#### DCPI352/2009

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 352 OF 2009

BETWEEN

CHAN KAM FAI Plaintiff

and

**李志傑經營之惠林運輸公司** Defendant

##### Before: H H Judge Lok in Court

Date of Hearing: 1 December 2010

Date of Judgment: 1 December 2010

## ASSESSMENT OF DEMAGES

1. This is a claim for damages for personal injuries arising from a work-related accident.
2. At all material times, the Plaintiff was employed by the Defendant as a driver and delivery worker for furniture. On 4 March 2006, in the course of employment with the Defendant and in a car park located at the Castello, Sha Tin, New Territories, Hong Kong, a piece of furniture fell down and hit onto the Plaintiff’s left foot when he was offloading the same from a trolley.
3. As a result of the accident, the Plaintiff was suffering from comminuted fracture of the distal phalanx of the left big toe with minimal displacement of the fracture fragments and soft tissues swelling around the fracture.
4. The Defendant has not filed a notice to defend the Plaintiff’s claim. Interlocutory judgment on liability was entered on 27 February 2010 and this is the assessment of the quantum of the Plaintiff’s claim.

Injuries and treatment

1. The Plaintiff was born on 22 October 1964 and so he was aged 41 at the time of the accident.
2. The Plaintiff was sent to the Accident and Emergency Department of the Prince of Wales Hospital for treatment immediately after the accident. Upon examination, it was found that there was fracture of the distal phalanx of the left big toe. Thereafter, the Plaintiff received treatment from ADEC Medical Centre and was referred to JP Physiotherapy Clinic for treatment. Due to the swelling over the left big toe, he could not bear weight on his left foot and he had to sit on wheelchair for mobilization. The Plaintiff was referred to and consulted Dr Chang Shao on 27 May 2006, who diagnosed that the Plaintiff suffered from capillary and lymphatic injury causing left big toe swelling. The Plaintiff was only able to bear weight on his left foot in or about September 2006. At the last follow-up consultation at ADEC Medical Centre on 16 July 2007, physical examination revealed reduced flexion at the first metatarsal phalangeal joint and total loss of flexion and extension at the interphalangeal joint.
3. The Plaintiff is still suffering from on-and-off needle pain and numbness in his left big toe. The Plaintiff’s left big toe will be painful during change of weather and while jumping or running. Because of the pain, he cannot carry heavy objects like furniture as before, otherwise he would experience pain in his left big toe.
4. The Plaintiff was assessed by the Employees’ Compensation (Ordinary Assessment) Board on 31 October 2007 to have suffered 1% loss of earning capacity for his left big toe injury resulting in pain and stiffness.
5. The Plaintiff was granted sick leave from 4 March 2006 to 10 November 2006, a period of approximately 8.25 months.

Pain suffering and loss of amenities (“PSLA”)

1. In respect of the claim for PSLA, Mr Leung, solicitor for the Plaintiff, has referred me to a number of cases including To Ying Wa v Cargo-Land (Warehouse) Development Limited, HCPI441 of 2000, Lee Sze Wai v Law Chi Kin, DCPI 44 of 2001, Sin Fu Yau v Cheung Kwok Leung Keith & Others, DCPI1081 of 2005, and Tsang Ching Fei v Mo King Guo, DCPI2136 of 2006. It is clear that the Plaintiff’s case falls below the serious injury category according to the Lee Ting Lam scale. In my judgment, the injury of the Plaintiff is similar to that of the Plaintiff in the case of Sin Fu Yau, in particular, there was no operation involved and the stiffness in the Plaintiff’s left big toe is not particularly serious. Taking into account the effect of inflation since that case, I award a sum of $180,000 as PSLA in the present case.

