in *Handbook on Damages for Personal Injuries and Death in Singapore and Malaysia*, stated:

A tortfeasor will [after 1987] still have to pay (to the dependant relatives) an amount reflecting lost support derived from lost future earnings of the deceased, from the time of death to the end of the period in which he would have provided such support. He will no longer be required to pay any amount *to the estate* reflecting lost earnings of the deceased for the period after death.⁴²

54 Consistent with the principle enunciated in *Rutter*, the loss of CPF contributions have also been awarded in Singapore cases.⁴³

(b) Academic opinion in England

Winfield and Jolowicz on Tort⁴⁴

The [Fatal Accidents] Act simply says that the court may give damages proportioned to the injury resulting from the death to the dependants it does not say on what principle they are to be assessed, but Pollock C.B. [in *Franklin v S E Ry* (1858) 3 H&N 211] adopted the test which has been used ever since, that damages must be calculated: '*in reference to a reasonable expectation of pecuniary benefit as of right, or otherwise, from the continuance of the life*' ... [footnote] *Hence the dependants are entitled to recover where the deceased has been prevented from accumulating savings which they would receive from him*: Singapore Bus Co v Lim [1985] 1 WLR 1075.

...

... it is not necessary that the deceased should have been actually earning anything or giving any help, provided there was a reasonable probability ... that he would do so.

...

In a case under the Fatal Accidents Act the court is concerned with assessing what would have happened if the deceased had lived.

[emphasis added]

Salmond and Heuston on the Law of Torts⁴⁵

The dependency: the multiplicand

... Damages can be assessed under two distinct heads. *First, in respect of the sums which the deceased would probably have applied out of his income to the maintenance of his dependants; and secondly, in respect of such portion of any additional savings which he might have accumulated during the period which ... he would have lived. ...*

⁴² *Supra* n 39, at para 1202.

⁴³ See subsection (4) of this section A below.

⁴⁴ W V H Rogers, *Winfield and Jolowicz on Tort* (Sweet & Maxwell, 16th Ed, 2002) at paras 23-12 – 23-13.

⁴⁵ R F V Heuston and R A Buckley, *Salmond and Heuston on the Law of Torts*, (Sweet & Maxwell, 21st Ed, 1996) at p 547.

Nor is it necessary that any benefit should have been actually received from the deceased during his lifetime. [emphasis added]

Clerk & Lindsell on Torts⁴⁶

Damages are to be calculated 'in reference to a reasonable expectation of pecuniary benefit, as of right, or otherwise, from the continuance of the life'

...

... damages ... are intended to compensate the dependants ... for the loss of pecuniary benefits derived from the relationship subsisting between them. *Damages are thus not necessarily restricted to compensation for the loss of support, whether in cash or in kind, and it has been held, for example, in a case where the deceased had been making regular and substantial savings out of his income, that his dependants were entitled to damages for the loss of their interest in the savings which ... the deceased would have continued to make*⁴⁷ ... [emphasis added]

McGregor on Damages⁴⁸

The courts have evolved a ... [multiplier and multiplicand method] ... *Moreover, the value of the dependency can include not only that part of the deceased's earnings which he would have expended annually in maintaining his dependants but also that part of his earnings which he would have saved and which would have come to his dependants by inheritance on his death; ... Alternative methods of dealing with these savings have appeared: either they are regarded as comprised in the figure of annual dependency to be multiplied by the multiplier [two-way split] or they are excluded from the figure of annual dependency and a separate, and additional, sum is calculated and awarded in respect of them.* [three-way split]

There are, exceptionally, situations in which the court is entitled to regard this conventional method of computation as inappropriate and to arrive simply at an overall figure after consideration of all the circumstances. This is usually done because of the presence of too many imponderables in the case.

[emphasis added, words in brackets added for clarification]

(c) English cases which take loss of savings into account in awarding dependant's claims (ranging from 1951–2001)

Nance v British Columbia Electric Railway⁴⁹

First, if the deceased ... had eked out the full span of life to which ... he could reasonably have looked forward, what sums during that period would he probably have applied out of his income to the

⁴⁶ John Federic Clerk, *Clerk & Lindsell on Torts* (Sweet & Maxwell, 14th Ed, 1975) at paras 426 and 430.

⁴⁷ Citing *Taylor v O'Connor* [1971] AC 115, cf *Gavin v Wilmot Breeden Ltd* [1973] 1 WLR 1117, *Davies v Whiteways Cyclers Co Ltd* [1974] 3 All ER 168.

⁴⁸ Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 17th Ed, 2003) at para 36-038.

⁴⁹ *Supra* n 31, at 614 and 615 – 616.

maintenance of his wife and family? ... Secondly, in addition ... *it would be proper to award a sum representing such portion of any additional savings which he would or might have accumulated during the period ... he would have lived, as on his death at the end of this period would probably have accrued to his wife and family by devolution either on his intestacy or under his will, if he made a will.*

... The question there is what additional amount he would probably have saved during the x years if he had ... endured, and what part, if any, of these additional savings his family would have been likely to inherit.

[emphasis added]

Taylor v O'Connor⁵⁰

55 The House of Lords was prepared to take into account the deceased's savings because the savings would ultimately have gone to the wife and daughter.⁵¹ Lord Pearson and Lord Reid expressly contemplated that the deceased would have been mainly saving for the benefit of his family to provide them financial security. All the judges except Lord Guest had expressly factored savings into the calculation of the dependency.

56 Both methods (assessing the savings as part of the annual value of the dependency or adding a separate additional sum representing the savings) were used. Lords Morris, Guest and Pearson added the savings to the multiplicand, whereas Lord Reid and Viscount Dilhorne calculated such savings as a separate sum. Viscount Dilhorne took into account the fact that some of the deceased's savings would go towards post-retirement maintenance. All five of their Lordships also calculated as a separate sum, the savings which the deceased would have specifically built up in the partnership capital account by retirement, taking into account post-retirement expenditure and other contingencies.

57 Lord Reid, in calculating the value of the dependency, after deducting expenses by the deceased on himself and his dependants, concluded that the deceased would either have saved £2000 a year or that £2000 a year would have gone towards any increase that there might have been in the cost of living or any increase in the standard of living of the family.⁵² He considered that the widow and daughter would have had an interest in any capital that the deceased may have accumulated before his death and that the deceased would have saved as much as possible to provide for the future.⁵³ He awarded £6,000 for the £18,000 he considered that the deceased would have invested in his partnership business which would have been repayable to the deceased. He also awarded a further £5,000 for the £20,000 savings the deceased would have accumulated by the time of his natural death.⁵⁴

⁵⁰ *Supra* n 35.

⁵¹ Two other points to note from this case: the figure for savings will be quite reduced due to contingencies and Lord Reid had acknowledged that the line between savings and dependency may not always be so clear (the £2000 could have been used either to benefit his dependants or been saved up to form part of his estate).

⁵² At 367.

⁵³ *Id.*, at 369.

⁵⁴ David Kemp QC, *Damages for Personal Injury and Death* (Longman, 1993) at p 66.

Gavin v Wilmot Breeden Ltd⁵⁵

58 The court took part of the savings to be part of the dependency. The court's reasoning was that:

... if one ignores the savings ... [or if] there are no savings to be taken into consideration ... [then] the money is being expended, ... and, ... applying the ordinary probabilities, ... the increased household expenditure would result in greater benefit to the deceased man as well as to his wife; ... the standard of living of *both* spouses would go up.⁵⁶

59 Accordingly, the court subtracted the amount attributable to the increase of the deceased's standard of living from the savings and awarded the rest as part of the dependency claim. Stephenson LJ commented that savings were a part of the husband's income which might at any time have been used to increase the family's weekly expenditure: "Whether saved ... or spent, ... sooner or later, to meet the needs of the family, some part of it should be regarded as [spent for the benefit of the husband himself]."⁵⁷

Adsett v West⁵⁸

In general the bulk of a married man's income benefits his dependants and the proportion spent for his own benefit alone is small [generally only about a quarter or a third] ... [*It generally is right to assume that any money he would have saved would have been for the benefit of his dependants ... the element of savings will be part of the dependency ...*] [This is why] the "surplus" [of the estate] will in the case of a married man generally be the same as the dependency ... and will usually be of the order of the two-thirds or three-quarters.

Cape Distribution Ltd v Aine O'Loughlin⁵⁹

... where ... the deceased chose to reward himself very modestly while simultaneously increasing his assets, or put another way, in effect took his rewards for his labour partly in income and partly by building up his capital and income creating assets, it would be wholly unjust to assess the damages due to his dependants (or ... if ... his injuries had made him permanently unemployable) as if the calculation of any consequent loss should be based exclusively on the modest salary he paid himself. And the difficulties of ascertaining the appropriate and fair figure does not mean that the loss is speculative, or unproved. It is merely difficult to quantify.

60 From the major textbooks cited, it can be seen that English academic opinion is in support of savings being assessed as part of the value of the dependency. The cases cited immediately above show that, from 1951 to 2001, the English courts have taken savings into account in awarding dependants compensation in at least some cases.

⁵⁵ *Supra* n 47.

⁵⁶ *Id* at 1120H.

⁵⁷ *Id* at 1121E.

⁵⁸ *Supra* n 29, at 442H – 443A.

⁵⁹ [2001] EWCA Civ 178.

(d) Australian Law Reform Commission Reports which take the view that the current law in Australia (Queensland) allows for loss of savings to be taken into account in dependency claims

Queensland Law Reform Commission, *Damages in an Action for Wrongful Death*⁶⁰

... the principal source of pecuniary detriment is the loss of the deceased's net earnings, present and future. The basis of calculation is, therefore, the amount of his wages or other income from which must be deducted an estimated amount of what the deceased required for his own personal and living expenses. *The value of the dependency thus includes not only expected maintenance but also savings.*⁶¹ [emphasis added]

... The settled principle governing the assessment of compensatory damages ... is that the injured party should receive compensation in a sum which, so far as money can do, will put that party in the same position as he or she would have been in if the [wrongful act] had not been committed.... the calculation must not only quantify the damage already suffered by the time the claim is assessed, but also attempt to estimate the extent of losses likely to be experienced in the future.

[In Queensland, statutory limits appear to apply to the amount of compensation recoverable for personal injury damages.]

Queensland Law Reform Commission, *The Assessment of Damages in Personal Injury & Wrongful Death Litigation*⁶²

If the deceased was the breadwinner for the family, the loss suffered by the [dependants] is calculated by reference to the lost earning capacity [after taking into account contingencies] after deducting income tax and the proportion of the product of that capacity which he would have spent on his own maintenance.⁶³

61 The value of the dependency can include not only that part of the deceased's earnings which he or she would have expended annually in maintaining his or her dependants but also that part of his or her earnings which he or she would have saved and which would have come to the dependants by inheritance on his or her death. There may also be included a sum in respect of loss attributable to the cessation of contributions which the deceased, and his or her employers, had made to a superannuation or other fund of which the dependants were the nominated beneficiaries.

⁶⁰ Queensland Law Reform Commission Report No 57, November 2003.

⁶¹ Citing Fleming JG, *The Law of Torts* (LBC Information Services, 9th Ed, 1998) at p 735.

⁶² Queensland Law Reform Commission, *The Assessment of Damages in Personal Injury & Wrongful Death Litigation: Griffiths v Kerkemeyer, Section 15C Common Law Practice Act 1867* (Report No 45, October 1983) at p 69.

⁶³ Citing Balkin RP and Davis JLR, *Law of Torts* (Lexis Publishing, 1991) at pp 391–392.

(e) Australian cases which take loss of savings/inheritance into account in dependency claims.

*Clements Estate v Central Valley Taxi*⁶⁴

[where deceased husband had just changed his career to sales training and set up his own company]

Wife of deceased was entitled to [compensation] for present value of loss of potential savings resulting from loss of use of R.R.S.P as tax reductions. Recovery was also allowed for potential non-R.R.S.P savings ...

*Roads and Traffic Authority v Cremona*⁶⁵

Although ... a larger component of [the deceased]'s income would be applied to savings or investments the plaintiff and her children are entitled to claim what the deceased would have saved and ultimately left to them.⁶⁶

(f) Canadian cases which award loss of inheritance

*Remedies in Tort, 1996*⁶⁷

... beneficiaries are entitled to compensation for the amount by which the deceased's estate would have increased had he lived [subject to the probability of accumulation and inheritance]. However, in assessing damages under this head, the court must also consider the benefits which accrue to the claimants through premature inheritance of the deceased's estate ... [unless] the statutory beneficiaries enjoyed the inherited assets during the lifetime of the deceased.

*Jung Estate v Krimmer*⁶⁸

62 The principles to be applied in determining the measure of damages under the Families' Compensation Act⁶⁹ is:

the pecuniary loss suffered by the dependants as a consequence of the death, which is the actual financial benefit of which they have been deprived including any financial benefit which might reasonably be expected to accrue in the future if the death had not occurred.

