# DCPI 156/2006

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 156 2006

--------------------

BETWEEN

WONG PING SHING Plaintiff

and

NGAI YUK KEUNG 1st Defendant

WONG SUI FUN 2nd Defendant

--------------------

Coram: Deputy District Judge Charles T. C. Wong in Court

Date of Hearing: 30 May 2006

Date of Judgment: 26 June 2006

--------------------------------------

ASSESSMENT OF DAMAGES

--------------------------------------

1. This is the Plaintiff’s claim for personal injuries suffered by him as a result of a traffic accident, which took place on 10 November 2003 at about 2:45 a.m. along Kwai Chung Road. Judgment in default was entered against the 1st and 2nd defendants on 6 May 2006 with damages to be assessed. This hearing deals with the assessment of damages.

*The Accident*

1. At the time of the accident, the Plaintiff (“P”) was a passenger of a public light bus (“the PLB”) driven by the 1st Defendant (“D1”) owned by the 2nd Defendant (“D2”). The PLB mounted onto a dividing embankment and overturned.

*The Plaintiff*

1. P was 53 at the time of the accident. He is now 55. Prior to the accident, he owned and operated a fruit stall business with his wife. His work required him to visit the fruits wholesale market in Jordan in the morning to purchase fruits there. P’s business closed down about one year after the accident. According to P, prior to the accident he was very fond of sports, and his hobbies included playing basketball and volleyball, jogging and Chinese swordplay. P said he had to give up all sports after the accident.

*Injuries and Treatment*

1. On the day in question, P was making his usual trip to the fruit wholesale market by taking the PLB. He was sitting at the front row. There was an accident involving the PLB, P was thrown forward and his chest hit the guard railing in front of him. He felt pain in his left chest and he rested along the roadside for a while after the accident. He then took another bus to continue his journey to the fruit wholesale market.
2. By the time P reached home, he felt intense pain and noted some bruises over his left chest. He then went to visit and received treatment from a bonesetter, Mr. Chiu Shun Hung (骨醫招順雄). On the same day, Mr. Chiu recommended one-month’s sick leave period for the injuries starting from 10 November 2003 till 9 December 2003.
3. P continued to visit Mr. Chiu for several days. He then switched to an herbalist, Mr. Cheung Tat Chee (張達志中醫), for treatment from 20 November 2003 onwards. Mr. Cheung recommended a further sick leave period from 20 November 2003 till 10 February 2004. Combining the sick leave periods granted by both bonesetters amounted to 3 months.
4. As shown in the receipts issued by Mr. Cheung, P’s last visit to Mr. Cheung was on 26 November 2005, and that P received over 160 sessions of therapies from Mr. Cheung. P gave evidence in court that he would continue to visit Mr. Cheung in the future. P does not seek to claim for expenses for future visits to Mr. Cheung.
5. P also sought treatment from western doctors. A year after the accident P attended the Accident and Emergency Department of the Tuen Mun Hospital on 19 November 2004. According to the medical report by Dr. Lee Ming Ming of Tuen Mun Hospital dated 17 May 2005, P was found to have mild tenderness at the left 6th to 8th ribs, but there was no bruise or swelling. Chest radiograph showed a suspicious crack over the left 9th rib, which was later confirmed to be normal by radiologist. There was no pleural effusion or surgical emphysema.
6. From 24 March 2005 till 15 November 2005, P attended Pok Oi Hospital on 19 occasions. On each occasion, P’s main complaint was pain over his left chest.
7. P had in March 2006 consulted a retired bonesetter in Shenzhen Mr. Hung (洪醫師), and initially claimed for the medical expense at $12,000 for consulting Mr. Hung. P however abandoned the claim for consultation fee of Mr. Hung at the commencement of this hearing.

*Medical Evidence*

1. P adduced various medical reports prepared by Dr. Lee and Dr. Wong See Hoi respectively to support his claim. P also seeks to rely on Herbalist Mr. Cheung’s medical note. Ds have not filed any medical evidence in rebuttal.

