DCPI 306/2015

**IN THE DISTRICT COURT OF THE**

# **HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO.306 OF 2015

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BETWEEN

|  |  |  |  |
| --- | --- | --- | --- |
| WAN KAM PING | | Plaintiff | |
| and | | | |  | |
| MAN WAI HUNG trading as  CHIU SHING NOODLES HOUSE | | Defendant | | | |

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Before : District Court Master S.H. Lee in Court

Date of Hearing : 30 Aug 2017

Date of Assessment of Damages : 15 Sept 2017

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**ASSESSMENT OF DAMAGES**

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1. On 4 July 2013, the plaintiff slipped and fell on defendant’s restaurant in Yuen Long and sustained injuries (**the accident**). He began this action to recover damages from the defendant on 10 Feb 2015. Interlocutory judgment was entered against the defendant for damages to be assessed on 4 Jun 2015.
2. At the hearing before me, the plaintiff was represented by Mr Wong Charn Hung Andrew of Messrs. Huen & Partners (**Mr Wong**). The defendant did not turn up at all during the entire hearing which lasted until about 1145 hours.
3. Despite Mr Wong confirmed on my enquiry that 2 letters of his firm sent by ordinary post to defendant’s two addresses in the writ of summons as deposed by Mr Ho Kwan Lam in his Affirmation of Service filed 25 Aug 2017 were returned to his firm on 30 June 2017, I was satisfied that the defendant had been notified of this hearing and I decided to proceed with the assessment in defendant’s absence as submitted by Mr Wong.
4. I was so satisfied because the defendant turned up in person before Master Michelle Soong on 17 May 2017 when this assessment of damages was originally scheduled to be heard. According to paragraph 3 of court order of the said date and as Mr Wong verified before me[[1]](#footnote-1), Master Soong in punti orally adjourned it to be heard before Court No.48 on 30 Aug 2017 at 0930 hours in defendant’s presence. Hence, the defendant must have known of adjourned hearing date of the assessment of damages before me.
5. At the hearing before me, the only witness called by Mr Wong is the plaintiff. He adopted his witness statement dated 21 Mar 2016 and Mr Wong was given leave by me to examine plaintiff in chief on his latest health conditions. After that, this court asked the plaintiff a few questions to clarify a few matters and Mr Wong did not re-examine on the answers given.
6. As to plaintiff’s claim for damages, there are only 2 heads of claim set out in Revised Statement of Damages dated 21 Mar 2016 (**RSOD**) for assessment by this court. They are 1) pain, suffering & loss of amenities (**PSLA**); and 2) special damages.
7. I have fully and carefully considered Mr Wong’s written and oral opening submissions, all evidence adduced at the hearing before me, Mr Wong’s written and oral closing submissions, and all authorities brought to my attention. I am grateful for his assistance.

*Assessment of plaintiff*

1. Save for some understandable mistakes due to lapse of time or otherwise, overall speaking, I find plaintiff an honest and reliable witness. Subject to such clarification or correction he added in the box and subject to documentary evidence before me, which I give full weight and prefer them to plaintiff’s evidence, I am prepared to accept such of plaintiff’s evidence below as the truth.
2. My findings are as follows.