[Guidelines] ... 1) What is the difference between the amount of capital available in fact to the dependants and the amount which would have been available to them if the deceased had not been killed?

⁶⁴ (1992) ACWSJ LEXIS 36193; SCBC New Westminster Registry No A910185, 26 November 1992.

⁶⁵ [2001] NSWCA 338.

⁶⁶ Citing *Davies v Powell Duffryn Associated Collieries, Limited* [1942] AC 601. *Nance v British Railway*, *supra* n 31, cited and followed.

⁶⁷ Release 6, Carswell: Thomson Professional Publishing, at para 118.

⁶⁸ [1990] 47 BCLR (2d) 145

⁶⁹ RSBC 1960, c 138.

2) Is there a reasonable expectation that in the future, if he had continued to live, the deceased might have withdrawn more of the company's earnings for the benefit of his family?

3) What sums, during the period of his working life expectancy, would the deceased probably have applied out of his income to the maintenance of his wife and family?

63 Applying these principles the court awarded a sum of \$35,000 for lost inheritance.

Lowry, Rondeau v Canadian Mountain Holidays⁷⁰

64 The court awarded loss of inheritance on the basis of continued savings up to 65, and salary increments and investment of the accumulated amount from 65 to 75 minus interest (as the court assumed that the interest will be used for expenditure) and subject to contingencies as well as acceleration.⁷¹

65 In the *Rondeau* claim, the court awarded no loss of inheritance to the wife, only to the children, on the basis that the deceased would have taken the entire value of his savings upon retirement to purchase a joint life and last survivor annuity paying an income for the rest of his hypothetical life, with 65% of the income continuing to the wife for her remaining lifetime, hence the court instead awarded her the value of lost annuity payments and the value of lost financial support deriving from the husband's future income from his profession.⁷²

Tompkins (Guardian ad litem of) v Byspalko⁷³

66 The court awarded loss of inheritance, taking into account the probability that the dependant may not have survived the deceased and that the deceased might not have left cash savings because she might have spent them on her post-retirement support. However, the court still concluded that on the deceased's hypothetical death her estate would probably have an enhanced asset value which would have gone to the dependant's inheritance.

Sharp Barker v Fehr⁷⁴

67 This case sets out a possible framework for calculating the award to dependants, which includes loss of inheritance.⁷⁵

... 5. Decide an amount adjudged to be what would be received by the family from the 'savings' or inherited portion of the deceased's assets, take its present value and make a statistical reduction that the wife will be alive at the end of the purchase period ...

⁷⁰ [1985] BCJ No 768.

⁷¹ *Ibid.*, at para 31. Quoted *Davies v Powell Duffryn*, *supra* n 66 and followed *Nance v British Columbia Railways*, *supra* n 31.

⁷² At paras 71 – 76.

⁷³ (1993) 1 CCLT (2d) 179 (BCSC).

⁷⁴ [1982] 39 BCLR 19.

⁷⁵ See Appendix 2, section I.

Consider amounts for mother and children proportioning them to equal the total of the value of the lost dependency and the lost inheritance ...

Consider the total figure ... as to whether it constitutes fair and proper compensation for the loss, make any warranted adjustments and decide the award. ...

[Court assumed half the savings would be for deceased's own retirement and the other half would have devolved upon his wife.]

(g) Malaysian case taking loss of savings into account for dependency claim

68 A Malaysian court has approved *Nance v British Columbia Electric Railway*,⁷⁶ which stands for the principle that the portion of future savings the deceased's family is likely to inherit must be taken into account in the determination of the loss of support. *Chan Yoke May v Lian Seng Co Ltd*⁷⁷ accepted that an amount equal to what the deceased would have saved should be added to the multiplier \times multiplicand method, taking into account acceleration and the contingency that the dependants may have died before him.

(h) US cases awarding loss of inheritance for dependency claim

69 The Federal Death on the High Seas by Wrongful Act ("DOHSA")⁷⁸ provides that:

The recovery in [a DOHSA] suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

*Martin v Atlantic Coast Line Railroad Company*⁷⁹

The measure of damages ... under [the DOHSA] ... is the same as that ... in a Lord Campbell's Act type of statute creating a right of action for wrongful death.

...

If the person injured had survived ... he would have added so much to his personal estate, which ... on his death, if intestate, would have passed to his wife and next of kin; in case of his death by the injury, the equivalent is given by a suit.⁸⁰

...

... A widow is entitled to a share of her deceased husband's estate if she outlives him. *If he is a man who is accumulating an estate ... the widow suffers loss from his untimely death with regard to what she*

⁷⁶ *Supra* n 31, at 615.

⁷⁷ [1962] MLJ 243.

⁷⁸ 46 USC (US) § 762.

⁷⁹ 268 F 2d 397 (5th Cir, 1959).

⁸⁰ Citing *Illinois Central R Co v Barron* 5 Wall 90, 18 L Ed 591.

*might inherit as well as what she might have from the husband for support*⁸¹

...

[T]he leading authors in this field of damages are in complete agreement ...:

Where the evidence shows that it is probable that the decedent but for his death, would have accumulated property, which, if he had died intestate, would have been inherited by the beneficiaries of the action, these facts constitute such a reasonable expectation of pecuniary benefit as to authorize a recovery of damages for its loss

...

[T]he damages are such as flow from the deprivation of the *pecuniary benefits which the beneficiaries might have reasonably received* [had the deceased not died] ... (Emphasis supplied.)

[T]he expectance of an inheritance from the deceased is a ‘pecuniary benefit which the beneficiary (of the action) might have reasonably received if the deceased had not died from his injuries.’ This fully accords with the usual and ordinary experience in our society.

... It is only an incidental and irrelevant fact that she would not have received these benefits until her husband died. The statute expresses no condition whereby the pecuniary benefits for which there is to be compensation must be expected within the lifetime of the decedent.

[emphasis added]

*Snyder v Whittaker Corporation*⁸²

... *Loss of inheritance is a permissible element of DOHSA damages ... In order to obtain loss of inheritance damages, a wrongful death plaintiff must prove ‘a reasonable expectation of pecuniary benefit’ ... The factfinder will look at the likelihood that the decedent would have accumulated substantial property; how much consumption and taxes would eat into any accumulations; the decedent’s past propensity to save or invest; and similar factors.*⁸³

70 The jury took into account the deceased’s stake in various partnerships, the fact that the family lived conservatively and the deceased reinvested much of his savings in his business, possibilities of substantial post-retirement earnings, saving propensity and concluded that the deceased’s estate would contain \$300,000 by the time he achieved his life expectancy. The court noted that “[w]hile this conclusion incorporates several inferences, those inferences are based on concrete figures and represent more than ... speculation.” Hence, it declined to disturb the jury’s loss of inheritance award.

⁸¹ Citing *O’Toole v United States*, 242 F 2d 308 (3rd Cir, 1957).

⁸² 839 F 2d 1085 (5th Cir, 1988) at [27].

⁸³ Citing *Tallentire v Offshore Logistics, Inc* 800 F 2d 1390 (5th Cir, 1986) at 1392, *Solomon v Warren* 540 F 2d 777 (5th Cir, 1976) at 790.

Rohan for Rohan v Exxon Corp⁸⁴

[headnotes] *Worker's widow could assert claim for loss of inheritance in DOHSA action ... [provided there is conclusive evidence showing that the decedent would probably have accumulated property that wrongful death beneficiary would have inherited]. Wrongful death and survival actions are distinct causes of action, and while damages for loss of inheritance [and loss of support] depend on calculation of the decedent's future income, loss of inheritance [and loss of support] is not a recovery for future earnings.* [emphasis added]

... for this reason, courts ... that have disallowed recovery for future earnings have ... allowed recovery for loss of support and loss of inheritance as distinct and separate remedies... Although [recovery of future wages is disallowed] "lost earnings may be proved for the purpose of determining loss of support and loss of inheritance".

It has been well established for many years that children have a reasonable expectation of benefiting from any prospective accumulation of their parent's estate, making a claim for loss of inheritance a valid pecuniary loss claim in an DOHSA action ...

...

In the DOHSA setting, it is well established that recoverable damages include ... loss of inheritance ... predicated on a showing of full or partial dependency.⁸⁵

Solomon v Warren⁸⁶

[headnotes] Under the Death on the High Seas Act, loss of inheritance from deceased parent was an item of damages recoverable by surviving children,

The measure of recovery under [the DOHSA] is the actual pecuniary benefits that the decedent's beneficiaries could reasonably have expected to receive from the continued life of the decedent.⁸⁷

71 The deceased parents had an established pattern of savings and investment in real estate and similar properties. The court was convinced that they would have systematically invested in real property throughout their natural lives:

Where the evidence shows that it is probable that the decedent ... would have accumulated property, which if he had died intestate, would have been inherited by the beneficiaries of the action, these facts constitute such a reasonable expectation of pecuniary benefit as to authorize a recovery for damages for its loss.⁸⁸

⁸⁴ 896 F Supp 666 (SD Tex, 1995) at pp at 673 and 670.

⁸⁵ *Id.*, at [17] – [18].

⁸⁶ *Supra* n 83.

⁸⁷ *Id.*, at [30].

⁸⁸ *Id.*, at [51], citing Francis B Tiffany, *Death by Wrongful Act* (2nd Ed, 1913) at p 378.

(i) Sub-conclusion

(a) The principle of “reasonable probability of pecuniary benefit” established in English, Australian, Canadian and US cases is broad enough to cover loss of inheritance/savings. This is a view supported by the clear wording of the English textbooks, *Rutter*,⁸⁹ as well as the practice of the other Commonwealth jurisdictions which apply the same principle. Since Singapore purports to adopt the same test,⁹⁰ then loss of inheritance/savings should also be taken into account in an award of loss of dependency, as an application of the above principle.

(b) The claim for loss of inheritance/savings in a dependency claim had been recognised in other Commonwealth countries long before 1987, and there was no reason to suppose that Singapore would deviate from accepted Commonwealth law. The Singapore authorities before *Lassiter*,⁹¹ while not expressly recognising this head in so many words, were all consistent with the principle, and some authorities were actually suggestive of recognition.⁹²

(c) The appeal against Woo J’s decision in *Lassiter* was not pursued as it was settled and the law is left in an unsatisfactory state. Accordingly, there is a need for the Legislature to affirm that loss of savings/inheritance can be taken into account in a dependency claim. Most textbooks and case law of other common law jurisdictions which also derive their dependency claims from Lord Campbell’s Act have accepted that this is the state of the law.

(2) *The Civil Law Act amendment of 1987 was only to bar double recovery and not all recovery.*

72 Section 10(3)(a)(ii) of the Civil Law Act (amended by the Civil Law (Amendment) Act of 1987⁹³), which abolished the right of the estate to claim for “any damages for loss of income in respect of any period after that person’s death”, was not intended to bar dependants’ claims for the loss of savings. In fact, the statutory bar was to avoid any overlap with dependants’ claims. This is indirectly evidenced by s 10(5) which essentially encapsulates how s 10 (estate claims) is intended to operate in relation to s 20 (dependant’s claims):

The rights conferred by this section for the benefit of the estates of deceased persons shall *be in addition to and not in derogation of any rights* conferred on the dependants of deceased persons by section 20 ... [emphasis added]

⁸⁹ *Supra* n 39.

⁹⁰ See *Christina Hanson, supra* n 7, at [26].

⁹¹ *Supra* n 3

⁹² See subsection (2) below as well as the discussion of CPF cases at subsection (4) on p 27.

⁹³ Act 11 of 1987.

73 At the Second Reading of the Bill to amend the Civil Law Act, the concern was to remove any potential for double recovery introduced by *Gammell v Wilson*.⁹⁴ Prof S Jayakumar on 4 March 1987⁹⁵ stated the reasons for the amendment as:

- (a) Double compensation may be payable in cases where the deceased's dependants are not also beneficiaries of the estate.
- (b) Where the deceased has no dependants, other persons, *eg* distant relatives, may receive a "windfall" and be unjustly enriched by such an award.
- (c) The estate claim for "lost years" is often higher than the loss of dependency claims. In some cases, dependants may obtain damages which are more than their actual loss of dependency. Such cases include cases where the dependants are already elderly and are likely to have died before the deceased person had he not met with a premature death in an accident.

74 At the same time, Prof Jayakumar also called for an expansion of the categories of dependants in order to ensure that other relatives who are actually dependant on the deceased but did not fall within the then existing categories could claim for loss of dependency. The purpose of the expansion was to prevent undue hardship or injustice to dependants. This further demonstrates that the intention of the Legislature then was not to deny dependants their right to full compensation of reasonably expected pecuniary benefits.

