DCPI262/2006

# IN THE DISTRICT COURT OF THE

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 262 OF 2006

BETWEEN

CHAU KWAI Plaintiff

and

LEE CHIU FAN 1st Defendant

LEE CHIU CHUN 2nd Defendant

Coram: Her Honour Judge H C Wong in Court

Date of Hearing: 31 August 2007

Date of Delivery of Assessment of Damages: 31 August 2007

A S S E S S M E N T O F D A M A G E S

1. The plaintiff in this action claims against the defendant for injuries sustained in a traffic accident on 9 February 2003. Judgment in default of the Notice of Intention to Defend was entered 10 August 2005. The hearing before me is for an assessment of damages of the plaintiff.
2. The plaintiff is and was a minibus driver. On 9 February 2003, at about 2 am in the morning, the plaintiff was a passenger in a public light bus travelling in a northbound direction on Wylie Road in Kowloon when the 1st defendant, driving the 2nd defendant’s vehicle, collided with the public light bus in which the plaintiff was a passenger.
3. The plaintiff was sitting in the first row of the bus, due to the collision he was thrown through the windscreen on to the road. As a result of the head-on collision, the plaintiff sustained injuries to his face, scalp, left shoulder, left chest wall, fracture of the left 3rd and 4th ribs. He received treatment at the ICU of the Queen Elizabeth Hospital immediately after the accident and was later transferred to the Kowloon Hospital for convalescence. He was discharged on 25 February 2003 after hospitalisation of 17 days. He continued to receive follow-up treatment, including physiotherapy, and he was granted sick leave from 9 February 2003 to 23 November 2003.
4. The 1st defendant was convicted on his own plea for dangerous driving and driving under the influence of alcohol exceeding the prescribed limit on 14 March 2003 at the Kowloon Magistracy.
5. Apart from the injuries for which the plaintiff was treated by the doctors at Queen Elizabeth Hospital after the accident, the plaintiff complained, in May of 2003, to the doctors at Queen Elizabeth Hospital that he had been suffering for one month from numbness of fingertips in both his hands. He further complained of residual neck pain with stiffness on rotation and flexion. The QEH doctors at the Orthopaedics & Traumatology Department found his complaints were due to cervical spine degenerative changes with narrowing of C6 and C7 and corresponding intervertebral foramina and cervical spondylotic changes with posterior disc herniation at C3/C4 level that caused spinal cord compression.
6. Dr Wong of the QEH Orthopaedic & Traumatology Department recommended surgical decompression operation but the plaintiff was reluctant to have the operation. In Dr Wong’s opinion, the condition was not caused by the accident.
7. The plaintiff consulted a private practitioner, Dr Chan Kau-tak, who is a specialist in orthopaedic and traumatology and an adjunct associate professor at the Chinese University of Hong Kong. Dr Chan disagreed with Dr Wong’s opinion on the cause of the plaintiff’s neck complaints for not relating to the accident. Dr Chan considered the plaintiff’s symptoms after the accident to be compatible with central cervical cord syndrome with predominantly sensory involvement, namely fingertip numbness. Dr Wong does not recommend surgery; his diagnosis was based on the MRI scan films on the plaintiff’s cervical spine taken after the accident and he found no physical sign or MRI scan evidence to support cervical myolopathy i.e., spinal cord compression.
8. With the assistance of the fresh medical reports obtained after the adjournment in September 2006 from both the QEH Orthopaedic & Traumatology Department and from Dr Chan, I find the QEH doctors have not provided any further details on the cervical myolopathy they claimed the plaintiff was suffering from, nor did the QEH doctors supply any further particulars as to the extent of the compression of the plaintiff’s spinal cord to support the need for surgery. They may possess such details and particulars on record but none has been supplied in the QEH doctor’s new or old reports.
9. I find Dr Chan’s diagnosis to be better explained with supporting particulars. Based on Dr Chan’s report, which I find, on a balance of probabilities, to be preferable, I accept Dr Chan’s findings that the plaintiff’s cervical condition was caused by the accident as a result of a whiplash injury.