Herbalist Mr. Cheung Tat Chi

1. Herbalist Mr. Cheung states that P suffered from cracks and fractures to the left 3rd and 4th ribs (counting from the lowest level upwards). This comment by Mr. Cheung is not supported by the treating hospitals. Nor is it supported by P’s own Orthopeadist Dr. Wong See Hoi who after Radiological examination states “No evidence of any fracture ribs”.
2. No leave have been sought to treat the notes from Mr. Cheung as medical evidence. No leave was sought to adduce herbalist Mr. Cheung’s notes as medical report without calling the maker. I would therefore attach little weight to Mr. Cheung’s finding of fractured ribs.

Dr. Wong See Hoi

1. Dr. Wong, examined P on 26th July 2005. Dr. Wong found that P could walk, stand, squat and rise up normally. Although there was tenderness over the left chest wall, there was no deformity of the chest, with good chest expansion and symmetrical air entry. Chest x-ray also showed normal ribs alignment and there was no evidence of any fractured ribs.
2. P’s upper limb had full muscle power and full range of shoulder, elbow and wrist motions. As a result, Dr. Wong concluded that P suffered from soft tissue inflammation to his left chest which caused him persistent pain, and that the accident was probably the main contributory cause of his chest pain.
3. Dr. Wong concluded that P is able to resume his pre-injury work as a businessman with mild reduction in working efficiency, but he may have difficulty in lifting and carrying heavy objects.
4. For P’s residual left chest pain, Dr. Wong assessed the impairment of whole person at 2%. Dr. Wong also recommended sick leave of 1 to 2 months and a complete course of physiotherapy to P.
5. Dr. Wong’s medical opinion is consistent with that of Dr. Lee. Both doctors confirmed that there was no crack or fracture of rib. I find that P did not suffer from any crack or fracture of rib, but did suffer from soft tissue injury to his left chest, which may cause him long term on and off pain.