75 In *Ho Yeow Kim v Lai Hai Kuen*,⁹⁶ Yong CJ held that the 1987 amendments had not altered the law relating to dependency claims. Woo J in *Lassiter*⁹⁷ accepted this, but came to the conclusion that the pre-1978 law of dependency had not included or expressly considered loss of savings as part of a dependency claim. Woo J also recognised that his conclusion gives rise to the need for the Legislature to make a clear statement of what the law should be.

(3) *There is no residual danger of double recovery by the estate and dependants because in Singapore, dependant and estate claims can be subsumed in one action.*

76 There is little danger of double recovery because in Singapore, dependant and estate claims can be subsumed in one action. The *Assessment of Damages: Personal Injuries and Fatal Accidents* states that:

In a case where both the estate claim and the dependency claims are brought by the beneficiaries of the estate who are also dependants of the deceased person, the court will 'merge' the two claims. ... the claim that is smaller in quantum will be subsumed under the claim with the larger quantum, thus avoiding over-compensation or double claims by the same group of claimants.⁹⁸

⁹⁴ *Supra* n 21.

⁹⁵ *Singapore Parliamentary Debates, Official Report* (4 March 1987) vol 49 at cols 66 – 69.

⁹⁶ [1999] 2 SLR 246.

⁹⁷ *Supra* n 3.

⁹⁸ *Assessment of Damages: Personal Injuries and Fatal Accidents* (Subordinate Courts and Butterworths, 2001) at p 710.

There is no danger of double recovery if the judge is careful in his mathematics. Uncertainties such as how much the deceased is willing to leave to each dependant, the chances that the dependant may have predeceased the deceased had he lived, as well as deductions for taxes, acceleration and other contingencies can all be taken into account in the particular case as a matter of probability.⁹⁹ Therefore, such reasons should not be used to reject the award of loss of savings in principle.

(4) *If loss of future CPF contributions is awarded to the dependants as a reasonably expected pecuniary benefit, other types of savings should be similarly awarded.*

77 CPF has been recognised as a scheme of enforced or compulsory savings¹⁰⁰ and the courts have already held that CPF may be taken into account in a dependency claim.¹⁰¹

78 Loss of future CPF contributions had been awarded under the dependants' claim in *Singapore Bus Service (1978) Ltd v Lim Soon Yong*.¹⁰² The award of future CPF contributions, like the award of loss of inheritance in other jurisdictions, is dependant on the probability of inheritance. *Assessment of Damages* (2005) states:

[In two cases], the children were granted a share of the estimated loss attributable to the cessation of CPF contributions even though they would have attained majority before the deceased, if he had lived, could withdraw his CPF monies. However, in *Gul Chandiram v Chain Singh* [1999] 1 SLR 154 (SGHC), the court found it highly unlikely that the daughter would be financially dependant on the contributor at the time the monies were withdrawn or that any part of the CPF monies would remain to constitute part of the deceased's estate. As such, the likelihood of the daughter *getting a pecuniary benefit ...* either when the monies were withdrawn *or by inheritance* was a matter too speculative and too remote for any award of damages to be made ...¹⁰³

79 It would only be consistent to treat other types of savings in a similar manner and award compensation as well. In *Tan Harry v Teo Chee Yeow Aloysius*, when discussing deduction of benefits from the dependant's award, the court noted that the CPF and the deceased's savings should in principle be treated in the same manner.

⁹⁹ *Davies v Powell Duffryn*, *supra* n 66, at 613; *Taylor v O'Connor*, *supra* n 35.

¹⁰⁰ *Chan Heng Wah v Peh Thiam Choh* [1987] SLR 132 at 139; *Singapore Bus Service (1978) v Lim Soon Yong*, *supra* n 33; *Lee Wee Hiong v Koh Ah Sai Victor* [1989] SLR 1029; *Ang Song Huay v Chu Yong Thiam*, *supra* n 14. (See also *Tay Say Moi v Mua Hin*, *supra* n 5; *Lim Soh Neo v Amirtham*, *supra* n 14; *Ng Li Lian v Port of Singapore Authority* [1997] SGHC 62; *Guo Xiuhua v Lee Chin Ngee* [2001] SGHC 190; *Asmah v Damen Shipyards*, Suit 729 of 2002 (High Court); *Zhang Xiao Ling v Er Swee Poo* [2004] SGHC 21.)

¹⁰¹ The court in *Zhang Xiao Ling*, *id.*, awarded the widow 50% of the deceased's lost CPF contributions as it considered that she had a reasonable expectation of benefiting from the deceased's CPF contributions. It did not award the children any of the deceased's lost CPF contributions. The court considered that the children would not have had a reasonable expectation of benefiting from such moneys because they would have ceased to be dependant by the time CPF moneys could have been notionally withdrawn.

¹⁰² [1985] 1 WLR 1075.

¹⁰³ *Supra* n 6, at p 102.

“Once the claim for lost years was abolished, there was no need to deduct [certain collateral benefits received outside of an estate claim] from a dependency claim.”¹⁰⁴

80 Even though this case was dealing with deduction of collateral benefits, the same reasoning can be applied to loss of savings, *ie* the fact that statute has precluded the estate from claiming loss of savings does not mean that dependants are also impliedly barred from claiming loss of savings by reason of the same statutory provision barring estate claims.

81 In *Singapore Bus Service v Lim Soon Yong*, the deceased had nominated his wife and his parents as beneficiary. The defendants contended that the loss resulting from the cessation of contributions to the fund is a loss suffered by the deceased’s estate. The Court of Appeal had said that:

CPF contributions are not chargeable with estate duty. The money does not go to the estate of the contributor. In this case it goes to the widow and the parents ... Had the deceased lived to ... 55 he would have withdrawn [his CPF] and the widow and children would necessarily have benefited from the deceased having this money ... therefore, the CPF contributions do form part of the widow’s dependency claim.¹⁰⁵

82 On appeal to the Privy Council, the court stated that damages for loss of dependency is based on the reasonable expectation of pecuniary benefit or benefit reducible to money value:

The courts following this statement of principle [citing *Davies v Powell Duffryn*¹⁰⁶] have frequently awarded damages to compensate for loss going beyond that of daily maintenance. For example ... they have taken into account the value of services rendered to the dependants ... and have compensated a dependant who had a reasonable expectation of benefiting under the will of the deceased for the fact that the value of the estate would have been greater if the deceased had lived longer and so been able to save more for his dependants.¹⁰⁷

83 The method of including an additional sum representing savings in *Nance v British Columbia Railways*¹⁰⁸ was cited and the court concluded:

On the facts ... their Lordships can see no material difference between the loss of the expectation of a greater sum payable from the fund in consequence of additional contributions that would have been made and the loss of expectation under a will or intestacy resulting from additional savings. The widow and the parents had an expectation that they would benefit personally from the fund ...

The deceased might have lived beyond 55 and withdrawn the sum standing to his credit. *In that event it is reasonable to infer that he would have used the money not only for his own benefit but for the*

¹⁰⁴ *Tan Harry v Teo Chee Yeow Aloysius*, *supra* n 11, at [95].

¹⁰⁵ *Supra* n 33, at [15].

¹⁰⁶ *Supra* n 66.

¹⁰⁷ *Supra* n 102, at 1078E.

¹⁰⁸ *Supra* n 31.

benefit of his dependants. To the extent that he did not spend it he would have saved it and his dependants, particularly his widow who was younger than he was, would reasonably have expected to inherit from him.

... The fact that in England, before the Administration of Justice Act 1982 damages could be claimed by the estate for loss of the ability to earn over the ‘lost years’ ... did not take away the right of dependants to claim for their loss of dependency. The claim by the estate might affect the valuation of the claim by the dependants to the extent that they benefited from the estate but the two claims are independently sustainable.¹⁰⁹

84 For a consistent approach, normal savings should be treated similarly to CPF, as there is no logical distinction between the two. The courts are already familiar with assessing the likelihood that a dependant will obtain a pecuniary benefit from CPF moneys. It would not be difficult to extend the same assessment to other types of savings. Moreover, in *Low Yoke Ying v Sim Kok Lee*,¹¹⁰ Yong CJ held that, in principle, there appeared to be no reason why dependants should not also be entitled to claim for any loss of support which they would have derived from a pension, gratuity or other post-retirement income which the deceased would have received, had he not been killed.¹¹¹ To the extent that CPF and other retirement planning schemes may also derive in part from the enforced savings of the deceased, it would be inconsistent to take such losses into account and yet exclude any benefit from loss of future savings/inheritance.

(5) *An award for loss of savings/inheritance in a dependants’ claim is different in nature from the prohibited recovery of loss of future earnings in an estate claim.*

85 Unlike an estate claim, the dependants do not benefit *qua* dependants unless the accumulation of wealth results in an increase in the amount spent on them annually; the dependant’s claim will be contingent on both the probability that the defendant would have accumulated an estate and the probability that the dependant would have inherited.¹¹² These probabilities can be assessed by the courts, and reduction made for contingencies, when determining the final award for the dependants. A dependant’s claim for lost savings is thus different from an estate claim for lost accumulations.

B. Loss of inheritance is a calculable loss

86 The cases from other jurisdictions illustrate that loss of savings or inheritance is a calculable loss, and it should be calculated as fully as possible, in order that dependants not be deprived of their full and just compensation, as far as money can compensate them for the loss of their breadwinner.¹¹³

87 As the Court of Appeal stated in *Ho Yeow Kim v Lai Hai Kuen*:

¹⁰⁹ *Supra* n 102, at 1079E – 1080C.

¹¹⁰ [1990] SLR 1258; [1990] SGHC 111.

¹¹¹ *Assessment of Damages*, *supra* n 6, at para 9-49.

¹¹² *Davies v Powell Duffryn*, *supra* n 66, at 613; *Taylor v O’Connor*, *supra* n 35.

¹¹³ See Appendix 1: Sums Courts Have Awarded For Loss of Savings or Inheritance.

the calculation of the value of the dependency [the multiplicand], is a matter of hard dollars and cents subject to the element of reasonable future possibilities.¹¹⁴

88 Accordingly, the reason for the need to expressly take into account loss of savings or inheritance is not only for theoretical coherence and equality of treatment (between savers and non-savers), but also because dependants, especially of middle-aged breadwinners who have established a savings trend, face a real financial loss. To ignore the substantial anticipated savings of such a breadwinner, who has been killed in the years where he is probably saving the most, is to ignore *the purpose* of what he is saving for. If he had been saving to donate all his life's savings to a charity, or to meet his own retirement needs, then that part of his savings can be safely disregarded. However, if he had been saving to create a safety net for his dependants in case of contingencies, it is more than likely that, in his later years, his safety net (or even any excess retirement money), would go to the benefit of his dependants, either just before or after death. The standard of living of his dependants would have been artificially depressed in order to create this safety net, and excluding future savings which would have been left to them after death or spent on them in the later years (as is the law under *Lassiter*), would deprive dependants of their reasonable expectation of pecuniary benefit.

89 Any fear of double recovery (although there should not be any) is eliminated because:

In a case where the beneficiaries of the estate claim and the dependency claim are the same, the court will merge the two claims: *Hongkong Bank Trustee (Singapore) Ltd v Rajinder Singh* [1992] 2 SLR 31; *Lee Wee Hiong v Victor Koh Ah Sai* [1989] SLR 1029. The claim that is smaller in quantum will be subsumed under the claim with the larger quantum, thus avoiding over-compensation or double claims by the same group of claimants.¹¹⁵

¹¹⁴ *Supra* n 96, at [16], citing *Davies v Powell Duffryn*, *supra* n 66.

¹¹⁵ *Assessment of Damages*, *supra* n 6, at para 9-58.

IV. Possible consequences

A. *A potential increase in insurance premiums and how fully dependants should be compensated: a policy decision to be made by the Legislature*

90 Certain concerns in recognising the loss of savings in a dependency are neatly encapsulated in Luntz, *The Purpose of Damages in Tort Law*:¹¹⁶

compensation of the plaintiff cannot constitute a single purpose underlying the whole law of damages in tort ... since ... compensation can be more efficiently effected by means of social insurance.

... In practice, in nearly all personal injury actions, the damages are paid, not by the wrongdoer, but by the community through its contributions to compulsory and voluntary liability insurance premiums and the costs built into the prices of goods and services.

... [Also] the major pecuniary benefits which the beneficiaries would have expected were derived in most cases from the deceased's earnings ... and already wealthy people are likely to have insurance and superannuation benefits which their dependants will inherit and which under amendments to the original Lord Campbell's Act legislation are now disregarded when they were once taken into account in reduction of the damages consequent on the death.¹¹⁷ The redistributive effect in favour of the rich is manifest.

