###### DCPI 57/2010

### IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 57 OF 2010

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##### BETWEEN

## HO KIN LON Plaintiff

### and

WONG TIN CHI 1st Defendant

FAN TSZ HO 2nd Defendant

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Coram: Master K.K. Pang in Court

Date of hearing: 10 December 2010

Date of handing down Assessment of Damages: 22 December 2010

Assessment of Damages

1. The plaintiff’s claim is for damages for personal injury, loss and damage arising out of the negligent driving of a private car bearing registration no. MM 7216 driven by the 1st defendant on 7 January 2009 at Lin Cheung Road near Lamp Post No. BAB 1883 2, in Hong Kong for which the 2nd defendant was vicariously liable.
2. By consent on 26 April 2010 interlocutory judgment on liability was entered in favour of the plaintiff against the 1st and 2nd defendants.
3. By the order of Master J. Chow dated 22 June 2010, the medical reports of the Government hospitals as to the treatment and care of the plaintiff are to be adduced as evidence without calling the makers.
4. By the order of Master S. Lo dated 30 August 2010, it was ordered that: -
5. the joint medical expert report of Dr. Arthur Chiang Si Chung and Dr. Wong Chun Wa dated 9 August 2010 be adduced as evidence without calling the makers;
   1. the assessment of damages be set down to take place before a Master on 19 November 2010 at 9:30 a.m. in Court 47, with 1 day reserved.
6. By the Order of Master B. Mak dated 29 September 2010, upon the 1st and 2nd defendants’ application, the hearing dated 19 November 2010 was refixed to 10 December 2010 at 9:30 a.m. in Court 45, with 1 day reserved.

The parties’ respective stance on quantum

1. The respective position of the parties on quantum can be summarized as follows:-

|  |  |  |
| --- | --- | --- |
| Item | P’s updated stance $ | Ds’ stance $ |
| PSLA | 120,000-150,000 | 20,000 |
| Loss of Earning Capacity | 36,000-50,000 | Nil |
| Pre-trial loss of earnings | Nil | 6,300 |
| Special damages | 25,002 | 18,517 |
| Future medical treatment | Nil | Nil |
| Total (exclusive of Interest) | 181,002-225,002 | 44,817 |

The plaintiff’s background

1. The plaintiff’s personal background is as follows:-

(a) Plaintiff : Ho Kin Lon

(b) Sex : Male

(c) Date of birth : 2 June 1982

(d) Date of Accident : 7 January 2009

(e) Date of trial : 10 December 2010

(f) Age at date of : 26 years old

accident (28 years old at the time of trial)

(g) Job before the Accident : Waiter

(h) Current Job : Bar Tender

1. He was born in Hong Kong and received his education in Hong Kong up to Form 5 level.

Injuries, treatment, disabilities and prognosis

1. Immediately after the accident on 7 January 2009, the plaintiff was sent to the Accident and Emergency Department of Kwong Wah Hospital (“KWH”) by ambulance for immediate treatment. The plaintiff complained of right hand, right knee and neck pain after the accident.
2. Physical examination revealed that tenderness was elicited over right cervical back. Abrasions were noted over his right thigh and leg. X-ray films of cervical spines were unremarkable.
3. The plaintiff was treated and discharged on the same day with 3 days sick leave granted to him by KWH for the period from 7 January 2009 to 9 January 2009.
4. The plaintiff attended UMP Medical Centre (Tung Chung) under the care of Dr. Lawrence C.F. Wong for further treatment on 9 January 2009 and 14 January 2009 respectively. 5 days sick leaves were granted to the plaintiff for the period from 10 January 2009 to 12 January 2009 and from 15 January 2009 to 16 January 2009.
5. Since 12 January 2009, the plaintiff had attended Tung Chung General Outpatient Clinic several times for further treatment because of residual right leg pain and neck pain.
6. Physical examination revealed that there was mild tenderness over left side paraspinal muscles of cervical spine and several abrasions over his right leg.
7. The plaintiff was then referred to the physiotherapy department at Princess Margaret Hospital for treatment due to residual neck pain.
8. The plaintiff received 2 sessions of physiotherapy treatment at Princess Margaret Hospital.
9. As a result of the accident, the plaintiff had been given in total 15 days sick leaves.

