DCPI196/2003

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 196 OF 2003

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| BETWEEN | Leung Ka-yee | Plaintiff |
|  | and |  |
|  | L & Y Beauty Centre Limited | Defendant |

Coram: H H Judge H C Wong in Court

Date of Hearing: 22 October 2003

Date of Judgment: 22 October 2003

Present: Mr David Hui Tai-wai, instructed by Messrs. Lam Fung & Co., for the Plaintiff

Defendant was absent

JUDGMENT ON ASSESSMENT OF DAMAGES

1. This is a hearing on the assessment of damages for personal injuries suffered by the plaintiff.
2. Judgment was entered against the defendant on liability in default of the defence on 27 May 2003.
3. The plaintiff went to the defendant’s beauty centre in Central for a course of treatment for her acne pigment spots on the back in September and October 2002. She was given a treatment by means of what is called ‘intense pulse light treatment’ (referred to hereinafter as “IPL”) at the defendant’s shop premises.
4. On her third visit on 31 October 2002, she felt great pain during the treatment and she felt lumps had appeared on her back. She complained to the shop staff who told her it was normal.
5. She called the shop the same evening and the next day after she felt the pain had persisted. She returned to the defendant’s shop the next day to show the defendant’s staff her condition, but again she was told the condition was normal and that it will go away in time.
6. She was given no treatment or any advice as to treatment by the shop staff.
7. When the pain on her back persisted and blisters were formed, she consulted a medical doctor, Dr Leung Kwong-ming, on 5 November 2002 who told her that she had received scalded injuries to her back. She was given cream to dress her injuries by Dr Leung in early November 2002.
8. The plaintiff claims, in spite of the creams prescribed by Dr Leung, whom she visited twice in early November, her back still felt painful and she went to see a skin specialist, Dr Luk, in January and February 2003. She complained that she could not sleep due to the injury to her back and it took two months for the pain and her discomfort to subside.
9. She now has four columns of rectangular hyperpigmented scars on her back covering most of the upper and lower back.
10. She says she felt, after the accident, embarrassment of her condition and she can no longer wear a swimsuit or clothes that would show her back. She would not go swimming and she would avoid sun exposure and she would cover her back because of the pigmentation.
11. She says she would feel unhappy whenever she recalls the incident and the pigmentation on her back.
12. A report of her condition by Dr W L Luk, dated 5 February 2003, has been produced as an exhibit. Dr Luk said in the report that the plaintiff was treated by a general practitioner, Dr Leung, as a second-degree burn.
13. She was diagnosed to have post-inflammatory hyperpigmentation and hypopigmentation and scars due to burn. She was treated with hydrocortisone cream and hydroquinone cream. It was Dr Luk’s opinion that scar and pigmentary change are common due to burns or inflammation and usually would gradually improve over a few months’ time but permanent change might persist.
14. The plaintiff now claims under special damages medical expenses of $3,380, and these were supported by the doctors’ receipts or copies of such receipts; travelling expenses of $500, and these were unsupported by receipts.
15. She further claims general damages, pain and suffering and loss of amenities of $100,000 for the pain suffered over a period of two months; for the scars to her back which have persisted; her embarrassment due to the scars and inability to wear back-baring garments and swimsuits; her general embarrassment and unhappiness; her loss of pleasure of swimming and freedom to be exposed to the sun and her general enthusiasm and ability to enjoy life has suffered.
16. I have been given two UK authorities that Mr Hui, counsel for the plaintiff, found in Kemp & Kemp on Quantum of Damages, Volume 4, page 63-14, paragraph J3-020, the case of O (a minor) v Great Ormond Street Hospital for Children NHS Trust and the case of Podd v Ransomes and Rapier, paragraph J3‑021 of Kemp & Kemp, Quantum of Damages, Volume 4.
17. The Central London County Court, in the first case of O (a minor), District Court Judge Haselgrove awarded £14,000 general damages to the claimant who was a boy of 10 years old at the time of accident, who suffered a 2‑degree burn or 2 per cent burn to his back during a 4½ hour neurosurgical operation. Later on he had to undergo skin grafting operation for the wound to his back from skin grafted from skin on his thigh.