91 The counterpoint to these concerns is stated in an article "The Effects of Insurance on the Law of Damages",¹¹⁸ where Justice Derrington pointed out that the original effect of insurance was to allay the court's concern for the ruinous effect of heavy damages upon the wrongdoer, especially if any moral fault is relatively slight. With insurance, the courts are more at liberty to apply the primary principle that a wrongly injured party should be restored, so far as money can do it, to the position enjoyed before the loss. An award for personal injury should be fair but not perfect, which warns against any instinctive response that no amount is too large to atone for the plaintiff's suffering. In the context of pecuniary loss, "all that it is meant is that the impossibility of predicting the future accurately defeats any attempt at perfection and contingencies which may not occur must still be allowed for. *Where however the loss can be established, fairness requires full indemnity...*"

92 The award of lost savings would not result in a minority benefiting at the expense of the insurance-paying majority. First, the savings pattern of the victim should be reflected in the award. It is submitted that the current rule may mean that both a living victim and the dependants of a victim who chose to spend more on his dependants, or had no established savings pattern, would have recovered a larger sum than a thrifty deceased, which may be a somewhat arbitrary result. Second, savings may not in reality be truly that distinct from the value of the dependency. To that extent, it constitutes part of the loss sustained by the dependant as a result of the tortfeasor's

¹¹⁶ In P D Finn (now Justice Finn), *Essays on Torts* (Law Book Company: Sydney, 1989) at pp 243, 261, 263.

¹¹⁷ In a footnote, Luntz also observes that his own argument is slightly weakened, but not proportionately, by the disregard of social security pensions.

¹¹⁸ In P D Finn, *Essays on Damages* (Law Book Company: Sydney, 1992) at p 153.

wrongdoing. Third, the fact that most people earn a salaried income and therefore would not face such a problem should not prejudice those who choose to be entrepreneurs and had the skill to be successful. Moreover, even those who earn salaried incomes may choose to plunge their savings into other investments, and generate other income streams. It may be unfair to penalise this class of people (who may at present be a minority but in future may be a substantial part of the population) in this manner. The fact that the difference would only become very substantial for certain cases might also have been the reason why savings were allowed to fall through the gap until now.

93 However, Luntz's concerns do make a valid point: insurance premiums may be affected if savings are taken into account when they previously have not been. Some societies require their citizens to invest more heavily in insurance than others and it is a balance to be struck in each society how fully compensated the victims of tortfeasors should be. Each society has different savings trends and retirement arrangements (pensions, superannuation funds, CPF) which may affect how this balance is to be struck.

94 This proposal for reform not only advocates that the balance be struck in favour of full compensation, it also calls for the balance to be at least struck clearly and after full consideration of the ramifications of any decision of the Legislature on this issue. The authorities in Australia, Canada, US and Hong Kong have clearly allowed loss of savings to be claimed and in practice, they have shown it to be workable in a framework of legislation that is similar to Singapore's. Unlike pain and suffering or bereavement, the loss of savings is a pecuniary loss. It is no harder to quantify than the loss of future earnings or earning capacity. The plaintiff's net income acts as a natural cap on this loss. Dangers of double recovery can be dealt with as a matter of experience, logic and mathematics in each case, as in Singapore only a single claim on behalf of all dependants is brought and can in the appropriate case be merged with the estate claim. Accordingly, what remains for the Legislature to decide is: as a question of policy, is it desirable to have loss of savings expressly and officially recognised as a possible element of a dependant's claims?

APPENDIX 1:
SUMS COURTS HAVE AWARDED FOR
LOSS OF SAVINGS / INHERITANCE

Canada	Deceased	What awarded	Sum: Canadian dollars C\$
Jung v Krimmer 47 BCLR (2d) 145 Owner of family poultry business	Age 56 yrs, family business “The [trial judge] failed to take into account that the [deceased’s company] had been keeping its directors’ and management low in order to create a reserve in respect of certain litigation that had been commenced against the company in 1974. It had been intended that more money would be available to the directors once the litigation was resolved ... A better earnings estimate was \$120,000 a year ...”	Minimal deduction for accelerated inheritance because widow had little control over assets after his death, used the assets more for her children’s benefit, and also because, by the time of the action, widow herself had died and deduction for acceleration had been made for the children’s receipt of an accelerated benefit.	\$210,000 reduced to \$175,000 (after deducting \$35,000 for acceleration) No loss of dependency because the widow drew director’s fees from the family company in his stead
Lowry, Rondeau v Canadian Mountain Holidays [1985] BCJ No 768	Vice President of Spear and Jackson (Canada) (manufacturer of industrial saws), accumulated \$41,000 at time of death, from which savings pattern of 15% of take-home pay derived. Counsel had calculated inheritance at \$319,000 based on continued savings to age 65 of unchallenged percentage of 15% of take-home pay, salary increment of 5–5.5% pa then investment of the amount accumulated to age 65 for a further 10 yrs. Counsel estimated the present value to be \$41,000, to which 23% probability of widow predeceasing him will apply.	Present value of loss of inheritance assessed at \$35,000 because there would have been encroachment on savings at least to extent of interest earned on amount saved after deceased reached 65. Deduct \$13,000 for acceleration and further \$12,000 as the value of accelerated receipt of the car and two condominiums.	\$10,000 Value of lost support Pre-trial: \$46,800 Post-trial: \$95,222 + \$21,600 (from pension) Total loss of support: \$163,322
<i>Tompkins v Byspalko</i> 1 CCLT (2d) 179 (British Columbia Supreme Court)	Counsel’s calculation: When daughter ceased dependency, mother would have accumulated savings until stopping work at age 65, assumed 10% inheritance and allowances made for early death of daughter and mother based on life expectancies as well as taking into account post retirement expenditure.	Discount for early receipt \$5,000	Loss of inheritance \$20,000 Loss of past services \$48,600 Future services: \$31,000 Past support: \$38,000 Future support: \$49,000 Future medical/dental

			benefits (from deceased's insurance) Total: Loss of services \$79,600 Loss of support \$87,000
Sharp Barker v Fehr [1982] 39 BCLR 19	Grinder operator and machine helper with Canadian Pacific Rail. Estimated savings \$3,000 pa after deducting personal spending and annual support of child and wife, high school education. Income at death: \$29,200 pa.	Present value of inheritance of \$1,500/yr for 20 yrs, being savings for the family and half the total predicted savings of \$3,000 pa, taking into account termination of marriage after 20 yrs.	\$11,300 (Value of dependency \$89,500)
Keizer v Hanna (1978) 82 DLR (3d) 449	Tool-room foreman, capable, conscientious, industrious and in good health, age 33 yrs, one infant child age 6 mths. Gross future income \$15,000.	Court assessed \$7000/mth (to be available to dependants each year after expenses) × 31yrs (multiplier), discount 6.5% on exhausting fund basis, allowance for income tax payable had he lived, further reduction of contingency.	\$100,000 (loss of support that impliedly takes into account savings, no separate assessment of loss of savings or inheritance)

Australia	Deceased	What awarded	Sum: Australian dollars \$
Lamb v Southern Tablelands County Council (1988) Aust Torts Reports, para 80-220	<p>(Grazier: co-owned and operated 507 ha sheep farm with father. Father intended to progressively give property to deceased but after deceased's death, left it to his wife and three daughters instead)</p> <p>Loss of inheritance because had the deceased lived, he would have acquired by gift the remainder of the property and that property would probably have accrued to his wife and family by devolution.</p> <p>[NB: This is an unusual case. If the deceased was dead, the grandfather would have willed it to some other beneficiary and the fact that the grandfather did not will it to the deceased's</p>	Loss of inheritance (discount 25%) and reduced by \$5000 for probable acceleration of inheritance	<p>Loss of inheritance: \$152,208</p> <p>Loss of support Past: \$27,452 Future: \$235,962 Total: \$263,414</p> <p>Loss of services: \$39,899</p> <p>Loss of provision of car Past: \$20,364 Future: \$106,590 Total: \$126,954</p> <p>Loss of free fuel <i>etc</i> Past: \$5831 Future: \$41,047</p> <p>Loss of fuel: \$46,878</p>

	dependants was a deliberate choice, the only loss here was the loss of a chance to inherit.]		
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United States	Deceased	What awarded	Sum: US dollars \$
<i>Snyder v Whittaker Corp</i> 839 F 2d 1085 (5th Cir, 1988)	Experienced shrimp boat captain	Loss of inheritance damages	Loss of inheritance: \$300,000 Loss of support: \$680,000
<i>Solomon v Warren</i> 540 F 2d 777 (5th Cir, 1976)	Both parents killed. Parents had established pattern of savings and systematic investment in real property that would have continued throughout their natural lives. Father's salary had risen from \$12,850 to \$23,000 in the last 11 yrs before his death, anticipated work life of 21 yrs.	Loss of inheritance damages (dissenting judge said that there was too much uncertainty and double recovery because the increased income came from real property investments from the existing estate not earned income and no or insufficient deduction had been made for living expenses)	Total combined loss of inheritance of \$499,998 (global award) (\$83,333 from each parent's estate for each of the 3 children) Loss of support (for 3 children): \$8000 Loss of schooling: \$24,000 Loss of parental guidance (from both parents): \$183,000

Malaysia	Deceased	What awarded	Sum: Ringgit \$¹¹⁹
<i>Chan Yoke May v Lian Seng Co Ltd</i> [1962] MLJ 243		Estimate would have applied present value of \$43,596 to benefit of dependants	Global award \$35,000 (for dependency and savings)

England	Deceased	What awarded	Sum: British pound £
<i>Gavin v Wilmot Breeden</i> [1973] G No 3166		Estimated would have accumulated £20,000 capital which would have gone to respondent or daughter	Savings/inheritance: £5,000 (allowing for contingencies and high rate of interest) Award of dependency (based on maintenance of £15/wk) = £14,040

¹¹⁹ Malaya and British Borneo dollars.

<p>Taylor v O'Connor [1970] 1 All ER 365</p>	<p>Age 53 yrs, life expectancy 18 yrs remaining, net spendable income \$6000 pa</p> <p>Lord Reid: "... it is not suggested that there was any substantial likelihood that the husband would have done other than bequeath his estate to the respondent or the daughter. ...</p> <p>... he would ... have saved as much as possible to provide for the future. ..."</p> <p><i>Per</i> Lord Morris: some part of deceased's expenditure for dependants' benefit would have taken the form of ensuring that there was suitable provision for them for future years.</p>	<p>Lord Guest: £1,750 pa for 12 yrs less post-retirement expenses, insurance payments, estate duty.</p> <p>Lord Reid: £2000 pa to be used as savings or meeting the increasing cost of living.</p> <p>Viscount Dilhorne: deceased would have spent £3,250 on his dependants and surplus [£1,750 × 12yrs = £21,000] deduct personal and family's expenses post-retirement, insurance premiums, estate duty</p>	<p>Viscount Dilhorne: £3,500 (discounted to present value)</p> <p>Lord Reid: (£2000 pa = £20,000) present value = £5000 after discount</p> <p>Lord Pearson: £4000 (both maintenance and savings)</p> <p>Lord Morris: £3750</p> <p>Ultimately, total award for dependency all judges agreed with trial judge's figure of £3750 pa although for different reasons</p> <p>Final award: £45,000 as value of dependency, including savings/inheritance (no separate sum for savings/inheritance awarded)</p>
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Hong Kong (loss of accumulation of wealth)	Deceased	What awarded	Sum: Hong Kong dollars \$¹²⁰
<p>Chan Yee Mei v Leung Chi Fei [2007] HKCU 205</p>	<p>Age 72 yrs, lady, employed by family car service business as part-time clerk, gratuitous child-minding services for family</p>	<p>\$705 pension payment/mth × 10yrs on basis that deceased would have used whatever children gave her for minimal living expenses and hence would be able to save entire pension payment [NB: this reasoning may not be applicable to a dependency claim]</p>	<p>Loss of accumulation of wealth on old age pension :\$84,600</p> <p>Loss of services: \$40,000</p>
<p>Lee Sik Yee v Lo Wing Hong HCPI 21/2006</p>	<p>Had son and daughter, frugal, civil servant earning \$19,721/mth at time of death</p>	<p>\$4000 surplus after expenses + \$1,607 insurance payments which should also count as savings = \$5,600/mth up to retirement \$5,600 × 40 = \$224,000</p> <p>On retirement, lump sum of \$675,650 + monthly</p>	<p>Loss of accumulation of wealth: Final award \$450,000 after deductions</p> <p>Loss of dependency Pre-trial: \$266,842 Post-trial: \$520,652 Total: \$787,494</p>

¹²⁰ In Hong Kong, bereavement is usually at HKD150,000 or HKD70,000 unless otherwise agreed.