Pre-trial loss of earnings and loss of mandatory provident fund (“MPF”) contribution

1. Prior to the accident, the Plaintiff was a driver and delivery worker earning $8,000 per month. He was granted sick leave for a period of 8.25 months. The Plaintiff was unable to resume his pre-accident work after the sick leave because of his residual disability.
2. The Plaintiff had tried to help his brother with delivery work for a few days in or about the end of October 2006. However, he stopped the same because of pain over the dorsum of the left foot after work. In or about November 2006 to January 2007, the Plaintiff worked as a self-employed street hawker with his relative selling wool but he suffered loss from such business. Therefore, the Plaintiff did not have any income during the period from 11 November 2006 to early March 2007.
3. In or about early March 2007, the Plaintiff was employed as a delivery worker and earned an average monthly income of about $7,448. The Plaintiff resigned on 19 June 2010 for personal reason. During the period from March 2007 to 19 June 2010, the Plaintiff earned a total sum of $292,894.
4. Thereafter, the Plaintiff was only re-employed as a delivery worker in or about the end of July 2010. He earned a monthly wage of $7,500. His present job requires him to deliver food and grocery items. He cannot carry heavy objects like furniture as before.
5. After listening to the evidence of the Plaintiff, I am satisfied that the Plaintiff had made genuine attempt to find employment with the highest income after the accident. His reduction in income was only caused by the injury in the accident. However, the Plaintiff should not be allowed to recover the loss of income of about 1 month when the Plaintiff resigned in June 2010 because of personal reason. I therefore deduct the sum of $7,500 as the income that should have been earned by him during that period.
6. By reason of the above, the Plaintiff’s pre-trial loss of earnings up to the date of assessment can be assessed as follows:

(i) For the period from 14 March 2006 to 26 July 2010:

($8,000 x 52.75 months - $292,894 - $7,500) x 105% = $127,686

(ii) For the period from 27 July 2010 to 1 December 2010:

($8,000 - $7,500) x 4.25 months x 105%

= $2,231

1. The Plaintiff’s total pre-trial loss of earnings and loss of MPF contribution is therefore assessed in the sum of $129,917.

Post-trial loss of earnings and loss of MPF contribution

1. Prior to the accident, the Plaintiff was a driver and delivery worker earning a monthly income of $8,000. Since the end of July 2010, the Plaintiff has been a delivery worker earning a monthly income of $7,500. I am satisfied that the reduction in income is caused by the injury of the Plaintiff in the sense that he cannot carry heavy objects such as furniture as before.
2. By the date of the assessment, the Plaintiff is 46 years old. Since the Plaintiff has engaged in manual labour work, I adopt a post-trial multiplier of 9.
3. The Plaintiff’s post-trial loss of earnings and loss of Mandatory Provident Fund contribution should be:

($8,000 - $7,500) x 12 x 9 x 105% = $56,700.

1. As a result of the accident, the Plaintiff is still suffering from residual disability which would affect the Plaintiff’s work performance. Although he can still secure a job as delivery worker, his efficiency and working capacity are affected by his residual disability and as a result he would suffer from a disadvantage and handicap in the labour market. I therefore allow the Plaintiff to claim a sum of $45,000, being his present earnings for 6 months, as his loss of earning capacity.

Other special damages

1. The Plaintiff claims the sums of $8,120, $3,000, $2,000 as medical expenses, nourishing food expenses and travelling expenses respectively. In my judgment, the sums claimed are reasonable and I allow such claims in full.
2. The Plaintiff was awarded employees’ compensation in the sum of $50,153.98. The Plaintiff also received a sum of $13,500 being advance payment. The Plaintiff will therefore give credit in the total sum of $63,653.98.
3. In summary, the Plaintiff’s claim can be assessed as follows:

(a) PLSA: $180,000.00

(b) Pre-trial loss of earnings and MPF contribution:

$129,917.00

(c) Post-trial loss of earnings and MPF contribution:

$56,700.00

(d) Loss of earning capacity: $45,000.00

(e) Medical expenses: $8,120.00

(f) Nourishing food expenses: $3,000.00

(g) Travelling expenses: $2,000.00

Sub-total: $424,737.00

Less Employees’ Compensation Payment: $63,653.98

Total: $361,083.00

1. The Plaintiff is also entitled to interest at 2% per annum on the sum of $180,000 on PSLA from the date of Writ from (18 February 2009) to the date hereof, and interest at 4% per annum on pre-trial loss of earnings and other special damages from 4 March 2006 to the date hereof, and there be interest at judgment rate on the whole judgment sum from the date hereof until payment.

# ( David Lok )

# District Judge

Mr Leung Chun-cheung, Jeff, of Messrs Cheung, Chan & Chung for the Plaintiff

Defendant, in person, absent