

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
PERSONAL INJURIES ACTION NO. 22 OF 2001

BETWEEN	Nicola Sian Griffiths	Plaintiff
	and	
	Lettuce Chat Limited trading as Zip	Defendant

Coram: H H Judge Li in Court

Date of Hearing: 5 September 2001

Date of Judgment: 5 September 2001

Present: Miss A M Van Langenberg, of Messrs Oldham, Li & Nie,
for the Plaintiff
Mr Ian De Witt, of Messrs Tanner de Witt, for the
Defendant

J U D G M E N T

1. This is a case in which the plaintiff, according to her evidence, injured herself on 15 July when she was paying custom to a restaurant and bar called the Zip at the Ground Floor, Greenville, No. 2 Glenealy, Central, Hong Kong.

2. What happened was that she took the drinks and she walked into what she would call the outdoor seating area that would be beyond the backdoor of the premises. And, as she was getting into this outdoor seating area she slipped and somehow got her left foot injured.

3. According to what the doctor says, the fifth metatarsal bone was fractured. She was treated and, I am happy to say, that by 7 September, according to medical opinion, she was practically completely cured. Now she claims against the operator of this restaurant and bar, Zip.

4. The first thing I notice is that according to solicitors who used to act for the defendant, that is the operators of the restaurant and bar, Zip, the defendant has gone into voluntary liquidation on 31 July this year. It looks as though even when the plaintiff gets judgment in this case the chances of getting satisfaction from the defendant would be rather remote because, apparently, the defendant is heavily in debt. In fact, that is also the reason why, although the defendant was represented in the beginning, by the time of trial those who used to act for the defendant could no longer make representation on behalf of the defendant for lack of instructions.
5. So the case turns to become something like an unopposed action. I think that could raise problems too, because then there is only the plaintiff's side of the story and the claims for general damages and special damages. There is really no one to argue or to scrutinise.
6. The court is in kind of a difficult situation because, of course, the court should not be doing its research and in the normal course of events the court does not enter into the arena.
7. I must say that, of course, I have no doubt that the plaintiff told the truth as she did receive the injuries and by and large the injuries and pain and suffering as described by her and the doctor must be true and accurate. But I must say I have some doubt as to whether the position where she said the accident occurred was, in fact, premises occupied by the defendant or whether the defendant can be properly said to have a responsibility for that area. But, as I say, this is only my suspicion. In that respect, I really do not have any solid evidence from the plaintiff to

say one way or the other and, of course, in the absence of opposition from the defendant, this is all I have.

8. The other problem I can see is this, that it looks as though part of the pain and suffering, and perhaps the longer period that it took for the plaintiff's wound to heal, may not be the direct result of the accident and injury. There might be - and I stress there might be - a case of treatment or initial treatment not having been properly carried out, leaving the wound contaminated and swollen. If that is the case then perhaps part of the liability should also fall on somebody else rather than the defendant.
9. The other thing I notice is that, of course, the plaintiff said that she fell because it was dark. If I were the defendant I would have said that perhaps the plaintiff herself was a little careless as well. In legal terms there might be an element of contributory negligence. But, again, that is not in the pleadings and because the defendant is not opposing, again, all these are left in a sort of embarrassing situation. But, as I said, I do not wish to be particularly difficult.
10. Having made my observations, because all I have is the plaintiff's case, I would accept what she says on the face of it, especially I have no reason to doubt her integrity and veracity. I am only saying that there might be points more in terms of law, which does not really go to the plaintiff's honesty, that one might have raised to query the position as to liability.
11. But having said all I have said, I would think I have no difficulty in entering judgment on liability against the defendant.

12. As to damages, perhaps I will deal with the general damages first. At first the statement of damages asked for \$30,000. At the beginning of the trial Miss Langenberg, for the plaintiff, asked for amendment to \$70,000. But after that she, decided rather than to put in a specific figure, asked for the claim to be amended to damages to be awarded as the court sees fit. So general damages is at large, but, of course, in submission, Miss Langenberg says that 70,000 would be an appropriate figure.
13. She refers me to a number of cases, this includes the Wong Sam-mui case, which is HCA 1817; the Lam Kwai Yip case, which is HCA 12617/1994; the Wong Ka-pang case, which is HCPI 644/98. There is also a case, English case, called Morrissey v Borderdown Communications, a decision by a district judge in the Northampton County Court.
14. To put it briefly, I do not find any of these cases helpful because they are quite different from the present case and really, because I cannot do the research, I must say I have no assistance at all.
15. All I can do, therefore, when Miss Langenberg says that 70,000 is appropriate is to allow it. I have no basis to say that it is right or wrong. So that deals with the matter of general damages.
16. As to special damages, I did point out that I really see no problem with the taxi fares. The taxi fares amounts to \$3,000, I think that is obviously a reliable figure, so I would allow that. The medical bills, \$15,276, there cannot possibly be any dispute about that, is also allowed.
17. But then there follows a number of things like cancelled tickets because the plaintiff could not go on holiday as the result of the injuries sustained from the accident and also

her husband having to amend the ticket incurring an amendment charge. There were also cancelled rail tickets and also this ladies club gym membership fee wasted for three months, and also this concert ticket. My initial reaction is these are not normally losses that are reasonable foreseeable, but I have not looked into the case law. There might be some cases in which this sort of things would have been allowed. There might be other cases in which these sort of things are not allowed. But as I have said, I do not do my own research and I am not supposed to do it. The defence side has no one here to argue against it. All we have is Miss Van Langenberg who says that these are reasonably foreseeable. I do not wish to argue with her. I have stated my reservations and I do not want to make it more difficult. So I will say that these are allowed.

18. That means, therefore, that in addition to the taxi fares, the medical bills there will be an amount of \$1,938 for the plane ticket to Singapore; there is this amendment charge for the plaintiff's husband's ticket at \$934; the cost of the rail tickets for £130 sterling; the gym membership fee, \$299, that is pro rata for three months; and also this concert ticket of \$150. So these are all allowed really by default.

19. Then, of course, the plaintiff is entitled to costs of the action, to be taxed if not agreed.

H H Judge Li
District Court Judge

I/we certify that to the best of my/our ability and skill, the foregoing is a true transcript of the audio recording of the above proceedings.

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Faye McCarthy
7 September 2001