		<p>pension \$4020 – death gratuity \$594,049.68 + contributions by son and daughter after graduation (3 yrs after retirement) = \$2000/mth, beginning 3 yrs after retirement</p> <p>Global figure of \$500,000 for post retirement savings after giving credit for death gratuity</p>	
Pun Lai Ling v Hong Kong [2006] HKCU 505	Frugal and hardworking, married, employed as petrol station worker	Living rent-free with free meals supplied by brother + MPF ¹²¹ payout upon retirement. Children to become independent in 12 – 16 yrs, freeing up more money for savings	<p>Loss of accumulation of wealth: \$250,000 (lump sum)</p> <p>Loss of dependency Pre-trial: \$246,100 Post-trial: \$563,300 Total: \$809,400</p>
Lee Hang Kuen v Chan Hong [2006] HKCU 281	Construction worker at time of death. If he had lived he would have qualified as electrician/metal worker earning \$800/day, not heavily in debt, age 21 yrs	<p>Median income assessed at \$21,000, \$6000 left after contributing to family.</p> <p>Pre-trial loss of accumulation: $\\$2,500 \times 62\text{mths} = \\$155,000$</p> <p>MPF (employers + own) contributions \$1000/mth each = $\\$62,000 \times 2 = \\$124,000$</p> <p>Post trial income \$24,000/mth. Savings: $\\$3300 \times 16\text{yrs} \times 12\text{mths} = \\$663,600$ + MPF \$384,000 = \$1,047,000</p> <p>No further deduction as low multiplier already takes into account uncertainties of life.</p>	<p>Loss of accumulation of wealth Pre-trial: \$279,000 Post-trial: \$1,047,000 Total: \$1,605,000</p> <p>Total loss of dependency (for 2 dependants): \$532,320</p> <p>Loss of service: \$24,000</p>
Li Hoi Shuen v Man Ming Engineering Trading HCPI 8/2004	Age 21 yrs, 3 dependants, monthly contribution \$5,500, earned \$12,000 at time of accident, air-con technician, unmarried	During early stage of career, unjust to jump to conclusion that no saving pattern as deceased did not earn much and could not save much, unless there was some evidence that he would not have saving pattern in future	<p>Loss of accumulation of wealth: Global award \$160,000</p> <p>Loss of dependency Pre-trial: \$199,270 Post-trial: \$192,038 Total: \$391,308</p>

¹²¹ Mandatory Provident Fund, Hong Kong equivalent of CPF.

Tsang Choi Yung v United Christian Hospital [1993] HKLY 471	\$13,500/mth earned income at time of death, age 25 yrs	Although savings exhausted from time to time, deceased would have been able to save up money in future when salary eventually goes out. Multiplier 14, multiplicand 20% of earnings pre-trial, 40% of estimated earnings post-trial	\$1,020,900
Cheung Kai Chi v Chun Wo Contractors Ltd HCPI 572/2004	Welder ganger at construction site, 2 sons	<p>Before younger son goes to university, deceased and wife's savings \$24,000 pa × 2.5yrs = \$60,000.</p> <p>After university, \$2000/mth.</p> <p>By 2009, son should get job and savings increase to \$8500/mth</p>	<p>Total savings \$60,000 + \$2000 × 10mths + \$8500 × 12 × 2 = \$284,000</p> <p>+ MPF (own and employer) \$216,000 + children's contributions = global assessment \$450,000 (reduced to \$337,500 for contributory negligence)</p> <p>Loss of dependency: \$604,800 + \$673,440 reduced by 25% contributory negligence = \$858,680</p>
Li Lai Fun v Leung Yiu Cheung CACV 253/2005	Age 42 yrs, driver, married with responsible children, simple and hardworking life	Post retirement fund of \$800,000 – (exhaustion of \$25,000/yr = total exhaustion \$500,000) = balance \$300,000. Discount 30% for early receipt	<p>Loss of accumulation of wealth: \$200,000 from MPF contributions (on appeal sum of MPF contributions was reduced due to an error) so final award reduced to \$132,300.</p> <p>Loss of dependency Pre-trial: \$960,750 Post-trial: \$1,211,250 Total: \$2,172,000</p>
Ting Kam Yuen v Ng Tai Sing DCPI 32/2002	Age 30 yrs, fisherman, healthy, filial, hardworking frugal, no bad habits, thrifty	Absence of savings pattern, post-retirement expenses would have been more than pre-retirement as no free meals, contributed most of his income to family, would have gained more skills and experience which would have increased his income, have more money to save when mother passed away and son became financially independent	<p>Loss of accumulation of wealth: Global award \$80,000</p> <p>Loss of dependency: \$242,050</p>

<p>Leung Tsang Hung v Tse Yiu Pui HCPI 595/2002</p>	<p>Frugal working mother with 2 children, illegal hawker</p>	<p>After mortgage paid off, pre-trial loss of saving (after deducting household, dependants' and personal expenses) = $(\\$1925 \times 34\text{mths}) + (\\$1725 \text{ (after daughter's pocket money reduced by } \\$200) \times 15) = \\$91,325$</p> <p>Son independent, savings \$4170.40, daughter independent \$6660.80.</p> <p>Post-trial loss of savings for 8 yrs $= (\\$1725 \times 12 \times (7 - 4.25) + \\$4170.40 \times 12) + (\\$6660.80 \times 12 \times 11)$ assuming working up to 60 yrs. Discount of 20% for increased personal expenditure and healthcare in later years.</p>	<p>Loss of accumulation of wealth Pre-trial: \$91,325 + 80% discounted post-trial loss \$788,956.32 = \$880,281.32</p> <p>Assume interest from investment of savings and pocket money from children will be adequate to support post-retirement expenses until death.</p> <p>Global sum \$880,000 awarded</p> <p>Loss of dependency (for 2 dependants) Pre-trial: \$243,725.80 Post-trial: \$192,766.20 Total: \$436,492</p>
<p>Lam Fung Ying v Lui Kwok Fu HCPI 826/2002</p>	<p>Age 35 yrs, construction painter, purchased flat and paid mortgage = evidence of accumulation of wealth</p>		<p>Loss of accumulation of wealth: Post trial loss: \$3500 (earned income) $\times 24\text{mths} \times 10\% = \\8400 \$9000 (earned income after construction industry improves) $\times 122\text{mths} \times 10\% = \\$109,800$ Total: \$118,200</p> <p>Loss of dependency Pre-trial: \$68,000 Post-trial: \$841,000 Total: \$909,000</p>
<p>Lee Wai Man v Wah Leung Finance Ltd HCPI 106/2002</p>	<p>No vices, typical family man, hardworking in order to cater to all the needs of wife and children. Project manager earning \$63,456.26 at time of death (taking into account bonus)</p>	<p>Family home will be the major asset of savings which will remain at the end of notional life. The family home had an outstanding mortgage loan of \$1,680,000, which might have been evidence of what the deceased might have saved to pay the mortgage (assuming he was able to pay it off in his lifetime). However, plaintiff had only claimed \$700,000 for loss of accumulation of wealth. So award will be</p>	<p>Loss of accumulation of wealth: \$700,000</p> <p>Loss of dependency Pre-trial: \$1,639,884.20 Post-trial: \$1,154,331.90 Total: \$2,794,216.10</p> <p>Loss of gratuitous service: \$10,000</p>

		\$700,000 (as claimed) with no further deduction for acceleration of receipt as \$700,000 already on the low side.	
Chu Wo Heung v Hui Lai Wa HCPI 952/1996	Not extravagant, but considerable travelling expenses, driver of his own goods vehicle	Monthly saving at \$3000, after estimating personal and other expenses and deducting from earned income. Pre-trial = $\$3000 \times 107.5\text{mths} = \$322,500$ Loss of accumulated wealth, multiplier of 14. Post-trial loss of savings $\$3000 \times 60.5\text{mths} = \$181,500$	Loss of accumulation of wealth Pre-trial: \$322,500 Post-trial: \$181,500 Total: \$504,000 Loss of dependency Pre-trial: \$1,720,000 Post-trial: \$968,000 Total: \$2,688,000
Or Oi Cheung v Securicor Hong Kong Ltd HCPI 299/2002	Single, healthy, vice-free life, industrious and diligent saver. Hazardous job as security job, age 32 yrs, could have left security job eventually but later than peers.	Taking into account marriage and having children, savings assessed at \$6500/mth including MPF.	Loss of accumulation of wealth: Global award \$1,200,000 Loss of dependency: \$440,300.13 (agreed)
Law Yuet Kwai v Secretary for Justice HCPI 430/2001	Considerable bank accounts, income \$16,000/mth at time of death, brought up son and daughter, age 49 yrs, another 11 yrs of working life without dependants, artisan of Marine Dept	Pension entitlement \$740,812	Loss of accumulation of wealth: Global award \$500,000 Loss of dependency Pre-trial: \$566,287 Post-trial: \$728,123 Total: \$1,294,410
Chan Oi Ying v Kwong Wai Hung HCPI 448/1998	Fluctuating savings passbook, rebuilt house in China, loan to relatives (\$180,000), roast meat cook	Would not have been able to save much as family migrating to Hong Kong but would have saved what he could	Loss of accumulation of wealth: Global award \$100,000 Loss of dependency Pre-trial: \$768,000 Post-trial: \$365,500 Total: \$1,133,500
Mok Merla v Ocean Crown Transportation Ltd HCPI 226/1998	No savings at time of his death but was supporting 3 sons with mortgage, so may have chance to save later, assistant operation manager	MPF entitlement \$99,500	Loss of accumulation of wealth: Global award \$300,000 Total loss of dependency: \$966,827
Chan Lai Fong v Chung Kin Wa HCPI 199/2000	Construction worker, construction industry in decline, 3 dependant daughters, frugal	Post trial: $\$3,500/\text{mth} \times 41 \times 50\%$ discount for uncertainties	Loss of accumulation of wealth: \$386,660 (post trial) + \$111,750 (pre trial) = \$498,416 Loss of dependency Pre-trial: \$991,500.75 Post-trial: \$1,690,172

			Total: \$2,681,672.75 (Total award was reduced by employee's compensation \$1,613,782.80)
Kung Pik To v Au Kam Fai HCPI 545/2000	Frugal hardworking, pattern of savings, \$1000/mth existing pattern, taxi driver	\$2000/mth (after children dependant) × 12mths × 8	Loss of accumulation of wealth: \$192,000 Loss of dependency Pre-trial: \$352,320 Post-trial: \$370,038 Total: \$722,358
Buaphan Wanlayaphol v the Incorporated Owners of the foremost building situate at 19-21 Jordan Road HCPI 336/1998	Not extravagant, cleaner and runs hotdog venture, demonstrated pattern of industry, past savings and frugal lifestyle	15% of annual income × 13yrs	Loss of accumulation of wealth: \$321,836.99 Loss of dependency: \$477,027.94
Chow Kam Ho v Gammon Construction Ltd HCPI 863/1999	Concretor (at construction site). Deceased was financially reliant on parents for large capital outlays, chance of savings only in far future, had 5 dependants.		Loss of accumulation of wealth: Global award \$100,000 Loss of dependency Pre-trial: \$446,966.35 Post-trial: \$2,228,513.30 Total: \$2,675,479.70
Wong Sau Kam v Shum Yuk Fong HCPI 798/1998	Construction worker, 5 children, fluctuating bank balance, frugal	Responsible, hardworking and still managed to save in spite of large dependency	Loss of accumulation of wealth: Global award \$350,000 Loss of dependency Pre-trial: \$833,437 Post-trial: \$1,485,000 Total: \$2,318,437
Yu Shuk Ying v Proficiency Industrial Products Ltd HCPI 1019/1997	Business generated profits of \$60,000/mth, sole proprietor of cleaning company, carried out most of the cleaning work himself	Deceased would have paid mortgage for property, 50% discount for acceleration and uncertainties in life = \$212,101 + \$100,000 general savings (conceded)	Loss of accumulation of wealth: \$312,101 Loss of dependency Pre-trial: \$1,307,200 Post-trial: \$1,133,600 Total: \$2,440,800
Lam Pak Chiu v Tsang Mei Ying FACV 23/2000	Age 42 yrs, frugal man, earning \$16,700/mth at time of death, 4 dependants, painting worker		Loss of accumulation of wealth: Affirm trial judge's award of \$320,000 Loss of dependency (all dependants) Pre-trial: \$1,277,216 Post-trial: \$3,681,144 Total: \$4,958,360