*Pain, Suffering and Loss of Amenity (PSLA)*

1. Initially, P claimed the sum of $180,000 for PSLA in the Statement of Damages. This figure was revised upward to $250,000 in the Revised Statement of Damages. There does not appear to be any change of circumstances within a period of 4 months between the Statement of Damages and the Revised Statement of Damages. No reason is proffered for the change. D submits that the award should not exceed $50,000 under this head.
2. Ms. Lau for P referred me to a number of awards which are summarised below:-
   1. **Lam Wai-chun v. Tam Chi-wai & Wong Yau-pui (HCPI 1532 of 2000)**. The plaintiff was a front seat passenger in a private car and sustained injuries in a traffic accident. She suffered from fractures of four ribs and laceration of scalp. She also suffered from post concussional syndrome and adjustment disorder, although that was later aggravated after she was diagnosed to suffer from breast cancer unrelated to the accident. She had persistent pain over her chest and back. Suffiad J. awarded $300,000 for PSLA.
   2. **Chung Chun-man v. Chow Wai-kin & Ors. (HCPI 713 of 2004)**. The plaintiff was a rear seat passenger in a private car. He sustained multiple injuries in a traffic accident, including fractures of four right ribs, right pneumothorax and right lung contusion, liver and spleen lacerations, and laceration to the right flank of abdomen. He had ongoing pain at the right chest. Muttrie J. awarded $350,000 for PSLA.
   3. **Teng Wei**-**yan v. Kwok Kai-wai & Ors. (DCPI 54 of 2005)**. Again, the plaintiff had abrasion over forehead and chin, fractured ribs (5th to 8th on the left side) with hemo-pneumothorax, and a fracture of the right clavicle. She also suffered from a ruptured spleen and pneumonia after splenectomy was performed. Chan J. awarded $330,000, taking into account the fact that the plaintiff, being young and single, has suffered impairment as a result of scars in the abdomen, and that she suffered from residual pain around the scars, left chest wall, and right shoulder.
   4. **Iau Kau**-**ih v. Wan Kei Geotechnical Engineering Co. Ltd. & Ors. (HCPI 130 of 2001).** There, the plaintiff was a welder employed in a construction site and was hit by a massive object when a crane collapsed. He suffered from left chest wall, right shoulder, elbow and thumb contusion. He also had laceration over his nasal bridge and left orbit of the eye. He felt pain or numbness in his right hand, elbow and thigh, and his right hand grip has substantially weakened. He also suffered from low back pain. The most debilitating injury was the mild wasting of the muscles around the right shoulder causing decreased range of motion. Recorder Yu S.C. awarded $400,000 for PSLA.
3. Ms. Tsang for D referred me to cases where the awards were substantially lower:-
   1. **Tsang Kay-ping v. Lo Wai-yu (HCA 2132 of 1980)**. The plaintiff was a victim of a traffic accident. He sustained multiple lacerations over head, right shoulder and right side of back. X-ray revealed fractured right scapula bone and 1st, 4th and 5th ribs. Hunter J. found that the plaintiff showed exaggerations on the defects to his eyesight and shoulder joints. $20,000 (equivalent to $73,080 in 1998 according to *Butterworths Hong Kong Personal Injury Service V2003*) was awarded for PSLA.
   2. **Lo Siu-wai v. Lee Wai-chuen (HCPI 617 of 1995)**. The plaintiff was a schizophrenic. He was assaulted by the defendant and as a result suffered from fractures of left 6th, 7th 8th and 9th ribs and multiple abrasions to his face, lips and knee. He was absent from work for 3 months. The assault also aggravated his schizophrenic state, warranting admission to mental hospital. Seagroatt J in awarding a general damages of $100,000 reflected amongst others some element for the influence of the assault upon the plaintiff’s psychiatric state and employment capacity.
   3. **Yip Chun-nam v. Chan Kang & Anor. (DCPI 183 of 2002)**. The plaintiff was punched 3 times on his chest and suffered from chest wall contusion and chest pain. Examination in hospital revealed that he had mild swelling and mild bruise in the chest region and he was diagnosed to have blunt chest injury. Wong J. found that the plaintiff was a malingerer and that the injuries suffered by the plaintiff were only minor. $17,500 was awarded for PSLA.
4. I also take into account the case of **Chan Wai-leung v. Mo Sheung-wah & Anor. (DCPI 166 of 2001)**. The plaintiff was punched and kicked to the ground and was kicked in the head and on the chest and abdomen while on the ground. He suffered fractures to the right 6th to 10th ribs and left 4th, 6th and 7th ribs, as well as head injuries. There was bruising and tenderness to his abdomen. He had permanent pain over the chest area and also suffered from post-concussional syndrome. Carlson J. found that his personal injuries should have resolved themselves at the time of trial leaving only residual chest pain, and awarded $180,000 for PSLA.
5. In my judgment, the injuries suffered by P in the present case is much less serious than those in the authorities cited by counsel for P. The initial pain suffered by P on the day of accident may not have been severe, as it did not require P to seek immediate medical treatment and P was able to continue his journey to the fruit market. I accept that P might probably suffer from on and off pain in the future. I have also taken into account that P can no longer enjoy sporting activities. I shall award $120,000 for PSLA.

*Medical Expenses*

1. P claims $92,230 for bonesetter fees in the Revised Statement of Damages. P now abandoned the claim for fees paid to bonesetter Mr. Hung in Shenzhen, P’s claim for bonesetter fee is reduced to $80,130 as appeared on the receipts produced by P.

*Bonesetter’s fees*

1. Ms. Tsang for D criticised P’s seeking treatment from both bonesetters and western doctors as overlapping. P explained that the bonesetters helped relieve pain, but for acute pain, which he suffered from time to time, he would seek assistance from western doctors for quick pain relief as he would be given painkillers. I accept P’s explanation and find that P has not acted unreasonably in seeking assistance from both bonesetters and western doctors.
2. Ms. Tsang also attacked the receipts issued by herbalist Mr. Cheung. Ms. Tsang submits that it is out of order for P to have initially asked Mr. Cheung to issue receipt for each treatment, but subsequently asked Mr. Cheung to issue a single receipt for several treatments. It is, however, not D’s case that the receipts were issued fraudulently.
3. Ms. Tsang suggested that some of the Chinese medicine prescribed by Mr. Cheung was for treatments for age-related health problems and not for the accident. There is no evidence either way and the court is not in the position to take judicial notice of the usage of Chinese medicine.
4. I take into account the 14 receipts issued by herbalist Mr. Cheung over a period of two years from November 2003 to October 2005, amounting to $78,690, which on the face of it is a rather substantial amount for herbalist treatment. Further, it is noted that two receipts issued for 20 August 2005 at $4,830 and 26 October 2005 were numbered “00446” and “00447”. On the face of these receipts, the circumstances surrounding the issuing of two consecutive receipts in a gap of two months does call for an explanation.
5. The receipts issued by herbalist Mr. Cheung were however admitted as evidence without any application for D to call the maker. Mr. Cheung is not cross-examined on this matter. In absence of evidence to the contrary, the court will have to accept the receipts on its face value. Despite with much reservation, based on the evidence before me, I would allow the bonesetter fees of $80,130 in full.

