#### DCPI339/2004

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## **PERSONAL INJURIES ACTION NO. 339 OF 2004**

BETWEEN

KHAN SUJAD Plaintiff

and

HO HO KWONG Defendant

formerly trading as

A STEP AHEAD CLEANING

ENGINEERING COMPANY

##### Coram: H H Judge H C Wong in Court

Date of Hearing: 23 February 2005

Date of Delivery of Judgment: 23 February 2005

## ASSESSMENT OF DAMAGES

1. In this action, the defendant was absent throughout. The affirmation of service of Leung Yik-hang filed on 22 February 2005 set out the dates whereby the defendant was served the notice of this hearing, the bundle and the judgment entered. He remained absent from these proceedings throughout and the assessment of damages hearing is conducted in his absence. The judgment in this action was entered on 20 October 2004 against the defendant and today is the hearing of the assessment of damages.
2. The plaintiff claims against the defendant, his former employer, for injuries suffered while working for him at Room 1014, Kwai Chi House, Kwai Fong in Kowloon on 21 March 2002. The plaintiff is a construction worker doing odd jobs. The plaintiff, after working for the defendant for three days at the aforesaid address, cut his left thumb while working at the premises with an electric saw. The machine had jumped and cut his left thumb, leaving a 1.5-cm laceration wound. The cut had severed 90 per cent of the extensor pollicis longus tendon and caused the cortical bone loss over the dorsal radial aspect of the left thumb.
3. He was taken to the Princess Margaret Hospital on the same afternoon and an operation on his left thumb was performed on the next day. He was discharged on 23 March 2002 and was followed up with physiotherapy and occupational treatments. He was granted sick leave from 21 March 2002 to 15 July 2002.
4. The plaintiff’s evidence in court was that he had resumed work since the accident but he found he had a weaker grip on his left hand and stiffness of his left thumb which he found difficult to bend and he was not able to hold heavy objects for a long period of time. According to Dr Tsoi Chi-wah Danny, who has written a medical report on 26 March 2004 after examining him, the plaintiff suffered from stiffness of the IP joint which accounted for 4 per cent of the impairment of the thumb which is a 2 per cent impairment of the hand and it amounts to 1 per cent impairment of the whole person.
5. Dr Tsoi considered that the plaintiff is suitable to resume his pre‑injury work with minimal reduction in capacity. The weakened left thumb would slightly affect his ability in handling tools, twisting knobs and picking up heavy objects with his left hand. A change of occupation, in Dr Tsoi’s opinion, is not required. He further considered that the reduced IP joint motion of the left thumb accounts for 2 per cent loss of earning capacity. Dr Tsoi also confirmed that four-month sick leave to be a reasonable period.
6. The plaintiff’s own evidence confirmed that his daily living has not been affected. The only difference in his work is that he had not returned to work at construction sites for he was afraid that his weakened left hand grip may lead to more accident if he climbed up and down in construction sites. He told me he has been working in packaging and other lighter duties since the accident.

Plaintiff’s suffering loss of amenities and loss of earning capacity award

1. The plaintiff’s solicitor, Mr Chan, has asked for $100,000 for the pain, suffering, loss of amenities for the plaintiff based on the authorities of *Chan Po-keung v Law Ping* HCA 3993 of 1983, *Tran Van Nho v Cheuk’s Industries Company Limited* HCA 719 of 1986, in the more recent case of *Lee Tsz Kan v Climax Paper Convertors Limited* HCPI 504 of 2003, a judgment of Tang J as he then was on 24 June 2004.
2. The most relevant and recent case of *Lee Tsz Kan* where Tang J awarded $50,000 under PSLA and $100,000 for loss of earning capacity was based on the agreement by the parties at the hearing. Mr Chan on behalf of the plaintiff asks for a similar sum of $100,000 for the plaintiff’s loss of earning capacity. He based his calculations on Tang J’s formula of one month for every 10 years of work or working capacity. Therefore, for 40 years of employment, it was Tang J’s judgment that a sum of not more than four months would be awarded. This has been explained and set out in Tang J’s judgment under paragraph 28 of his judgment where he held that:

“In the absence of concession, I would have awarded a smaller sum for loss of earning capacity since on the evidence, the residual disability of the plaintiff is small and negligible. He was earning HK$14,004.25 per month. I would not have awarded more than four months’ pay on the basis of a month’s loss of wages for every 10 years, namely HK$56,017. However, Mr Yau’s concession is made on the basis that the award of PSLA should remain at $50,000. Although I regard HK$50,000 was correct for PSLA, I believe when the conceded figure of $100,000 for loss of earning capacity is taken into consideration, there is really no reason for me to make a higher award for PSLA.”

1. The formula therefore is for every 10 years of employment, one month. Tang J did not make an award on that basis because of the concession and agreement reached by counsel for the parties in that case.
2. Based on this formula for the plaintiff in the present case, a man of 28 years of age at the time of accident (he is now 31 years old), his working life would not exceed a period of 30, maybe 35 years. Mr Chan gave the figure of 25 years of future employment. I would tend to be more lenient, taking into account that he was 28 at the time of the accident and he is now 31 years old and I would assume that he would be able to work for a further 30 years or 35 years if his health allows him to do so. I will use a multiplier of not more than 3.5, representing 35 years. His salary was $450 per day and he worked 26 days a month which makes his monthly salary $11,700 per month. The loss of earning capacity therefore is $11,700 x 3.5 = $40,950. As to the PSLA, I would accept the figure proposed by Mr Chan of $100,000.

Loss of MPF

1. Under this head, I accept Mr Chan’s calculation and allow the award of $2,262 and this consists of the PSLA being based on 5 per cent of the monthly earnings of the plaintiff, and Mr Chan used the figure of 585/30 x 116. I accept those calculations to be correct.

The special damages

1. I assess that the $3,000 requested and claimed as medical and travelling expenses to be reasonable and I accordingly allow the figure of $3,000. As to interest, Mr Chan asked for 2 per cent per annum on general damages from the date of writ to the date of judgment, and I allow that and half judgment rate for special damages from the date of accident to the date of judgment and thereafter at judgment rate for both the general damages and special damages. This is allowed.
2. In summary, the award is:

PSLA $100,000

Pre-trial loss of earnings $52,200

Loss of earning capacity $40,950

Loss of MPF $2,262

Special damages $3,000

The total comes to $198,412.

1. As to costs, the costs to the plaintiff to be borne by the defendant, to be taxed if not agreed. The plaintiff’s own costs to be taxed in accordance with legal aid regulations. As the employee’s compensation award has not been paid, I will not deduct this amount from the present award.

# (H C Wong)

# District Judge

Mr Keith Chan, of Messrs Massie & Clement, assigned by the DLA, for the Plaintiff

Defendant, in person, absent.