Ho Pang Lin v Ho Shui On [1994] 2 HKLR 313	Age 40 yrs, bus driver, 20% stake in employer company, earning \$8,200 at time of death		Loss of accumulation of wealth: Global award \$100,000 Loss of dependency: \$314,914.13
Cheng Ching Muk v Wah Nam Travel Service Ltd [1999] 1 HKC 100	Age 34 yrs, saleswoman, earning \$8000/mth		Loss of accumulation of wealth: Global award \$150,000 Loss of dependency Pre-trial: \$162,932.80 Post-trial: \$84,672 Total: \$247,604.80
Chan King Wan v Honest Scaffold [2001] HKCU 146	Age 50 yrs, scaffolder, likely to work as contractor for next 20 yrs Had existing savings of \$2.5m, earned \$30,000 as wages and \$180,000 as dividends, estate duty figures for the first deceased's estate taken into account for award to determine amount of wealth which the deceased could be expected to have accumulated in the course of a year	Put money in property, deceased had accumulated property and shareholdings had generated considerable wealth. Multiplier 10 yrs. Interest on assets of \$2.5m included: \$125,000 [NB: this should not be taken into account for dependency claim] “Although ... the amount of the award is substantial, in each case the size of the award must be the result of a matter of impression and depend upon the judge's assessment of the evidence relating to the deceased and the impressions received as a result of seeing and hearing the evidence.”	Loss of accumulation of wealth: \$4,166,666 awarded Loss of dependency (all dependants) Pre-trial: \$3,191,526 Post-trial: \$627,684 Total: \$3,819,210 Loss of services: \$200,853.90
Leung Suk Yi v Pang Fuk Choi HCPI 438/1998	Consistent savings pattern, Land Inspector (II) at the Lands Department of the Civil Service	10% of monthly earning	Loss of accumulation of wealth Pre-trial: \$19,790.46 × 10% × 65.5mths = \$129,627.51 Post trial: \$26,684.48 × 10% × 30.5mths = \$81,387.66 Loss of dependency Pre-trial: \$897,281.64 Post-trial: \$563,365.41 Total: \$1,460,647.05
Lee Wai Lien v Dragages et Travaux Publics and Penta-Ocean Construction Co	Insurance policy, little savings in bank account, VSL provident fund, job title: Leading Hand (for	Limited propensity to save, multiplier of 9, savings \$2000/mth	\$474,289, taking into account provident scheme, reduced to \$380,000 after deductions for

Ltd HCPI 596/1999	construction site)		depletion + 20% discount <i>etc</i> Loss of dependency Pre-trial: \$524,730 Post-trial: \$595,653 Total: \$1,120,383
Sin Kin v Dragages HCPI 599/1999	Age 30 yrs, life insurance policy, had credit card debts, construction site worker (ex-fisherman)	10% savings + MPF, multiplier 15 (before MPF \$3000/mth, after MPF \$4000/mth, after cessation of dependency \$5000/mth). “... savings can be invested to generate income returns of a recurrent nature during the deceased’s working life. ... the more you have in your retirement fund, it is likely you will spend more during the years of retirement, still leaving sufficient financial security.” [This reasoning was applied to all <i>Dragages</i> cases]	Loss of accumulation of wealth: \$510,000 (deduction of 20%) Loss of dependency Pre-trial: \$359,585 Post-trial: \$674,832 Total: \$1,034,417
Wong Hiu Shan v Dragages HCPI 598/1999	Age 33 yrs, sole breadwinner, construction worker, 3 children, aged parents, (ex-fisherman, who had owned and later sold his own boat, which might have accounted for some of the savings)	MPF taken into account, would have retired from physical work from age 60, at time of death, substantial savings in plaintiff’s account, clearly demonstrates propensity to save	Loss of accumulation of wealth (including MPF): \$1,000,000 Loss of dependency Pre-trial: \$821,215 Post-trial: \$2,153,040 Total: \$2,974,255
Wong Hiu Shan v Dragages HCPI 593/1999	Had substantial savings in bank account at time of death (\$50,000), 41 yrs old at date of trial had he lived, construction worker, 2 children	MPF taken into account	Loss of accumulation of wealth: \$900,000 Loss of dependency Pre-trial: \$777,344 Post-trial: \$1,909,826 Total: \$2,687,170
Wan Dan Nei v Dragages [2000] HKCU 724	Age 40 yrs, project engineer, very frugal man, exceptional savings	Pre-trial savings \$4000/mth after contributions to his family and personal expenditure Post-trial \$6000/mth “the more you have in your retirement fund, the more likely you will be likely to spend ... while leaving you with sufficient financial security”	Loss of accumulation of wealth \$1,308,000 + provident fund \$809,880 = \$2,309,880 in savings \$1,800,000 after deducting expenditure at end of notional life (after 22% deduction) Loss of dependency Pre-trial: \$1,277,216 Post-trial: \$3,681,144 Total: \$4,958,360

Yeung Yuet Mei v Wong Yau Ming HCPI 77/1998	Partnership business, frugal hardworking man who managed to purchase 6 properties before his death although no systematic savings		Loss of accumulation of wealth: \$500,000 Loss of dependency Pre-trial: \$728,172.50 Post-trial: \$724,842 Total: \$1,453,014.50
Tsui Shuk Fong v Chan Chu Sun HCPI 979/1998	Clear evidence of savings in bank accounts, employee of subcontractor (construction)	Pre-trial savings assessed at \$2100/mth Post trial \$2400/mth	Loss of accumulation of wealth: Pre-trial: \$2100 × 12mths × 5 = \$126,000 Post trial: \$2400 × 12mth × 9 = \$259,200 Total: \$385,200 Loss of dependency: \$1,828,000
Wong Kit Chun v Wishing Long Hong HCPI 349/1996	Personal secretary to boss, manager of associate company of employer, right hand man of the boss and salary 3 times that of boss's son, who was the manager. No savings despite working for 20 yrs and earning good salary, 3 dependants, 2 insurance policies	Annual earnings at time of death: \$236,453.60 May have savings when 2 daughters independent	Loss of accumulation of wealth: Global award \$250,000 Loss of dependency Pre-trial: \$1,422,000 Post-trial: \$578,000 Total: \$2,000,000
Tang Mei Ying v Cheung Kee Fung Construction Company Limited CACV 319/1999	Monthly wage \$16,708, after rent family contributions, surplus \$4,000/mth, hardworking responsible with no wasteful vices, deceased had good consistent working record, two children, wife earning \$5000/mth managed to save \$30,000	Savings assessed at \$1000/mth for 4 yrs, further 4 yrs at \$3000/mth, 2 yrs savings at \$6000/mth. Discount (fact that wife had been able to make savings out of her own income and monthly contributions from deceased taken into account)	Appeal dismissed. Savings assessed at \$1000/mth for 4 yrs, further 4 yrs at \$3000/mth, 2 yrs savings at \$6000/mth
Kwan Lai Kuen v National Insurance Co Ltd [1998] 1 HKC 98	Age 20 yrs, male, badminton player of exceptional ability, occupation: junior clerk	Earning \$6000/mth at time of death	Loss of accumulation of wealth: Global award \$100,000 Loss of dependency Pre-trial: \$111,250 Post-trial: \$264,750 Total: \$375,000
Kwan Yau Tai v Eng Kong Container Services Ltd [1998] HKLRD (Yrbk) 329	Male, age 27 yrs, hookman at construction site	Earning \$9192/mth at time of death, no pattern of saving	Loss of accumulation of wealth: Global award \$100,000 Loss of dependency Pre-trial: \$111,250 Post-trial: \$264,750 Total: \$376,000

Appendix 1

Wang Chin Ying v Lam Ping Fung [1999] 4 HKC 373	Teenaged girl who had been earning \$6000–7000/mth, died age 17 yrs, just completed Form 4		Loss of accumulation of wealth: Global award \$100,000 Loss of dependency: \$180,000
Chan Yuk Yin v Chan Cheung Wai [1990] 1 HKC 474		Multiplier-multiplicand method: multiplier 15, multiplicand 10% of earnings	Loss of accumulation of wealth: \$154,860
Cheung Yuk Shiu v Registrar General (1990) HKLY 514	Male, age 19 yrs	Mutiplier of 16 and multiplicand 10% of earnings	Loss of accumulation of wealth: \$194,675 Loss of dependency Pre-trial: \$67,087.50 Post-trial: \$168,000 Total: \$235,087.50
Wong Mee Wan v Kwan Kin Travel Services Ltd (1993) HKLY 473	Student, age 18 yrs	Multiplier 17, multiplicand of 10% of estimated earnings	Loss of accumulation of wealth: \$153,000
Ho Wun Chau v Chan Chuk Mui [1997] 3 HKC 666	Male, age 34 yrs	Multiplier of 14 and 10% of earnings	Loss of accumulation of wealth: \$108,800

APPENDIX 2:
PROPOSED METHODS OF CALCULATION

I. Method A (adapted from the Canadian approach)

The following framework is adapted from that laid out in the Canadian case of *Sharp Barker v Fehr*.¹²²

1. Calculate a capital sum sufficient to replace the loss of support due to the deceased's death, considering those contingencies which might have affected that income such as:
 - (a) increase/decrease in "personal characteristic" abilities affecting earning power as years went by,
 - (b) unemployment due to economic conditions,
 - (c) ceasing to provide for the family for some reason such as incapacitating sickness,
 - (d) altered earnings because of early or late retirement,
 - (e) death before the joint expectancy period of husband and wife,
 - (f) any other factors raised on the evidence.
2. Decide the proportion of the annual income that would have been used by the deceased in:
 - (a) supporting his dependants,
 - (b) spending on his own personal needs,
 - (c) putting aside for savings [inclusive of the part of CPF moneys that would have been applied in some manner for the benefit of dependants] or building up family assets for an estate,and apply the proportions to the amount projected in para 1.
3. Take the amount projected in para 2(a) and estimate the total predictable income of the deceased as a lump sum after payment of tax and other expenses (on a net or "take home" pay basis) using the exhausting fund principle.
4. Consider the effect of any contingencies affecting the [dependant] personally such as:
 - (a) the possibility of marriage breakdown ... [or other factors shown on the evidence],
 - (b) whether the dependant has ceased to be dependant [however one must not necessarily assume that the fact that once dependants have an income, their reasonable expectation of a pecuniary benefit is entirely extinguished in all cases (although it may be reduced).

As stated by Lord Diplock in *Mallet v Monagle* <1970> AC 166 the purpose of the award 'is to provide the widow and the other dependants with a capital sum, which, with prudent management, will be sufficient to supply them with material benefits of the same standard and duration as would have been provided for them out of the earnings

¹²² *Supra* n 74.

of the deceased had he not been killed by the tortious act of the defendant ...¹²³

and make any appropriate alteration to the amount projected in para 3.

5. Decide an amount adjudged to be what would be received by the family from the “savings” or inherited portion of the deceased’s assets, take its present value and make a statistical reduction that the [dependant] will be alive at the end of the purchase period. [In that case, the court assumed half the savings would be for deceased’s own retirement and the other half would have devolved upon his wife.]
6. Discount the above sum, if the facts demand, for the benefits of acceleration of the receipt of the lost inheritance.
7. Take the totals found in paras 4 and 6 and add back an estimated amount sufficient to pay the income tax on such amount each year on the invested proceeds of the award.
8. Consider amounts for dependants proportioning them to equal the total of the value of the lost dependency and the lost inheritance.
9. Consider the total figure as to whether it constitutes fair and proper compensation for the loss, make any warranted adjustments and decide the award.
10. Consider an extra award (if justified) to the children for the loss of a loving parent.
11. Consider providing a management fee.
12. Consider any application of prejudgment interest.

[For more complex situations, the court must also be careful to separate the part of future savings that derive from investing the assets of the present estate from future savings that derive from future earned income.]

II. Method B (CPF assessment applied *mutatis mutandis* to other types of savings)

The current method of taking future CPF contributions into account can be extended to non-CPF future savings. This can be done by setting a percentage rate of savings relative to earned income for the various stages in life. It can function as a rough and ready alternative to Method A.

Assessment of Damages (2005)¹²⁴

Contributions to the CPF may be included in the figure of annual dependency to be multiplied by the multiplier or excluded from the figure of annual dependency and a separate and additional sum awarded in respect of them. In *Teoh Mee Sun v Asia-Pacific Shipyard Pte Ltd* [1991] SGHC 71, the pre-trial CPF loss was arrived at by

¹²³ Cited by *Ang Song Huay v Chu Yong Thiam*, *supra* n 14.

¹²⁴ *Supra* n 6, at para 9-47.

applying the percentage rates of contribution over the period to the average of estimated earning over the period. The post-trial loss was arrived at in a similar fashion using the rate at the date of trial and the post-trial multiplier. A discount was then given on the total to allow for uncertainties and the fact that it would be an accelerated payment. The total was then divided among the dependants according to the rules of intestate succession. A discount may be given for the fact that not all the CPF monies would necessarily go to the dependants if the deceased were alive: *Ng Lim Lian v PSA* [[1997] SGHC 62], *Guo Xiuhua v Lee Chin Ngee* [2001] SGHC 190.