*Plaintiff’s background*

1. At the time of the accident, the plaintiff was aged 51, worked in a bakery, and resided in Tin Shui Wai.

*Injuries & treatments*

1. The plaintiff, I find, landed on his right shoulder and right face in the accident which happened at about 1530 hours. But he suffered no loss of consciousness, vomiting or headache. He called police for assistance at 1714 hours[[2]](#footnote-2) and later arrived on ambulance to Accident & Emergency Department (**A&E**) of Pok Oi Hospital (**POH**) at about 1746 hours.
2. Examined at A&E of POH, he was found to have swelling over right maxilla, swelling over right middle finger, and tenderness over right shoulder. The range of movement of his right shoulder was limited by pain. X-ray of his facial bone, right shoulder, right elbow and right hand revealed no fracture. CT brain revealed no acute hemorrhage or skull fracture. The provisional diagnosis was “S/F with right shoulder injury”[[3]](#footnote-3).
3. Plaintiff, I am satisfied, was given dressing in form of sling[[4]](#footnote-4) to stabilize his right shoulder at A&E of POH on 4 July 2013 as was recorded in 3 photos taken at POH on the same day[[5]](#footnote-5). But I think he was mistaken about swelling of his right *index* finger as the photo[[6]](#footnote-6) and the medical report or records never show that. He was discharged on the same day and given sick leave from 4 to 7 July 2013[[7]](#footnote-7).
4. Plaintiff told me in the box, and I accept, that the said sling was removed by him 2-3 days after the accident when he found it no longer necessary.
5. On 13 July 2013, the plaintiff attended A&E of Tuen Mun Hospital (**TMH**). Medical examination revealed localized tenderness over right anterior chest wall near shoulder. The range of movement of his right shoulder was full. Chest X-ray revealed no fracture. The provisional diagnosis was “R chest wall pain”[[8]](#footnote-8). The plaintiff was treated and discharged on the same day, with sick leave from 13 to 15 July 2013 given to him[[9]](#footnote-9).
6. On 16 July 2013, the plaintiff again attended A&E of POH for treatment on ambulance. I think plaintiff was mistaken in the box when he said he attended A&E of TMH on ambulance. In fact, according to the medical records of the 2 hospitals, he attended on ambulance on his 2 attendances at POH and not on that at TMH.
7. Medical examination at A&E of POH revealed tenderness over right upper chest wall. Chest examination was clear. The provisional diagnosis was “chest wall pain”[[10]](#footnote-10). The plaintiff was treated and discharged on the same day with sick leave given from 16 to 18 July 2013[[11]](#footnote-11).
8. On 19 July 2013, the plaintiff consulted Dr Lai Ming Yuet (**Dr Lai**), a private practitioner, for right chest pain and was given sick leave of 3 days from 19 to 21 July 2013[[12]](#footnote-12). The diagnosis was “right chest pain”[[13]](#footnote-13).

*Current conditions*

1. I am only prepared to accept that plaintiff still suffers today from very mild intermittent pain on his right shoulder which does not affect his daily living in any way as he added in the box. I am afraid I do not accept his evidence of alleged right wrist pain today as he claimed in the box and I do not find it necessary to decide whether his right shoulder pain today adversely affects his work as he claimed in the box.
2. I have come to the above conclusions for the following reasons.
3. Firstly, the medical reports and records before me in no way indicated that plaintiff’s right wrist was injured in the accident or that he suffered from right wrist pain. His witness statement made in 2016 also said nothing of right wrist.
4. Secondly, the plaintiff elects not to adduce expert medical evidence at this assessment of damages. Hence, there is no expert medical evidence to verify his alleged current health conditions.
5. On the evidence before me, plaintiff’s treatment ended on 19 July 2013 and he had no more treatment for the last 4 years. One imagines he suffers today very mild symptoms or else he would have sought more treatments in the past or today.
6. Finally, as the plaintiff neither claims loss of earnings nor loss of earning capacity in his RSOD, whether his current symptoms as a result of the accident adversely affect his work or working ability is, in my view, neither here nor there.

*PSLA award*

1. Mr Wong seeks a PSLA award of $120,000 and drew my attention to the following 3 comparable authorities, namely: -1) *So Kim Lung v Lee Pak Wai*, unreported, HCPI 494/2010, 1 Nov 2012; 2) *Wong Kin Hung v Chan Wai Ming*, unreported, DCPI 1223/2006, 16 Feb 2007; and 3) *Ling Man Kuen v Chow Chan Ming & Another*, unreported, DCPI 1445/2005, 21 Aug 2006.
2. I have carefully compared the injuries, symptoms and other relevant circumstances of the victims in these 3 cases to those of plaintiff which I have found above.
3. The injuries of the victims in the 3 cases Mr Wong cited are not, I am afraid, similar to those suffered by the plaintiff before me. Comparing their overall severity, I think cases 1) and 3) are more serious than that of plaintiff while case 2) is closer.
4. All things considered, I make a PSLA award in plaintiff’s favour at the sum of **$70,000**.