*Quantum*

*PSLA*

1. Under PSLA, the plaintiff complained he is still suffering from pain in the neck and shoulders, stiffness of the neck, numbness of the fingertips, lack of strength in the left shoulder and left arm, numbness in the base of his feet.
2. Dr Chan’s report supported the plaintiff’s claim on the whole and Dr Chan found the plaintiff to have suffered from mild weakness and limitation of the left shoulder elevation and abduction, residual neck pain and stiffness on rotation and flexion, numbness to his fingers, lack of strength in both arms. Dr Chan reported that the plaintiff would be able to drive but with less confidence and dexterity. He found the plaintiff’s injuries, in particular, his whiplash injury, to constitute 5 per cent impairment of the whole person and he found there is an 8 per cent loss of earning capacity in the plaintiff.
3. Mr Yim, counsel for the plaintiff, referred me to a number of authorities where the claimants suffered similar injuries to the plaintiff, such as the case of *Cheung Man Fai v To Yu Bun and Another* [2005] 4 HKLRD 16, where Suffiad J awarded the sum of $550,000 under PSLA; the case of *Boivin v Wong King Yin and Another* HCPI 195/2000, a judgment delivered in February 2001, where Suffiad J awarded the sum of $475,500 under PSLA.
4. Mr Yim placed particular reliance on the judgment of Deputy Judge B. Yu SC in the case of *Iau Kau Ih v Wan Kei Geotechnical Engineering Company Limited* [2002] 4 HKC 76, a judgment in July 2002, where he awarded the sum of $400,000 under PSLA to the plaintiff. A further case referred to me by Mr Yim is the case of *Tang Ka Wai v Chan Wai Kin* HCPI1335/2003 where the plaintiff sustained injuries to his neck and left knee in a traffic accident, he was hospitalised for 15 days. He had an operation in respect of his neck injury and the sum awarded under PSLA was $350,000 by the late Gall J in November 2004. In the case of *Lam Wai Chun v Tam Chi Wai and Another* HCPI1352/2000, Suffiad J awarded the sum of $300,000 to the plaintiff who suffered from fractures to four ribs and laceration to the scalp with a complaint of whiplash from the plaintiff.
5. In view of the multiple injuries suffered by the plaintiff, which included fractures to two ribs, injured left shoulder and whiplash injury to his neck, the period of hospitalisation of 17 days and his long sick leave period, together with the pain and disability that the plaintiff is still suffering from, I award the sum of $400,000 to the plaintiff under PSLA.

*Loss of income*

*Pre-trial loss*

1. I accept the plaintiff’s evidence that he was working 26 days a month and earned a daily income of $550 as a minibus driver. His monthly income therefore comes to $14,300. I also accept the sick leave period of 15 months supported by the hospital sick leave certificates and certified by Dr Chan to be reasonable. The calculation of the loss of income is therefore:

Pre-trial period during the sick leave period of 9 February 2003 to 8 May 2004

$14,300 x 15 = $214,500

For the period 9 May 2004 to 31 August 2006

($14,300 - $12,000) x (39 months + 13 days) = $90,683

Total: $(214,500 + 90,683) = $305,183

*Post-trial loss*

1. Under the post-trial loss of income, the plaintiff asks for a multiplier of 3. I accept this to be reasonable.

$(2300 x 12 x 3) = $82, 800

*Loss of earning capacity*

1. The plaintiff asks for the sum of $30,000 under this head on the basis that it would compensate the plaintiff’s risk of unemployment and loss of employment opportunity. Given the circumstances of the plaintiff’s long period of sick leave, the compensation for his pre-trial loss of employment, the sum claimed by the plaintiff is $30,000 which is equal to 54½ days of the plaintiff’s daily income. I find this claim to be reasonable and I grant this sum of loss.

#### Special damages

###### Acupuncture and Chinese herbalist treatments

1. There was no medical report to support the need for such treatments in addition to the follow-up clinics and physiotherapy treatments at Queen Elizabeth Hospital and the Princess Margaret Hospital. Furthermore, the plaintiff himself claimed he gave up taking such further treatments after finding them unhelpful and Mr Yim relied on the reduced award by Suffiad J in the case of *San-To, Po Yuk Hitler v Wing Kwong Painting Co. Ltd.* HCPI387/2002, a judgment of 6 February 2004. I allow $320 for the bonesetter charges.

#### Tonic food

1. Even though the plaintiff here produced receipts in support of his expenditure under this head, in view of the lack of medical opinion supporting the necessity and the beneficial effects of such treatments, I am only prepared to allow the sum of $3,000 and not the whole sum claimed by the plaintiff.

(Clarification discussion)

*Amendment of special damages*

1. The total of the medical expenses under special damages is now revised.

Hospital expenses $1,188

Physiotherapy and follow-up treatments $1,692

Total: $2,880

1. Occupational therapy and orthopaedic follow-up at Queen Elizabeth Hospital between 17 March to 8 May 2006, as opposed to the earlier items from 3 March 2003 to 14 October 2003 of $1,692.

The 92 visits to Queen Elizabeth Hospital from 17 March 2003 to 8 May 2006 $6,348

Total $9,228

Travelling expenses $10,560

Tonic food $3,000

Bone-setter $320

Special damages therefore should be $9,228 plus $13,880 plus $3,000. Therefore, the total is $26,108.

*Summary of damages*

1. PSLA $400,000

Loss of income:

Pre-trial $305,183

Post-trial $82,800

Loss of earning capacity $30,000

Special damages $26,108

Total: $844,091

*Interest*

1. Interest on the PSLA at 2 per cent per annum from the date of writ to the date of judgment. Pretrial loss of earnings and the special damages from the date of accident at half judgment rate. Thereafter at judgment rate.

*Costs*

1. Costs to the plaintiff, to be taxed if not agreed, with certificate for counsel.

(H C Wong)

District Court Judge

Mr Eugene Yim, instructed by Messrs Simon C.W. Yung & Co., for the Plaintiff

1st Defendant, in person, absent

2nd Defendant, in person, absent