III. Method C (adapted from method used by Hong Kong courts)

The Hong Kong courts calculate the available surplus after monthly family contributions and then deduct a sum for personal expenses to determine the monthly saving. To adapt this to a dependency claim, the monthly saving can be multiplied by the multiplier, then a percentage for acceleration, personal post-retirement expenses and other uncertainties deducted to arrive at a fund representing savings which would be available to be spent on dependants either in the later years of the deceased's life or as inheritance. The court can then determine what proportion would benefit which dependant and apportion accordingly.

APPENDIX 3:
HOW HONG KONG HAS TAKEN CARE
OF THE SAVINGS GAP

Hong Kong has taken care of the savings gap by way of an estate claim. Section 20(2)(b)(iii) of the Hong Kong Law Amendment and Reform (Consolidation) Ordinance (Cap 23), states:

Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person –

...

(b) shall, where the death of that person has been caused by the act or omission which gives rise to the cause of action –

...

(iii) not include any damages for loss of property, whether income or otherwise, in respect of any period after his death, *except in so far as the court is satisfied that, but for the act or omission that gave rise to the cause of action, the deceased would have achieved an accumulation of wealth by the time that he would otherwise have died, in which case damages may be awarded in respect of the loss of that wealth:*

Provided that damages awarded under this sub-paragraph shall be subject to such deduction as the court considers it just to make in the circumstances of any particular case on account of the accelerated receipt of that wealth and in order to avoid over-compensation.

[emphasis added]

In proposing this solution, the Law Reform Commission of Hong Kong's *Report of Damages for Personal Injury and Death*¹²⁵ had been trying to address the problem of possible double recovery due to overlapping claims of the estate and the dependants. The reason why it has chosen to deal with it by way of an estate claim is probably due to the particular development of events. The same report was proposing an abolition of estate claims for loss of future income, hence its starting point at that time was that the estate could still claim for loss of future income, which is different from our starting point today when the estate claim for loss of future income has already been abolished. In that context, it was easy for the Law Reform Commission of Hong Kong ("Law Reform Commission") to add in a proviso with regard to an accumulation of wealth in the process of abolishing loss of future income for an estate claim. Also, in the process of proposing legislative amendments, the Law Reform Commission was of the view that a dependency claim did not include a claim for savings, although there was a suggestion by Roberts CJ that it should. At para 11.15 of the Law Reform Commission report, the Law Reform Commission quoted Roberts CJ in *Wong Sai-chuen v Tam Mei-chuen*:

I suggest that it is open to a trial judge, having assessed the FAO dependency:–

¹²⁵ Law Reform Commission of Hong Kong, *Report on Damages for Personal Injury and Death* (Topic 10, 5 October 1984).

- (a) to apply this figure as the first part of the free balance, unless there is evidence that the amount of dependency might have varied during the lost years;
- (b) to add to that the deceased's notional savings during his lost years.

As a starting point, it would be reasonable, in my view, to adopt the formula ... of taking 10% of the deceased's net earnings as the amount of the notional savings ... The natural thrift of the inhabitants of Hong Kong suggests that this is not an unreasonable assumption.¹²⁶

However, after quoting Roberts CJ, the Law Reform Commission somehow concluded in the following paragraph:

This approach recognises that a person's income may be used for three purposes - for supporting his dependants, for personal expenses, and for savings. Whereas a claim under the FAO [*ie* the dependency claim] only relates to the amount spent on the dependants, a claim under LARCO [the estate claim which at that point of time still included loss of future income, but was subsequently abolished as recommended by the same report except for accumulation of wealth] should be for the whole of the net income minus the personal expenses, and therefore should include any savings. Hong Kong courts have in a number of cases therefore awarded more under LARCO than under the FAO (see *eg Wong Sai-chuen v Tam Mei-chun; Yeung Yuk-sim v Mak Kam-lit; Chung Wing v Wong Lan-ying; Lam Sze v Ling Shum-ha; Chan Kit-ching v Lee Yuk-sui*).¹²⁷

Therefore the Law Reform Commission proceeded on the basis that a claim for savings belongs to the estate claim and confined itself to considering three ways of improving the law, namely:

- (a) to abolish the dependency claim,
- (b) to abolish the estate claim,
- (c) to retain both but limit the estate claim to the loss of net savings.

The Committee rejected (a) because:

in [their] view it is the dependants of the deceased who are in the greatest need of compensation in respect of the financial loss caused by the death. It is therefore wrong to allow the estate to claim the financial loss since the money may not go to those dependants. It is true that certain dependants may claim reasonable provision out of the estate under the Deceased's Family Maintenance Ordinance but this is a round-about procedure and in any event it only protects a limited class of persons.

Option (b) was rejected because "[i]f the [estate] claim were to be abolished, however, it would mean that the deceased's estate would be deprived not only of the sums which would have been spent on the dependants, but also of the amount which the deceased

¹²⁶ [1981] HKCA 140; Civ App No 133 of 1981(HK).

¹²⁷ *Supra* n 125, at para 11-16.

would have saved.”¹²⁸ Accordingly, it can be seen that the Committee was careful not to let any claim for savings “fall through the gap”.

Therefore, Option (b) was taken.

We recommend that a LARCO claim [the estate claim] for damages for the lost years should only lie in respect of the loss of saving during the lost years, and that such a loss should be calculated on the basis of the established pattern of savings (if there is one) of the deceased prior to the accident. This approach will eliminate speculation as to the future savings habits and will make settlements easier to arrange. It will enable the estate of a deceased person with an established pattern of savings (eg a middle-aged family man) to recover the loss of future savings, but will eliminate claims in the case of a young person with no savings pattern. In our view this approach is preferable to the total abolition of damages for the lost years and yet has a degree of certainty and simplicity. Some commentators pointed out that it was incorrect to regard the net savings as the only surplus left from the net income after deductions are made for personal expenses and sums spent on the dependants. We acknowledge the logic of this. There may be other amounts which were dealt with in other ways by the deceased. Nevertheless we are of the view that the estate should only be able to claim for the loss of those sums which would have been saved by the deceased. If other uses made by the deceased of his money were to be taken into account we feel this would create an unacceptable level of speculation as to whether that money should be regarded as a loss to the estate.¹²⁹

It is submitted that it is not necessary to associate an award for savings only with an estate claim. It is not necessary to follow Hong Kong’s approach exactly and award lost savings in an estate claim, as long as the current savings gap in Singapore can be filled by another method. An award of the portion of lost savings/inheritance which would have benefited dependants would better compensate dependants for their loss of reasonable expectation of pecuniary benefit. In addition, the award will be lower than an accumulation of wealth as it is limited by considerations such as the years of dependency, likelihood of inheritance *etc.* Awarding lost savings under a dependency claim would achieve the need for full and fair compensation to dependants while keeping insurance premiums at a more reasonable rate compared to an accumulation of wealth assessment.

Application in cases

It must be noted that the accumulation of wealth is approached as an estate claim. The court’s starting point is what the deceased would have left at the end of his notional life.¹³⁰ “[A]n award for loss of accumulation of wealth is compensation for the loss of what would have passed to the deceased’s estate upon his death after having lived out an average life span.”¹³¹ Accordingly, the starting point is quite different from the award of a loss of savings under a dependency claim. The Hong Kong courts are trying

¹²⁸ *Id.*, at para 11-31.

¹²⁹ *Id.*, at para 11-37.

¹³⁰ *Lee Hang Kuen v Chan Hong* [2006] HKCFI 168; HCPI 548/2002.

¹³¹ *Lam Pak Chiu v Tsang Mei Ying* [2001] HKCFA 28; [2001] 2 HKC 11.

to determine what the deceased would *not* have spent on his dependants during his lifetime, whilst for our purposes, loss of savings should take into account both what the deceased would have spent on his dependants from his savings in the event of any contingency *etc* outside of their regular maintenance, as well as what part of his savings after his lifetime would be left to his dependants. Certain factors such as what the family members would have contributed to the deceased (free meals,¹³² children giving a part of their income to their parents, enabling parents to save more from their own income) must therefore be disregarded for a loss of savings/inheritance under a dependency claim. In fact, *Chan Yee Mei v Leung Chi Fei*¹³³ also makes a clear statement that voluntary contributions to the deceased by his family are not to be taken as an accumulation of wealth. Due to the particular wording of the Hong Kong statute, accumulation of wealth is not limited to that arising from savings and means the accumulated wealth which would have been in the deceased's estate in the normal course of events generally. The Legislature chose this approach, in order to avoid the need to define "savings" and afford greater flexibility to the court to consider the individual circumstances of each case.¹³⁴ However, for our purposes, any accumulation of wealth resulting from the existing estate or unearned income must also be disregarded, as the existing estate would continue to be invested by the beneficiaries and unearned income would have been diverted to other living persons since the deceased has died. The use of savings to buy property can be taken into account but not the worth of the property bought as that is not a loss of savings or inheritance in a dependency claim. Mortgage payments of the family home are often taken as part of the household expenses in the dependency claim and excluded from the accumulation of wealth calculation.¹³⁵ The court often finds that when dependencies have ceased, a frugal deceased may convert the dependency into savings.¹³⁶ For a loss of savings/inheritance dependency claim, it would not matter whether the deceased converts the previous dependency into savings or chooses to spend more freely on the dependant or other dependants (except when it comes to apportionment amongst dependants).

For an accumulation of wealth claim, the court also disregards post-retirement expenses that the deceased spends on himself and his spouse since the purpose is to determine what is left at the end of his notional life.

For example, Kaplan J in *Re Lau Chuen-fat*¹³⁷ where no award was made for loss of accumulation of wealth. Kaplan J reasoned at 184:

People often do save during the course of their working life to provide for their retirement. As the population grows older, and people live longer, it is more likely than not, in my view, that any savings accumulated during the working life of people in the position of the

¹³² *Pun Lai Ling v Hong Kong Master International* [2006] HKCFI 309; HCPI 53/2005.

¹³³ [2007] HKCFI 93; HCPI 370/2006; [2007] HKCU 205.

¹³⁴ *Chan King Wan v Honest Scaffold General Contractor Company Limited* [2001] HKCA 333; CACV 290/2000 (on appeal from HCPI 1267 and 1269 of 1996 (consolidated)).

¹³⁵ *Kung Pik To v Au Kum Fai* [2002] HKCFI 291; HCPI 545/2000; *Chow Kam Ho v Gammon Construction Ltd* [2001] HKCFI 481; HCPI 863/1999.

¹³⁶ *Lee Wai Man v Wah Leung Finance Ltd* [2004] HKCFI 116; HCPI 106/2002; *Leung Tsang Hung v Tse Yiu Pui* [2004] HKCFI 242; HCPI 595/2002; *Pun Lai Ling*, *supra* n 132; *Ting Kam Yuen v Ng Tai Sing* [2004] HKDC 122; DCPI 32/2002; *Chan Lai Fong v Chung Kin Wa* [2002] HKCFI 1068; HCPI 199/2000.

¹³⁷ [1994] 2 HKLR 173.

deceased in the case before ... me would have been used up by the time of natural death.

However, *Lam Pak Chiu v Tsang Mei Ying*¹³⁸ commented that this reasoning cannot be taken to extremes, at the same time setting out a framework with which the courts can treat post-retirement expenditure:

No court would ever set up the dismal hypothesis of a man saving up during his working life for his retirement and then, during an anxious retirement, using up all of his savings so that he spends his last cent as he draws his last breath. Such a notion is wholly unrelated to reality barring an instance of the most astonishing coincidence.

It is only to be expected that any accumulation of wealth made during the working years would yield income – whether such income be in the form of rent, dividends, interest or anything else – during the retirement years. And there is also the question of pension and the like. Thus if the court were to find in any given case that an accumulation of wealth would have been achieved by the notional time of retirement, the realistic possibilities, factoring in probable inflation, would then be as follows:

(i) expenditure during retirement may exceed the income from the accumulation plus any pension and the like received during retirement so as to exhaust the accumulation some time before the notional time of death, thus leaving the deceased dependent upon state, family or other help during his notional final years; or

(ii) post-retirement expenditure may exceed post-retirement receipts but only so as to diminish the accumulation without exhausting it; or

(iii) such receipts may more or less match such expenditure so as to leave the deceased's financial position at the notional time of death much the same as it had been at the notional time of retirement; or

(iv) it may even be that such receipts would exceed such expenditure so as to leave his financial position better at the notional time of death than it had been at the notional time of retirement.

It would be for the court to select from these possibilities the one which it considers the most realistic in the particular circumstances of the case, remembering that the burden lies on the party who asserts.

...

