DCPI412/2004

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 412 OF 2004

BETWEEN

CHAN KWOK WAH Plaintiff

and

TSOI LEUNG MING trading as Defendant

TSOI MING GEI ENGINEERING CO.

Coram: H H Judge H C Wong in Court

Date of Hearing: 24 June 2005

Date of Delivery of Judgment: 24 June 2005

ASSESSMENT OF DAMAGES

1. The plaintiff took out the present action against the defendant for compensation for injury sustained in the course of employment. The defendant failed to acknowledge service and is in default of defence. Interlocutory judgment on liability was entered on 6 January 2005.

Today’s Hearing on the Assessment Damages

1. The plaintiff is a trained and experienced plumber. On 9 May 2001, while working at Shop 202-203, 2nd Floor, Grand Millennium Plaza, 183 Queen’s Road Central, Hong Kong, he fell from a ladder. He was engaged by the defendant at the time. He was awarded the sum of $126,972 at the hearing of the Employees’ Compensation application before me on 27 and 28 November 2003 under DCEC767/2002. The defendant was present at the Employees’ Compensation application hearing on 27 and 28 November 2003. He is, of course, absent at today’s hearing.
2. At the Employees’ Compensation hearing on 27 and 28 November 2003, after hearing evidence from both parties, the plaintiff was assessed the following:

(1) Pre-accident monthly earning was assessed at $10,500. The calculation was based on a daily wage of $750 and an average working days of 14 days a month.

(2) Sick leave was between 10 May 2001 and 26 April 2002, a total of 11 months and 16 days.

(3) Medical expenses claimed by the plaintiff at the time was $132.

1. He was, as evidence showed, assessed by the Medical Assessment Board of the Employees’ Compensation Board to have suffered loss of earning capacity of 4 per cent.
2. I am informed by Mr Lau the plaintiff’s counsel that the plaintiff will not dispute the findings of the court at the Employees’ Compensation application on 28 November 2003.

The Injuries

1. The plaintiff visited after the accident a medical practitioner on the same night, that is 9 May 2001, but there was no full investigation of his injuries at the time. He visited the Accident and Emergency Department of the Queen Elizabeth Hospital on the early morning of 10 May 2001, that is the next day, the day after the accident. He was found to suffer from the following:

(a) left hand bruise and tenderness;

(b) left pelvis tenderness;

(c) x-ray of left hand show no fracture;

(d) x-rays of pelvis and left hip showed irregularity at cortical outline of inferior rami of left pelvis,

and these were consistent with the history of his falling from height the day before. He was treated and discharged but he was readmitted on 12 May 2001 for further treatment.

1. Dr Mak Ka-lok of the Department of Orthopaedics and Traumatology at the Queen Elizabeth Hospital found the plaintiff had abrasions over the left elbow and forearm, tenderness over his left trochanteric and pelvic regions. X-rays showed a fracture of left inferior pubic ramus. The plaintiff complained at the time of swelling in the left hand but no fracture was shown. He was discharged on 15 May 2001 from the Queen Elizabeth Hospital. He was given physiotherapy and occupational therapy treatments after discharge.
2. The plaintiff received follow-up treatments but failed to attend the follow-up treatment at the Orthopaedic and Traumatology Department on 10 February 2004.
3. According to the medical reports, he received 63 occupational treatments sessions between 18 September 2001 and 13 July 2004. He attended 28 sessions of physiotherapy sessions from 17 May 2001 to 13 September 2001. He was given sick leave up to 26 April 2002.
4. Dr Lam Kwong-chin, specialist orthopaedics and traumatology, examined the plaintiff and reported on 15 February 2003 that the plaintiff complained of:

(1) left hand swelling at dorsum; snapping sound on making fist and pain at exertion;

(2) pain at proximal joint of left ring finger;

(3) the left buttocks and hip pain, which became worse at prolonged sitting or standing; no particular limitation in sitting or walking time.

