DCPI 473/2018

[2019] HKDC 1393

**IN THE DISTRICT COURT OF THE**

# **HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO.473 OF 2018

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BETWEEN

|  |  |  |  |
| --- | --- | --- | --- |
| DHILLON CHAMKAUR SINGH | | Plaintiff | |
| and | | | |  | |
| YIU SZE YUEN | | Defendant | | | |

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

Date of Hearing : 17 Oct 2019

Date of Assessment of Damages : 17 Oct 2019

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**ASSESSMENT OF DAMAGES**

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1. At around 7 pm on 13 Feb 2017, while the plaintiff was going down a slippery staircase of the 8th (top) floor (**the Floor**) of an old building in Shanghai Street, Yau Ma Tei, Kowloon (**the Building**), he slipped and fell and injured his left ankle (**the Accident**). He began this action in Mar 2018 to recover damages from the defendant owner and occupier of the Floor.
2. The defendant did not defend and interlocutory judgment was entered against him in plaintiff’s favour on 21 Aug 2018 for damages to be assessed.
3. On 11 July 2019, this action was set down for assessment of damages (**AOD**) on 17 Oct 2019.
4. Mr Pickavant appeared for the plaintiff at this hearing of AOD before me.
5. The defendant did not turn up. But I am satisfied on affidavits of service filed that he had been duly notified of this hearing and served with the hearing documents that I decided to proceed with this assessment in his absence.

*Government medical reports*

1. According to medical report by one Dr Chan Kin Kwan dated 29 Sept 2017 adduced before me, the plaintiff attended the Accident & Emergency Department of Queen Elizabeth Hospital (**QEH**) at 1020 hours on 14Feb 2017 i.e. the following day after the Accident. His general condition was observed to be satisfactory.
2. Medical examination revealed tenderness and swelling over medial and lateral aspect of left ankle. X-ray of left ankle showed fracture of lateral malleolus. The diagnosis was fracture of left ankle lateral malleolus. He was admitted to orthopedic ward. Permanent disability is said to be unlikely as a result of the injury.
3. According to another medical report dated 18 Sept 2017 by Dr Matthew Lee also adduced before me, on examination at the Department of Orthopedics and Traumatology of QEH, there was tenderness over plaintiff’s left ankle. Distal neurovascular examination was intact and there was no compartment syndrome. X-ray of his left ankle showed fracture of left lateral malleolus.
4. The plaintiff was treated with a short leg complete dynacast and given physiotherapy. He was taught left non-weight bearing walking and was discharged with analgesics on 15 Feb 2017.
5. He had subsequent follow up on 1 and 29 Mar 2017.
6. During his last follow-up (which I took to mean 29 Mar 2017), he was compliant to non-weight bearing walking with 2 elbow crutches. His cast was removed and there was no tenderness and normal distal neurovascular status. X-ray showed that the fracture was healing in satisfactory alignment. He was referred to the physiotherapists for partial weight bearing walking.
7. According to the report, the plaintiff was given further follow-up on 17 May 2017 but he defaulted.

*Plaintiff’s evidence*

1. The plaintiff gave evidence in Punjabi through assistance of interpreter before me. He adopted his witness statement dated 31 Oct 2018 as his evidence in chief. Mr Pickavant was given leave by me to elicit further oral evidence from the plaintiff on the claimed travel expenses.
2. The plaintiff was born in India in 1967. He was raised in India and he worked as a truck driver in India before he came to Hong Kong. He was married with 4 children aged between 17 and 23. They all now reside in India.
3. The plaintiff said he is a refugee. He said he fled from India to Hong Kong to save his life. On the day of his arrival in Hong Kong by air in Aug 2015, he was refused permission to land but he made a *non-refoulement* claim and later detailed by the Director of Immigration. It was not until Feb 2016 that he was released on recognizance.
4. As a result, the plaintiff could not work in Hong Kong and he was dependent on International Social Services (**ISS**) for financial support for his basic needs here. In Apr 2016, he rented a sub-divided room of the Floor from the defendant together with his 2 refugee friends. He paid his share of rent from assistance given by ISS.
5. The plaintiff said, in the Accident he described in para 1 above, his back landed on the staircase and he rolled down 5 to 6 steps. His friend behind him helped him up and helped him to walk back to their room. There was no blood on his injured left foot but he felt severe pain He had to take painkiller for relief.
6. The next morning, the plaintiff woke up and found his left foot swollen and its pain unbearable. He could not stand on his left foot. His friends carried him from the Floor to ground floor before he was driven on taxi to QEH.
7. After arrival at QEH, he was admitted to its Orthopedic ward for further treatment. He was treated with cast and given physiotherapy. He was discharged on 15 Feb 2017 with follow-up appointments.
8. The plaintiff said in this witness statement his daily life has been affected as a result of his injuries in the Accident.
9. He said he could not stand or walk without 2 crutches for several months after the Accident. He felt distressed about that because the Building had no elevator and ISS declined to finance him to move elsewhere.
10. He said he felt weak after the Accident. He had to rely on his friends for his daily activities e.g. asking them to buy daily food and household products for him, and asking them to cook for him.
11. And the plaintiff said in his witness statement that pain in his left foot would increase whenever he walked or stood for 10 minutes with help of 2 crutches. The pain would also radiate with climbing on stairs. He could not climb stairs for more than 9 to 10 steps without resting for 1 to 2 minutes.
12. The pain also affects his sleep. Since the Accident, he spent most time in bed and that caused him frustration.
13. Finally, the plaintiff said in his witness statement that he used to enjoy playing cricket with friends but he said he could not resume it given his conditions.
14. In the box, the plaintiff answered Mr Pickavant that he probably went to QEH on taxi for 5 to 6 times.
15. In answer to questions of this court, the plaintiff said he spent $24 on his taxi trip to QEH on 14 Feb 2017. He said his friend paid for his taxi trip home on his discharge on 15 Feb 2017. He had no idea about the fare paid but said it might be $50.
16. The plaintiff said he did not recall of follow-ups at QEH on 1 Mar 2017 or on 29 Mar 2017 due to lapse of time. According to his best recollection, he said he attended subsequent appointments at QEH by taxi for at least 5 or 6 times and the taxi fare on each journey differed, sometime more than $50 and sometimes less than $50.
17. Turning to his current conditions, the plaintiff confirmed with this court that he no longer requires any walking aid and no longer attended public hospital or clinic for treatment of his injuries in the Accident. For pain relief, he took medicine prescribed by private practitioner to him.
18. Finally, he told this court that his cast was removed 40 days after the Accident and he no longer required crutches for walking about 4 months after the Accident.