Finding a multiplier for a loss of accumulation of wealth award would present no greater difficulty than finding a multiplier for a loss of dependency award. But finding a multiplicand for a loss of accumulation of wealth award would be very difficult, to say the least. Except in cases where there is something more to go on than one has in those cases where the court is driven to taking an almost arbitrary percentage of earnings as a multiplicand, judges and masters

¹³⁸ *Supra* n 131, at [33] – [35], and [41].

calculating such awards would be well advised to make global awards. This is not to say that a conventional figure across the board ought to be adopted. Nor is it to say that a figure should be plucked out of the air. Even where the exercise does not lend itself to the precision of a multiplicand as in loss of dependency claims, some process of ratiocination must underlie the global award made. And it is necessary that the judge or master indicate at least in general terms how the award has been assessed in the light of the relevant factors, including expenditure during the retirement years.

[emphasis added]

This framework is a useful reference for our courts if an award is to be made for loss of inheritance/savings in a dependency claim. However, for a loss of savings/inheritance dependency claim, post-retirement expenses on his spouse would have to be separated from the deceased's own post-retirement expenses and taken into account under some portion of the dependency claim (either as an annual dependency or lumped together in the loss of savings (preferred since the spouse may continue to live on the deceased's savings after his death)).

There are certain common factors assessed in an accumulation of wealth claim that would be equally helpful in the assessment of a loss of savings or inheritance dependency claim.

In order to determine whether there would be an accumulation of an estate, the court will assess the deceased's lifestyle and existing savings pattern to see if there is a probability of future accumulation of wealth.¹³⁹ This can be done from witness evidence and bank account evidence, showing comings and goings from the account. Other evidence such as loans to relatives, investment in life insurance policies, mortgages¹⁴⁰ can also be an indicator of a probability of accumulation.¹⁴¹ A pattern of savings is not an absolute assessment and the court does not look for proof on the balance of probabilities.¹⁴² By taking the present savings relative to the historical income of the deceased, the court is sometimes able to arrive at a steady percentage of saving. Alternatively, by having regard to the circumstances of the deceased (the number of dependants *etc*), it will be able to discern the deceased's attitude toward the saving.

There need not be an existing savings pattern before the court awards an accumulation of wealth:

The crucial question is whether [the court is] satisfied that the deceased would have achieved an accumulation of wealth by the time of his natural death. That depends on the propensity of the deceased to save money, his ability to save and his lifestyle. Although a savings pattern

¹³⁹ *Kwan Lai Kuen v National Insurance Co Ltd* [1997] HKCFI 560; [1998] 1 HKC 98; *Buaphan Wanlayaphol v The Incorporated Owners of the Foremost Building situate at 19-21 Jordan Road* [2001] HKCFI 477; HCPI 336/1998; *Wong Sau Kam v Shum Yuk Fong* [2000] HKCFI 112; HCPI 798/1998.

¹⁴⁰ *Mok Merla v Ocean Crown Transportation Ltd* [2002] HKCFI 602; HCPI 266/1998.

¹⁴¹ *Chan Oi Ying v Kwong Wai Hung* [2002] HKCFI 628; HCPI 448/1998.

¹⁴² *Pun Lai Ling*, *supra* n 132; *Lam Pak Chiu*, *supra* n 131.

is one way to prove an accumulation of wealth, it is by no means the only way ...¹⁴³

Lam Pak Chiu v Tsang Mei Ying elaborates on why a pattern of savings is not necessary:

... in the general run of cases the surest possible foundation for an award for loss of accumulation of wealth would be a pattern of savings by the deceased during his lifetime. But is such a pattern of savings an absolute pre-condition to such an award? ... the first thing to note is that the statute itself does not lay down any such pre-condition. All that s 20(2)(b)(ii) requires is that the court be satisfied that, but for the act or omission which killed him, the deceased would have achieved an accumulation of wealth by the time that he would otherwise have died ...

... Take the example of a relatively young married man or woman with a strong sense of family responsibility. With that sort of person there would be strong prospects of achieving an accumulation of wealth at the end of a life of average span for a person like him or her. Nevertheless the financial responsibilities which such a person had faced may have prevented him or her from accumulating any wealth before an early and untimely death. But that does not mean that an accumulation of wealth would not have been achieved given an average life span ...

...

I reject the notion that a pattern of savings by the deceased during his lifetime is an absolute pre-condition to an award for loss of accumulation of wealth. Even in the absence of any savings during the deceased's lifetime, there may in any given case be, on a balanced view, real prospects of an eventual accumulation of wealth such as to justify an award for loss of accumulation of wealth. The court then assesses the award in accordance with those prospects as it sees them.

...

... the further one has to look into the future the more difficult it naturally becomes to find real prospects, as opposed to a mere speculative possibility, of a future eventuality of the sort here in question.

... I should mention that there are in fact many cases in which judges and masters have made such awards even though the deceased had not made any savings during his or her lifetime ... both the global basis and the multiplier and multiplicand method have been resorted to by judges and masters making awards under this head ...¹⁴⁴

In cases of a young plaintiff or where it is difficult to predict what the savings pattern will be, a global award can be given.¹⁴⁵ Where the savings pattern is clearer or more

¹⁴³ *Lee Wai Lien v Dragages et Travaux Publics and Penta Ocean Construction Co Ltd* [2000] HKCFI 45; HCPI 596/1999, per Master Cannon at [46].

¹⁴⁴ *Supra* n 131, at [21] – [22], and [26] – [28].

¹⁴⁵ *Pun Lai Ling*, *supra* n 132; *Li Hoi Shuen v Man Ming Engineering Trading Co Ltd* [2006] HKCFI 53; [2006] 1 HKC 349.

predictable, a multiplier-multiplicand method can be adopted.¹⁴⁶ A mix of both methods can be used to verify the soundness of the figure awarded. The MPF (equivalent of CPF),¹⁴⁷ as well as entitlement to pensions, leading to savings¹⁴⁸ is also taken into account in the award.

The court in *Law Yuet Kwai v Secretary for Justice*, explained why pension entitlements should be taken into account:

... in a fatal accident case, where the deceased is already dead, there can be no claim for loss of pension for the same reason that the estate of the deceased is not entitled to claim for loss of future earnings. There can only be a claim for loss of *accumulation of wealth* in the sense that the court will have to decide what a deceased would have saved during his notional lifetime (whether from his wages or pension or both) which is not spent by him and of which he died possessed. *In so determining what is the accumulation of wealth, the court will no doubt be able to take into account his entitlement to pension and decide what part, if any, of his pension (and for that matter what part of his earnings had he not died) he would have been able to save up at the end of his notional life or whether he may have to expend some of what he had saved up during his working life in supplementing his pension to support his and/or his wife's living during his retirement.*¹⁴⁹ [emphasis added]

Interest is usually awarded at judgment rate only after the date of judgment, although the award of interest before the date of judgment seems to vary. The Hong Kong High Court of Appeal has decided that no interest is to be awarded for the pre-trial period,¹⁵⁰ although some courts awarded still awarded half judgment rate from date of death to judgment.¹⁵¹ Accumulation of wealth is unlikely to be awarded where the deceased is old but yet no discernible pattern of saving can be shown, especially when he has expensive habits of gambling and smoking.¹⁵² If the deceased is a housewife who had a pattern of savings by retaining a portion of the family contributions out of which she made a profit by way of investments, the court has held that any accumulation of wealth at the end of her notional life would have been too speculative.¹⁵³ Similarly if the deceased is already middle-aged and having only a barely sufficient income, the court is more likely to find that any savings he manages to make would be exhausted post-retirement and award no loss of accumulation.¹⁵⁴ In the majority of cases where there has been an award, young deceased with no savings or savings patterns have shown diligence, filial piety and initiative with no great vices¹⁵⁵ and middle-aged

¹⁴⁶ *Eg in Chu Wo Heung v Hui Lai Wa* [2001] HKCFI 899; HCPI 952/1995.

¹⁴⁷ *Pun Lai Ling*, *supra* n 132; *Li Lai Fun v Leung Yiu Cheung* [2004] HKCFI 1046; HCPI 697/2002.

¹⁴⁸ *Chan Yee Mei*, *supra* n 133; *Law Yuet Kwai v Secretary for Justice* [2002] HKCFI 379; HCPI 430/2001.

¹⁴⁹ *Ibid*, *per Suffiad J*, at [15].

¹⁵⁰ *Hsu Li Yun v The Incorporated Owners of Yuen Fat Building* [2000] HKCA 330; CACV 16/2000.

¹⁵¹ *Chan Yee Mei*, *supra* n 133.

¹⁵² *Shek Chor Tai v Ya Lee Construction*, [1999] HKCFI 897; HCPI 757/1998.

¹⁵³ *Chan Ki v Travel Trade Communication Network and Marketing Services Ltd* [1998] HKCFI 220; [1998] 2 HKC 57.

¹⁵⁴ *Chan Sim Lan v Shee State International Ltd* [1994] HKCFI 475; [1994] 1 HKC 460.

¹⁵⁵ *Eg Siu Sau Yung v Tak Wing Contractors Ltd* [1997] HKCFI 190; HCPI 1139/1996; *Lee Woon Lan v Cheng Hing Pun* [1997] HKCFI 182; HCPI 465/1995; *Wang Chin Ying v Lam Ping Fung* [1999] HKCFI 830; [1999] 4 HKC

deceased have at least shown an ability to meet household expenses, maintain dependants or pay their mortgage/insurance even if they have a propensity to indulge in personal expenses.

The clearest cases of a deserving award would be those of breadwinners with a frugal lifestyle.¹⁵⁶ For example, the court in *Wong Sau Kam v Shum Yuk Fong* reasoned:

Given the indication of the kind of man the deceased was [a responsible husband and father who worked to support his family as well as his father. It also points to a man sufficiently frugal to be able to save up a little from his meagre income despite the large dependency on him], I am quite satisfied that there would have been some accumulated savings by the deceased had he not met with this accident.

As for the amount, I take the view that if the deceased was able to save up in the region of \$60,000 to \$70,000 when supporting a family of five children, a wife and a father, there would be little reason to think that he cannot save up \$350,000 at the end of his natural life.¹⁵⁷

The Hong Kong courts do acknowledge that assessing such a head of damage is not easy, because future loss is very difficult to assess.

But the mere fact that an assessment is extremely difficult does not relieve the court of its duty, or deprive it of its ability, to make that assessment. The court, in the time-honoured expression, does the best it can with what it has.¹⁵⁸

The court in *Lam Pak Chiu* adopted Lord Diplock's comment in *Mallett v McMonagle*:

The role of the court in making an assessment of damages which depends upon its view as to what will be and what would have been is to be contrasted with its ordinary function in civil actions of determining what was. In determining what did happen in the past a court decides on the balance of probabilities. Anything that is more probable than not it treats as certain. But in assessing damages which depend upon its view as to what will happen in the future or would have happened in the future if something had not happened in the past, the court must make an estimate as to what are the chances that a particular thing will or would have happened and reflect those chances, whether they are more or less than even, in the amount of damages which it awards.¹⁵⁹

For global awards, the court in *Lam Pak Chiu* stated:

A good way of testing [a global] award is to compare it with awards in previous cases, where the circumstances of the deceased persons are not wholly dissimilar. ...

373; *Kwan Lai Kuen v National Insurance*, *supra* n 139; *Wai Kang Kwan v Wong Wing Hong* [1989] HKCFI 475; [1989] 2 HKC 585.

¹⁵⁶ See *Chu Kang Yee v Giant Ocean Ltd* [1995] HKCFI 541; [1996] 1 HKC 284, *Ho Wun Chau v Chan Chuk Mui* [1997] HKCFI 354; [1997] 3 HKC 666; *Chan Yuk Yin v Chan Cheung Wai* [1990] HKCFI 208; [1990] 1 HKC 474.

¹⁵⁷ *Supra* n 139, *per* Suffiad J at [85] – [86].

¹⁵⁸ *Lam Pak Chiu*, *supra* n 131, at [23].

¹⁵⁹ [1970] AC 166 at 176E – 176G.

Where a tribunal is sailing in uncharted waters, it would be wise to take as many bearings as possible. A judge, after having heard all the evidence, may have a tentative global sum in mind. Where it is possible, it may be desirable for him to cross-check this with the multiplicand-multiplier formula, but remembering that this too is, by its nature, an inexact exercise. If the resultant figures more or less coincide, the judge can be reasonably confident that his global sum is not far off the mark.

...

... the legislation in its wording has left it to the court to exercise judgment generally: The only proviso being that in making an award the court is bound to make a deduction on account of the accelerated receipt. ... So long as trial judges weigh up the evidence carefully and apply common-sense, it is unlikely that appellate courts would interfere. Rightly so. If there is one area of the law where courts have to be mindful of the incidence of legal costs, lest awards of damages be eaten away by the expense of fruitless attempts to achieve theoretical perfection, it is in the personal injuries field.¹⁶⁰

[emphasis added]

¹⁶⁰ *Supra* n 131, at [50] – [53].