# DCPI 567/2004

## IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES NO. 567 OF 2004

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# BETWEEN

## SZETO MING ( 司徒明 ) Plaintiff

And

#### LO MAN KAM ( 老文金 ) Defendant

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## JUDGMENT

## (ASSESSMENT OF DAMAGES)

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##### Coram : Deputy District Judge E. Yip in Court

###### Date of Hearing : 9 December 2005

Date of Judgment : 15 December 2005

##### Introduction

1. The plaintiff suffered injuries out of an attack by the defendant. Judgment was given to the plaintiff. It remains for me to assess the damages.

*The heads of claim*

2. As set out in the Revised Statement of Damages dated 6 July 2005, at pp. 23-26 in the Bundle of Documents (“BD”), the plaintiff’s claim is for a total sum of $464,087 *(sic)* comprising:

1. Pain, suffering and loss of amenities $300,000;
2. Loss of earning capacity $80,000;
3. Aggravated damages $50,000;
4. Special damages (medical fees, traveling for medical treatment, and tonic food) $34,087.

*The evidence in the plaintiff’s case*

3. At the time of the attack, the plaintiff was 51 years of age. Now he is 57. He was a village house developer. He had lived in the village in Sai Kung for 40 years. He has lived in his present house for 10 years. On 11 October 2000, the defendant’s workers were excavating soil from land (belonging to the government) behind his house and dumping it into the drainage channel. As it would cause water blockage, he asked the defendant to desist, otherwise he would call the police. The defendant desisted as asked.

4. On 13 October 2000, the defendant phoned him for a meeting. He waited for the defendant at the Rural Committee Office of the village. Nobody was there. The defendant arrived with a man and identified him to the man. The defendant punched his nose and the man, soon joined by 5 to 6 men, began to attack him with fists, kicks and bars for half a minute. A female passer-by shouted for help. The attackers fled in 4 private vehicles. The defendant was jailed for 3 ½ years after trial for wounding with intent. The village was a small community with only hundreds of residents. Most residents knew the plaintiff and of the incident. He felt depressed.

5. As a result of the attack, his head, back, left arm and hand, right middle finger, and knees were injured. He was hospitalized until 18 October 2000. An ulnar plating was performed. After discharge, he took sick leave for several months and received outpatient treatment regularly. The ulnar plating was removed on 10 January 2002.

6. Dr. Lau Hoi Kuen, an orthopaedic specialist, examined him on 24 February 2005 and completed a report on 2 March 2005 (BD 34-44). Dr. Lau regarded the following conditions as caused by the attack:

1. A 9 cm long vertical scar over the distal part of the ulna;
2. A mildly limited movement of left wrist joint;
3. A mildly limited movement of right middle finger;
4. Accelerated degeneration of right knee.

7. He complained to Dr. Lau of the following pain:

1. Mild, persistent pain over the vertex of the skull when in the cold season;
2. Depression and tenderness over his chest;
3. Pain and stiffness in right middle finger;
4. Pain in left forearm;
5. Persistent pain in right knee.

8. Dr. Lau regarded the sick leave from 13 October 2000 to 25 May 2001 reasonable. He could continue his work as a house developer though he had to reduce the time for hiking, which was his habit before the attack.

*My assessment*

*Pain, suffering and loss of amenities*

9. The plaintiff’s conditions are at the lower end of the category of “serious injury”. They were less serious than in *Kot Yim Kam HCPI 292/2004* or *Pang Ping Sum HCPI 290/2003*, where $400,000 was awarded. I award $300,000 under this head.

*Loss of earning capacity*

10. The plaintiff has to show that he suffers a real and substantive disadvantage in the labour market. His conditions do not satisfy this requirement. I make no award under this head.

*Aggravated damages*

11. The plaintiff has to show exceptional or contumelious conduct or motive by the defendant, and that as a result he suffered humiliation, distress and pain. I accept that the attack satisfies these requirements. I regard $50,000 a fair and appropriate award.

*Special damages*

12. I accept that the medical, traveling, and tonic food expenses were reasonably incurred and quantified. I award $34,087 under this head.

*The conclusion*

13. The sums awarded are as follows:

(1) Pain, suffering and loss of amenities $300,000

(2) Aggravated damages $50,000

(3) Special damages $34,087

In total $384,087

14. On general damages, interest will be at 2% per annum, from the date of writ to the date of assessment of damages, and thereafter at judgment rate. On special damages, interest will be at half judgment rate from the date of judgment to the date of assessment of damages, and thereafter at judgment rate.

15. There is no apparent reason why costs should not follow the event. I order costs *nisi* to the plaintiff. This will be made absolute after 14 days.

Dated this 15 December 2005

EDDIE YIP

DEPUTY DISTRICT JUDGE

Mr. K.L. Yeung, of M/s C. L. Chow and Macksion Chan, for the Plaintiff

Defendant: Lo Man Kam, in person