*Hospital fees*

1. Regarding the $200 for visit to Tuen Mun Hospital, Ms. Tsang submits that only receipt for $100 for the attendance on 19 November 2004 was produced and therefore only $100 should be allowed. Although it was alleged in the Revised Statement of Damages that P also had 2 follow-up sessions at Tuen Mun Hospital after the attendance on 19 November 2004, this was not reflected in the medical report by Dr. Lee. As such, I shall only allow $100 under this item.

*Tonic Food*

1. P claimed that various tonic food in the amount of $8,800 was prescribed by Mr. Chiu, which would alleviate pain and bruises. No receipt was produced as P explained that he did not know such item was recoverable. In absence of receipt, I shall allow $5,000 under this head.

*Future Medical Expenses*

1. P claimed $6,000 for the course of physiotherapy suggested by Dr. Wong. Ms. Tsang challenged that there was no evidence to suggest that P would receive physiotherapy in the future as he had shown no faith in it. There is no evidence that P would undergo such treatment in the future. I accept that P should not be allowed any award under this head.

*Expenses Incurred for* *a replacement Assistant*

1. P and his wife operated and owned a fruit stall business. P claimed in the Revised Statement of Damages that after the accident, he could no longer participate in running the business and he therefore employed a casual worker to assist his wife. The casual worker earned a daily wage of $200 and worked 25 days per month on average, i.e. $5,000 per month. P claimed that he continued operating the stall for 1 year after the accident, and he claims a total of $60,000 under this head.
2. P did not claim for such expense in the Statement of Damages but included it in the Revised Statement of Damages. P explained that he had not mentioned this to his lawyers at first as he did not know such expense was recoverable.
3. P stated in the witness statement that he hired one casual worker to assist him. However at trial he gave evidence that he hired a total of three casual workers. P explained this discrepancy by saying that what he meant in the witness statement was that only one worker was working in his stall at a time.
4. P is unable to give particulars of the workers he employed. When asked why he had not recorded the I.D. card numbers and particulars of his casual workers, he explained that it was because they were all his neighbours and so there was no need to make record so long as he was satisfied that they were Hong Kong citizens. Nevertheless, P was unable to provide the full names of these neighbours. Nor has P made any attempts to ask these neighbours/casual workers to give evidence on his behalf. P also conceded that he had not taken out employment insurance for the workers. He did not fill in tax return for hiring these workers. There is no record of salary payment. I find P’s evidence on this subject incredible.
5. I am not satisfied on balance of probabilities that P did incur such expense. Taking into account the medical reports and the nature of work of P as a fruit stall owner assisted by his wife, it is more probable that P was able to operate the stall without the need to hire an extra worker. P’s version is uncorroborated, inconsistent and unbelievable. I shall disallow this item.

Loss of Earnings/Profit

1. P does not claim any loss under this head.

*Conclusion*

1. To conclude, I award the following damages to P:-

HK$

PSLA $120,000

Special Damages

Medical expenses and Hospital fees $80,230

Tonic food $5,000

\_\_\_\_\_\_\_

Total: $205,230

1. Interest is awarded at 2% per annum from the date of writ on PSLA $120,000 and at half the judgment rate on pre-trial special damages $85,230 from the date of the accident.
2. There will be costs order nisi to be made absolute in 14 days against the D1 and D2 to P with certificate for counsel to be taxed if not agreed.

( Charles Wong )

Deputy District Judge

Representation:

Ms. Lorinda Lau, instructed by Messrs. Kennedy W. Leung & Co. for the Plaintiff

Ms. Alice Tsang, instructed by Messrs. Tong & Tsoi for the 1st and 2nd Defendants.