*Discussion*

*Assessment of evidence*

1. I give full weight to contents of the 2 medical reports adduced before me. In so far they differ from plaintiff’s testimony, I prefer the former. For this reason, I find that plaintiff’s cast was removed on 29 Mar 2017 i.e. 16 days after the Accident and not 40 days afterwards as claimed by the plaintiff.
2. I think it likely that, due to lapse of time as the plaintiff had admitted himself, his recollection on the number of subsequent appointments was faulty. I prefer the contents of the medical report and find that he only attended 2 follow-ups at QEH on 1 and 29 Mar 2017 and no more. He was, I find, given another follow-up on 17 May 2017 but he defaulted. It is noteworthy that no further follow-up *after* 29 Mar 2017 was pleaded in Statement of Damages filed in Apr 2018 (**SOD**) or in Revised Statement of Damages filed in Feb 2019 (**RSOD**). Neither was particulars of further appointments *after* 15 Feb 2017 given in his witness statement filed in Oct 2018.
3. Such default of follow-up by May 2017 indicates to me that the plaintiff had achieved such satisfactory recovery by then that he found it unnecessary to seek further treatment from public hospital or clinic and I so find. I think it likely that he no longer required crutches for walking about 3 months after the Accident.
4. And I think it likely that the plaintiff did not attend to physiotherapy that he was referred to. No particulars of that was given in SOD, RSOD or in plaintiff’s witness statement.
5. Nonetheless, I accept plaintiff’s evidence in the box that he has mild residual pain today that requires him to seek symptomatic relief of painkiller prescribed to him.
6. Subject to my findings in para 31 to 35 above and in the section of travel expenses below, I am prepared to accept the rest of plaintiff’s evidence summarized above.
7. The plaintiff made only 2 heads of claim in RSOD. They are damages for pain, suffering & loss of amenities (**PSLA**) and special damages.