18. The result of the injuries restricted his ability to run and play football, his back was tight and pulled, causing pain when he bent down or stretched his arms.
19. In the second case, Judge Brandt of Colchester County Court awarded £12,000 to the claimant who suffered burn injuries to the dorsum of both hands, face and right side of his back and right elbow in an explosion at work. The burns were over 8 or 9 per cent of his skin.
20. He returned to work after 16 weeks. He also suffered from depression. The award dealt with both physical and psychological aspects.
21. Mr Hui cannot find any local Hong Kong cases for my reference. The closest case I can find in the given time is the case of Yanti & another v Chu Shin-chuen HCPI 1176/2000, a decision and assessment by Master de Souza on 2 November 2001. It is a case of dog bites causing injuries, scars and psychological impairment to the claimants, a Filipino maid and her charge, a four-year-old girl.
22. The Filipino maid received more serious and extensive injuries, therefore not strictly relevant in the present case. The four-year-old girl’s injuries included three laceration wounds over both thighs and multiple minor bites and scratch marks over her thighs and left arm. She was treated with analgesic and antibiotics and a course of anti-rabies vaccinations.
23. One year after the accident she was found to have various faint scars and two noticeable pairs of stitch marks on the back of her upper thigh. The scars were said would become less noticeable in time. Permanent cosmetic disability was assessed at a quarter per cent.
24. She also suffered from phobia towards dogs, had nightmares. Her psychiatric disability was assessed at 2 per cent of the whole person. Psychiatric counselling was recommended in her case.
25. Master de Souza awarded to her for pain, suffering, loss of amenities the sum of $130,000.
26. Mr Hui, counsel for the plaintiff, agreed that the injury to this four-year-old girl was more extensive in that the scars were in more noticeable part of her body - in the thighs - and she also suffered from other bite and scratch marks over her thighs and left arm and therefore her case is more serious.
27. The plaintiff in this case suffered no trauma resembling the little girl’s experience, however, I agree that the scars on the back do cover a large area of her back.
28. The treatment the plaintiff received is nothing like what the four-year-old girl in Yanti’s case or the claimant in O (a minor), the two Country Court cases that Mr Hui referred me to. There were of course no operations or the requirement of wearing of pressure garments.
29. On the other hand, I accept the plaintiff’s pain to the back must have been intense, particularly after the wounds became inflamed. The discomfort in the first couple of weeks after the IPL treatment was strong but not so serious that she had to seek immediate treatment in hospital casualty department or be hospitalised.
30. After all, she visited Dr Leung and consulted him twice in early November 2002 but she only saw Dr Luk two months later, in January 2003, after the two visits to Dr Leung(?) in November 2002.
31. I find her embarrassment to be real and genuine. I have seen in court the plaintiff’s faint scars still remained in the back and it is not surprising for her, as a girl of 27 or 28 years old, not wishing to wear a swimsuit or garments that showed her back.
32. It is hoped that in time the scars will become faint and she may be able to enjoy life more and be confident to swim again. Indeed, Dr Luk’s report does indicate the fact that the scars will improve - the appearance will improve in time.
33. I find the plaintiff a positive witness and she was able to cope with this unhappy episode relatively well and that is encouraging because the incident could have a worse effect on her psychologically.
34. In considering the award for pain, suffering and loss of amenities, I take into consideration the extent of the plaintiff’s pain and suffering, the duration of the pain, the treatment she received, the scars that remained and its effect on the plaintiff physically and psychologically.
35. I assess the appropriate award should be $75,000 for the pain and suffering, loss of amenities.
36. As to special damages, I find the plaintiff has proved that the expenses were necessarily incurred and award the sum of $3,380 medical expenses, $500 for travelling expenses, making a total of $3,880.
37. The total award is therefore $75,000, plus $3,880, making a total of $78,880 with interest from date of accident to date of judgment at 2 per cent per annum and thereafter at judgment rate until payment and costs be to the plaintiff with certificate for counsel, to be taxed if not agreed.

H H Judge H C Wong

District Court Judge