*Special damages*

1. The plaintiff seeks in RSOD $500 for medical expenses and another $100 for travel expenses.
2. I allow the sum of $500 claimed as documents were produced before me to prove that such expenses were, as plaintiff said, incurred for 3 attendances at A&E and one consultation at Dr Lai’s clinic.
3. No document was produced before me for travel expenses incurred. Plaintiff orally gave this court in the box further particulars of the number of trips he took by way of public transport (as opposed on ambulance), the type of public transport chosen by him and the estimated costs of each such trip. Having considered the same, I am prepared to accept his evidence and award an additional sum of $80 by way of travel expenses.
4. As such, I made a total award of **$580** for special damages in plaintiff’s favour.

*Total award*

1. The total damages payable by defendant to plaintiff on my assessment therefore comes up to **$70,580** i.e. $70,000 + $580.

*Disposition*

1. Accordingly, I enter final judgment against defendant in the sum of $70,580 in plaintiff’s favour.

*Interest awarded*

1. I further award interest on PSLA award at 2% p.a. from the date of the writ to the date of this written assessment of damages and also interest at 4% p.a. on special damages from the date of the accident to the date of this written assessment of damages as sought in RSOD.

*Costs of assessment*

1. I see no reason not to award costs of the assessment of damages against defendant and I so order.
2. Mr Wong elects to have gross sum assessment of the aforesaid costs instead of taxed costs. In view of the relatively small total award given in this case, I agree.
3. Having considered statement of costs submitted by Mr Wong, I assess the costs of assessment of damages, including all reserved costs inclusive of the hearing before Master Michelle Soong on 17 May 2017, at a total sum of **$28,000**.

(LEE Siu-ho)

Master, District Court

Mr Wong Charn Hung Andrew, of Huen & Partners, for the plaintiff

The defendant was not represented and did not appear

1. And Mr Wong gave this court an undertaking to file an affidavit within 7 days to verify that on oath and to exhibit updated business search of defendant’s restaurant business to confirm no change of ownership unlike the defendant orally claimed otherwise on 17 May 2017. [↑](#footnote-ref-1)
2. See letter to plaintiff’s solicitors from police dated 12 Mar 2015 at p.93 of assessment bundle [↑](#footnote-ref-2)
3. See ambulance record at p.94 of assessment bundle, medical report dated 2 Sept 2013 by A&E of POH at p.81 of assessment bundle, examination report of Radiology Department of POH at p.103 of assessment bundle, and medical records for 4 July 2013 from A&E of POH at p.101 of the assessment bundle [↑](#footnote-ref-3)
4. Recorded in medical records for 4 July 2013 from A&E of POH, lower photo at p.84 of assessment bundle and photo at p.85 of the assessment bundle [↑](#footnote-ref-4)
5. At pp.84-5 of the assessment bundle [↑](#footnote-ref-5)
6. i.e. upper photo at p.84 of the assessment bundle [↑](#footnote-ref-6)
7. “Right shoulder pain” was put down in his medical certificate. [↑](#footnote-ref-7)
8. See medical report dated 10 Sept 2013 from A&E of TMH at p.80 of assessment bundle and medical records for 13 July 2013 from A&E of TMH at p.97 of assessment bundle [↑](#footnote-ref-8)
9. “R shoulder and chest wall injury” was put down in his medical certificate. [↑](#footnote-ref-9)
10. See medical report dated 2 Sept 2013 from A&E of POH at p.81 of assessment bundle and medical records for 16 July 2013 from A&E of POH at p.99 of assessment bundle [↑](#footnote-ref-10)
11. “Chest wall pain” was put down in the medical certificate concerned [↑](#footnote-ref-11)
12. See certificate of sickness given by Dr Lai dated 19 July 2013 at p.110 of assessment bundle [↑](#footnote-ref-12)
13. It was so put in receipt issued by Dr Lai on 19 July 2013 at p.105-6 of assessment bundle [↑](#footnote-ref-13)