PSLA

1. The medical records and the joint expert report prepared by Dr. Arthur Chiang Si Chung (for the plaintiff) and Dr. Wong Chun Wa (for the defendants) are in general agreement in respect of the plaintiff’s injuries and diagnosis. The plaintiff sustained soft tissue injuries of the neck, right thigh and right knee. There were also abrasions to the right leg.
2. I have taken into account of authorities cited by counsel for the plaintiff.
3. In *Tai Yuk Wong v. Chong Kwok Fung & Another* (unreported, DCPI 1405/2005, 8 March 2006, H.H. Judge Yuen, appeal dismissed in CACV 177/2006), the plaintiff suffered whiplash injury in the form of soft tissue injury of muscles and ligaments to the plaintiff’s neck. The plaintiff’s doctor suggested a 5% permanent impairment of his whole person while the defendant’s doctor accepted 2%. Lengthy sick leave was given. The Court accepted that the plaintiff still had residuary mild neck and shoulder pain, and awarded $150,000 for PSLA. I take the view that the plaintiff’s conditions in that case is more serious that those of the present case.
4. In *Lau Chu Wing v. Law Wai Shing & Others* (unreported, DCPI 1389/2007, 5 May 2008, H.H. Judge Thomas Au as he then was), the plaintiff sustained mild soft tissue injury to his neck and back, but otherwise there was no general weakness of the plaintiff’s body and his range of motion was good. The period of sick leave granted to the plaintiff was 16 days and the plaintiff was able to resume his pre-injury job. The Court awarded $120,000 for PSLA.
5. In *Chan Siu Youn v. Ng Kam Man & Others* (unreported, HCPI 533/1999, 28 July 2000, Recorder Ronny Wong S.C.), the plaintiff suffered from a sprain neck out of a traffic accident. It caused intermittent neck pain especially upon prolonged neck extension. There were otherwise no further injuries to the plaintiff. The Court awarded $100,000 for PSLA.
6. It was the parties’ experts’ joint finding that:-

The neck:

* 1. the joint examination suggested a satisfactory status of the neck;
  2. there was no significant muscle spasm of the neck;
  3. the range of movement of the neck was satisfactorily preserved;
  4. there was no motor or sensory neurological deficit in the upper limbs;
  5. x-rays revealed a preserved cervical lordosis.

The right lower limb:

* 1. the scars in the right lower limb were well healed;
  2. no ligament or meniscal abnormality was noted in the right knee. The range of movement of the right knee was good.

Prognosis and further treatment:

* 1. the above examination findings suggested that the neck and the right lower limb had acquired a satisfactory recovery. Residues, if present, would likely be mild;
  2. the neck and the right lower limb’s conditions had reached the stage of maximal medical improvement. Further treatment is not required.

1. In view of the experts’ joint opinion, I am incredulous to the plaintiff’s allegation that he can no longer enjoy his hobby of motor-cycling or playing football. It is inexplicable that the plaintiff bought new helmet, gloves and jacket for motor-cycling on 13 January 2009, were the plaintiff could not do motor cycling. I take the view that the plaintiff’s conditions are similar to those of *Chan Siu Youn*, I award $100,000 for PSLA.

Loss of Earnings

1. The plaintiff was fully remunerated during his sick leave and resumed working after sick leave. The plaintiff suffered no loss of earnings. The plaintiff abandoned the claim for loss of earnings.

Loss of Earning Capacity

1. The plaintiff is now working as a bar tender. A claim for future loss of earning capacity usually arises to cover the risk that, at some future date during the plaintiff’s working life, he would lose his employment and would then suffer financial loss because of his disadvantage in the labour market. The court has to evaluate the present value of that future risk: see *Moeliker v. A Revrolle & Co. Ltd.* [1977] 1 WLR 132, 140, where Browne LJ dealt fully with this matter.
2. In the joint report, Dr. Chiang suggests a 1% permanent impairment of the whole person to each of the neck injury and the right lower limb injury; the total permanent impairment is of 2%. Dr. Wong suggests a 1% permanent impairment of the whole person to neck injury only; the total permanent impairment is of 1%.
3. During cross-examination, the plaintiff agreed that working as a bar tender, he stands for long hours. Apparently he is coping with it. Therefore, I am incredulous to the plaintiff’s allegation that he cannot concentrate on his work due to persistent neck and leg pain and that he cannot sit, walk or stand too long i.e. 1-2 hours due to persistent neck and leg pain.
4. Furthermore, I am also incredulous to the plaintiff’s allegation that, as a result of the accident, he was forced to resign from his previous job as a waiter, for the following reasons. Firstly, the accident happened on 7 January 2009. His sick leave ended by 18 February 2009. The treatment of his injuries ended in March 2009. However, he tendered his resignation in December 2009. In view of the long time elapsed between the recovery of his injuries and his resignation, in absence of any medical evidence linking up the two things, I consider that it is unlikely that the plaintiff’s injuries caused his resignation in December 2009. Secondly, during the joint examination the plaintiff told the experts that he left the previous job for non-medical reason. During re-examination the plaintiff explained that he misunderstood the experts’ questions at that time. I do not accept the plaintiff’s explanation.
5. After having carefully considered all evidence, I accept that the plaintiff will have the following work related difficulties:-
   1. his work efficiency would be affected by mild residual pain and stiffness over his neck and leg;
   2. he might experience difficulties when lifting heavy objects.
6. By reason of the matters mentioned in the above paragraph 30, I accept that the plaintiff suffers a handicap in the labour market. I award a sum equivalent to 3 months’ income i.e. $12,000 x 3 = $36,000 under this head.