*PSLA Award*

1. The plaintiff seeks an award of $150,000 in RSOD.
2. Mr Pickavant referred this court to the following PSLA comparable, namely: -
3. *Chan Sik Pan v Wylam’s Service Ltd & Others*, unreported, HCPI 648/1995, 16 Dec, 2002, Suffiad J;
4. *Li Chi Sing v Equal Link Ltd*, unreported, DCPI 1930/2011, 6 Mar 2013, his HH Judge Alex Lee;
5. *Lam Kam Fai v Yau Shing Scaffolding Co Ltd & Another*,unreported, HCPI 894/2011, 31 Oct 2013, Deputy High Court Judge Hartman;
6. *Ching Yuk Yee v Furniss Jacqueline Elizabeth & Another*, unreported, HCPI 127/2012, 24 Oct 2014, Deputy High Court Judge Wilson Chan (as he then was);
7. *Tamang Tikaram v Tong Kee Company Limited & Others*,unreported, HCPI 19/2013, 1 Apr 2015, Deputy High Court Judge Paul Lam SC; and
8. *Tsui Wai Ho v Pride Glory Limited trading as Ziti’s*, unreported, DCPI 1699/2016, 23 May 2019, Deputy District Judge SH Lee.
9. Each of the comparable (2) to (6) has, I think, facts different from those of plaintiff I have found above.
10. In comparable (2), the claimant received open reduction and internal fixation with plate and screws. He was left with an 11-cm scar at left malleolus. He had 14 sessions of physiotherapy and total sick leave of 166 days. But, like plaintiff, good recovery was achieved with normal waling resumed and fracture healed with good alignment. The prognosis was good according to expert assessment. $220,000 was awarded for PSLA in 2013.
11. The claimant in comparable (3), aged only 24 at accident, had fractured left distal fibula requiring surgery. He had to walk with crutches for some 9 months. He underwent 4-month physiotherapy. Two years, he was readmitted for 6 days for removal of implants and required further physiotherapy. But he also reported walking unaided and full recovery afterwards[[1]](#footnote-1). Expert opinion also gave a good prognosis. Allowing 10% discount for pre-existing injury, the court made a PSLA award of $292,500 in 2013.
12. Similarly, the female claimant in comparable (4) also had open reduction and internal fixation for left ankle fracture, and later an implant removal operation. Separately, she was diagnosed with post-traumatic stress disorder and depression. A PSLA award of $250,000 was given in 2014.
13. Closer to the circumstances of the plaintiff is, I think, comparable (5). The claimant had a minimally displaced fracture of right medial malleolus, received no operation but given a short leg dynast (which he wore for 7 weeks). He was hospitalized for 3 days. He was, however, only 36 at accident. He attended 19 sessions of physiotherapy and 17 sessions of occupational therapy.
14. On joint expert examination, the claimant could walk without aid. There was no scar or deformity. Range of motion was, however, reduced. X-ray showed the fracture to have healed in anatomic position. Having viewed surveillance video, the court accepted there might be some residual problem but not as frequent or serious as claimed. $200,000 was given by way of PSLA award in 2015.
15. The claimant in comparable (6) also suffered fractured distal fibula, requiring open reduction and internal fixation, 7 follow-ups, 13 sessions of physiotherapy and occupational therapy, and operation for implant removal. The fracture was found to have healed well with satisfactory range of movement. There was no limitation to claimant’s daily activities, and full recovery was achieved, 2 years after accident. A PSLA award of $250,000 was given in 2019.
16. Mr Pickavant accepted that plaintiff’s circumstances are not as serious as some of the comparable above in that he received no operation for his injuries in the Accident.
17. He, however, stressed that, according to Suffiad J at para 111 of the judgment in comparable (1) that, the range of PSLA awards for ankle fracture, and depending on the resulting disability, can vary from $150,000 to $400,000. That was said by his lordship in 2002 on the local cases then cited to him.
18. Having considered plaintiff’s circumstances against all the above comparable, and also taken into account of inflation over time, I make a PSLA award of $150,000 as sought by the plaintiff. It is, I agree, a reasonable and appropriate amount in all the circumstances of the plaintiff in this case.

*Special damages*

1. Mr Pickavant abandoned before me the claim of medical expenses in sum of $1,000 in RSOD. He only pursued travel expenses claimed in the sum of $500 in RSOD.
2. On my findings in para 32 & 34 above, I find the plaintiff took only a total of 6 trips to have medical treatment at QEH i.e. one on 14 Feb 2017 to QEH, one on 15 Feb from QEH, two on 1 Mar to and from QEH, and two on 29 Mar to and from QEH.
3. Considering, among others, plaintiff’s evidence of taxi fare paid and the distance between the Building and QEH, I am prepared to allow an average of $50 per trip. That should be more than sufficient to reimburse the plaintiff for his travel expenses.
4. I therefore allow $300 (i.e. $50 x 6) by way of special damages.

*Summary*

1. The total amount of damages payable by the defendant to the plaintiff is therefore $150,300 on my assessment.

*Disposition*

1. Accordingly, I enter final judgment in the sum of $150,300 in plaintiff’s favour against the defendant, together with interest on PSLA award of $150,000 at 2% p.a. from the service of the writ to the date of judgment and also interest on special damages of $300 at half judgment rate from the date of the Accident to the date of judgment.

*Costs of assessment*

1. I consider it appropriate to award costs to the plaintiff following the event. As the plaintiff is legally-aided, I think it appropriate to provide for taxation of plaintiff’s costs.
2. I therefore order that the defendant shall pay the plaintiff the costs of assessment of damages, including all reserved costs and the costs of this hearing before me, such costs are to be taxed if not agreed, and that plaintiff’s own costs shall be taxed in accordance with Legal Aid Regulations.
3. Finally, I thank Mr Pickavant for his submissions.

(LEE Siu-ho)

Master, District Court

Mr Pickavant of John M. Pickavant & Co, on the assignment of the Director of Legal Aid, for the plaintiff

The defendant acting in person absent

1. A bleak portrait of his conditions presented by the claimant was rejected by the court for contrary expert evidence and surveillance video put before the court. [↑](#footnote-ref-1)