1. Dr Lam found that apart from the local tenderness over dorsum of wrist and palmar side of left finger, no other abnormality was found. The joint motion and power were found to be satisfactory. He assessed the plaintiff due to his complaint of residual hand pain to have suffered 1 per cent impairment of the hand. As to the pelvis, Dr Lam found no abnormality other than local tenderness at left trochanter and left buttock region. The x-ray showed the fracture healed well with some residual deformity. This, according to Dr Lam, is a 5 per cent impairment of the leg. The combined impairment was assessed to be 3 per cent.
2. Dr Lam found the plaintiff’s sick leave granted to be justified and he should be physically capable to continue his job as a plumber but with working efficiency and tolerance slightly affected by the residual pain to his hand and pelvis. He assessed the plaintiff’s loss of earning capacity to be 4 per cent.

Quantum under PSLA

1. The plaintiff was born on 22 May 1958. He is now 47 years old. Mr Lau relied on the case of *Lam Pik Kuen v Lee Fai Ming* HCPI7/1998, a judgment of Deputy High Court Judge McMahon, as he then was, on 18 May 2000. The judge awarded $150,000 to the plaintiff who suffered a fracture of her left and superior and inferior rami. She suffered from groin pain due to irregular pelvis symphysis. She was not able to stand longer than 3 to 4 hours and was unfit for heavy work.
2. In *Woo Wai Kuen v Li Siu Keung* *trading as Alex Kitchen* DCPI309/2001, a judgment of Deputy Judge Yu at District Court on 19 June 2002, the plaintiff fractured her sacrum and was assessed to have suffered from 5 per cent impairment due to cracked fracture with no displacement, a sum of $150,000 was awarded under PSLA.
3. I am satisfied that the plaintiff with the combination of his pelvis injury and the left palm injury, the discomfort and residual pain he suffered in his left hand and hip, his loss of enjoyment of playing football and riding bicycle, the award under PSLA of $150,000 is reasonable and I so award.

Pre-trial Loss of Earnings

1. As to the pre-trial loss of earnings, the plaintiff does not dispute that $10,500 per month he was assessed at the ECC hearing based on 14 days work a month at $700 per day, I shall adopt this sum as his monthly earnings pre-trial. The plaintiff was given 11 months and 16 days sick leave, and the award therefore is in total $121,100.

Loss of Future Earnings

1. There is no loss. According to the assessment of Dr Lam, the plaintiff is able to return to his previous job as a plumber. However, the plaintiff has informed me that because he was able only to obtain work for 4 days in the last 12 months, he is now considering working in another line of employment. No award will be made under this head.

Loss of Earning Capacity

1. I accept the plaintiff has suffered loss of earning capacity in the job market and because I made no award on his loss of future earnings I think an award is appropriate under this head. I consider this 9 months’ earnings as a compensation of his loss of earning capacity suggested by Mr Lau to be reasonable, and I make the award as suggested of $94,500 based on $10,500 per month for 9 months.

The Loss of MPF

1. I accept there is a loss of MPF of 5 per cent and therefore he is awarded $6,055.

Special Damages

1. I am satisfied that the plaintiff paid medical expenses of $132 for three sessions of $44 each.
2. Travelling expenses for 109 visits, including physiotherapy and occupational therapy sessions, at $30 a round trip each time, amounting to $3,270. Tonic food of $3,000, and those are assessed to be reasonable.
3. In summary, the award is as follows:

PSLA $150,000

Pre-trial loss of earnings $121,100

Loss of earning capacity $ 94,500

Loss of MPF $ 6,055

Special damages $ 6,402

In total, the award is $378,057

Interest

1. 2 per cent per annum on general damages for the PSLA award from date of writ to date of judgment. Interest on pre-trial loss of earnings and special damages at half judgment rate from the date of writ to the date of judgment. Thereafter at judgment rate. Costs to the plaintiff to be taxed if not agreed, with certificate for counsel.

(H C Wong)

District Court Judge

Mr Steven Lau, instructed by Messrs K w Luk & Co., for the Plaintiff

Defendant, in person (absent)