Special Damages

1. The plaintiff’s claim is for HK$25,002, the particulars of which are as follows:-

(a) Medical expenses $350.00

(b) Travelling expense $300.00

(c) Nourishing food $5,000.00

(d) Repairing costs for MH1531 $8,877.00

(e) Survey report fee $800.00

(f) Towing fee $550.00

(g) Parking fee ($310/31 x 24 days) $240.00

(h) Damaged watch $2,600.00

(i) Damaged mobile phone $3,280.00

(j) Helmet, gloves and jacket $3,005.00

Total: $25,002.00

1. Regarding the plaintiff’s claim for special damages, the defendants agreed to a sum of HK$18,517. They disputed the following items but counter-proposed as follows:-

(c) Nourishing food $2,000.00

(h) Damaged watch $1,300.00

(i) Damaged mobile phone Nil

(j) Helmet, gloves and jacket $1,500.00

Nourishing food

1. The plaintiff did not produce any receipts for expenses on nourishing food. The plaintiff explained that his wife prepared chicken soup and fish soup to him for his injuries. His wife bought the materials from wet markets where receipts were usually unavailable. Fish and chicken are not expensive. I accept the 1st and 2nd defendants’ counter-proposal of the sum of $2,000 is reasonable.

Damaged watch

1. During this hearing, the 1st and 2nd defendants acting in person questioned whether the plaintiff’s watch was indeed damaged at all during the accident and disputed both the liability and quantum of this item. It was particularly noted that there is no photo taken of the damaged watch. Nor was there receipt of the purchase of the new watch. Instead the plaintiff produced the receipt (at p. 178 of Bundle) of his damaged watch. In reply, the plaintiff said he neglected to take a photo of the damaged watch. Intriguingly, the plaintiff took a photo of the damaged mobile phone and helmet. After having carefully considered, I do not accept the plaintiff’s explanation. In the Answer to Revised Statement of Damages, filed by Messrs. Paul W. Tse, the 1st and 2nd defendants’ former solicitors, it was stated that the 1st and 2nd defendants would agree to $1,300 for this claim. During this hearing, the parties had a full argument on the plaintiff’s claim under this item. In the premises, I take the view that I could allow the 1st and 2nd defendants to resile from their said position in the Answer to Revised Statement of Damages. After having carefully considered all evidence, I disallow the plaintiff’s claim for damaged watch.

Damaged mobile phone

1. The plaintiff produced a photo of the damaged mobile phone (at p. 180 of Bundle) and also a receipt to prove the purchase price of the damaged mobile phone. The plaintiff agreed that he used the mobile phone to call the police immediately after the accident. He said the mobile phone went out of order after that. One can see from the said photo that the screen of the mobile phone was cracked. It is probable that the plaintiff’s mobile phone was damaged in the accident and its replacement is necessary. I consider that the claim for $3,280 is reasonable and I allow it.

Helmet, gloves and jacket

1. The plaintiff produced the receipt for the purchase of new helmet, gloves and jacket. There is a photo of the damaged helmet (at p. 183 of Bundle). The plaintiff explained that his gloves and jacket were taken off and then lost when he was in hospital after the accident. The plaintiff sustained abrasions on his right hand, right knee, right thigh and leg during the accident. It is probable that his helmet, gloves and jacket were damaged at that time. I consider that the claim for $3,005 for those items is reasonable. I allow the said sum of $3,005.

Future medical treatment

1. Given the joint expert’s view that there was no need for future treatment, the plaintiff abandoned his claim under this head.

Summary of quantum

1. PSLA $100,000

Loss of earning capacity 36,000

Pre-trial loss of earnings nil

Special damages:-

(a) medical expenses 350

(b) travelling expenses 300

(c) nourishing food 2,000

(d) repairing costs for MH1531 8,877

(e) survey report fee 800

(f) towing fee 550

(g) parking fee 240

(h) damaged watch nil

(i) damaged mobile phone 3,280

(j) helmet, gloves and jacket 3,005

Future medical treatment nil

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$155,402

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Interest

1. There will be interest on general damages at 2% p.a. from date of writ to the date of this assessment and on special damages at half judgment rate from date of accident to the date of this assessment.
2. There will be an order nisi for costs of this action to the plaintiff, assessed summarily in the sum of $84,899, payable forthwith. This order nisi becomes absolute 14 days after today unless a party has applied to the Court for varying the order.

( K.K. Pang )

Master of District Court

Mr. Vincent Lung instructed by M/s. Li and Lai, solicitors for the plaintiff.

1st and 2nd defendants appearing in person.