## DCPI 569/2015

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 569 OF 2015

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BETWEEN

ERWIANA SULISTYANINGSIH Plaintiff

and

LAW WAN TUNG Defendant

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Before: Her Honour Judge Winnie Tsui in Court

Date of Hearing: 4 December 2017

Date of Assessment of Damages: 21 December 2017

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ASSESSMENT OF DAMAGES

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*Background*

1. The plaintiff is from Ngawi, East Java, Indonesia. She came to Hong Kong in 2013 to work as a domestic helper. She was 22 years old at that time. The defendant was her employer.
2. The parties signed the standard form employment contract. The employment was from 30 May 2013 for a term of two years. The plaintiff would earn a monthly wage of $3,920 and a food allowance of $875 a month if no meals were provided by the defendant. The plaintiff was to live at the defendant’s home at a flat in Tseung Kwan O.
3. From the first day of her employment and for a period of over seven months, namely up to 9 January 2014, the plaintiff suffered from extensive physical abuses at the hands of the defendant. She was not allowed by the defendant to leave the flat.
4. Her ordeal was uncovered when she was sent back to Indonesia by the defendant in early January 2014. Her case received extensive media coverage. Criminal investigation in Hong Kong followed. In February 2015, the defendant was convicted of a number of offences arising out of her maltreatment of the plaintiff during her employment, including inflicting grievous bodily harm, assault occasioning actual bodily harm, causing grievous bodily harm with intent, common assault, criminal intimidation and offences under the employment legislation.
5. The defendant was sentenced to a total of six years’ imprisonment and a fine. (There were other charges brought against the defendant in respect of the employment of two other domestic helpers. She was convicted of two charges in respect of one of them.)
6. Shortly after the sentencing, the plaintiff commenced the present civil action against the defendant on 16 March 2015. The main causes of action against the defendant are assault and battery, and false imprisonment. The plaintiff claims damages in the total sum of $809,430.03.

*History of these proceedings*

1. The generally indorsed writ, together with other documents including the statement of claim and the statement of damages, were served on the defendant at the Lo Wu Correctional Institution by registered post on 17 March 2015. No notice of intention to defend was lodged by the defendant. On 28 April 2015, interlocutory judgment was entered against the defendant, with damages to be assessed.
2. Since then, five checklist review hearings were held in which directions were granted in respect of the assessment of damages.
3. In the course of these proceedings, the defendant initially acted in person. She had legal representation for a brief period in 2015. After that, she acted in person again. Then in October 2016, she was represented by Messrs Ching & Co. The representation continued until late October this year, just one month before the assessment hearing. Since then, the defendant has been acting in person, including at the assessment hearing.
4. However, notwithstanding the retaining of Ching & Co since October 2016, which was about a month before the third checklist review hearing, and notwithstanding a number of time extensions granted to the defendant in these proceedings:-

(1) The defendant did not file any answer to the plaintiff’s statement of damages, whether original or revised;

(2) She did not make any discovery of documents (save for a last-minute application made at the assessment hearing which I refused);

(3) She did not file any witness statement;

(4) Nor did she nominate her own psychiatric expert to examine the plaintiff within the prescribed time limit.

1. The upshot is that the defendant is barred from adducing any evidence of her own, whether factual or expert, in the assessment of damages.
2. In an interlocutory application brought by the defendant earlier this year, leave was also refused to allow her to cross-examine the plaintiff’s psychiatric expert, Dr Gabriel Hung, on his solo expert report dated 16 May 2016. Pursuant to an earlier order of the court, the report had been admitted into evidence without calling the doctor to testify at the assessment hearing.
3. There was also a late application made just before the fifth checklist review hearing in May this year before the PI master to effectively extend time for the defendant to nominate her own psychiatric expert. The application was refused. The defendant’s appeal against that decision was dismissed by me in August 2017.
4. Accordingly, at the assessment hearing, the defendant, acting in person, was not in any position to put forward a positive case to counter the amount of damages claimed by the plaintiff.
5. On the other hand, the plaintiff has filed two witness statements in these proceedings. She also relies on Dr Hung’s report, a number of other medical reports complied by her treating doctors in Indonesia and medical reports compiled in the course of the criminal investigation in Hong Kong. She was represented by Mr Tony Ko, counsel, at the assessment hearing. She gave evidence as the only witness at the hearing.

*The plaintiff’s account of the defendant’s abuses*

1. Instead of summarising the plaintiff’s evidence in my words, it would perhaps be more effective to present the plaintiff’s factual case of how she was treated during her employment by quoting her own words from her first witness statement below:-

“9. During my employment with the Defendant, I was required to work long hours and was only allowed to sleep and/or rest for about 4 hours a day. I was also always hungry from lack of food. The Defendant only provided me with several slices of bread, a bowl of rice with leftover food and a bottle of drinking water each day. I was physically and mentally drained and sleep deprived at all times.

10. Further, I was only allowed to use the Defendant's toilet twice a day. I either had to hold my bladder or sometimes forced by the Defendant to urinate in a plastic bag. I felt extremely humiliated and shameful. About one month after I began my employment, the Defendant gave me some pills which she claimed to be vitamins. I stopped having menstrual periods after taking these pills and it only resumed after returning to Indonesia.

11. After about 5 weeks into employment, I tried to run away because the Defendant was not paying my wages and I was not provided with enough food. I called the agency in Hong Kong requesting to switch employer but the agency immediately sent me back to the Defendant.

12. Ever since I returned to the Defendant's residence, she kept the front door locked. I was not given the keys and/or access code to the door and was not able to open the door on my own. The door was only opened for me when I was instructed to clean the door or to take the rubbish to the stairwell which was usually in the early morning so that I would not see any of the neighbours. I was trapped and always closely watched by the Defendant and her children.

13. Since then, the Defendant also became violent and abusive towards me. I was beaten by the Defendant almost every day until I was terminated. She punched, hit, scratched and slapped me in the face with her bare hands or with a mop, ruler, hanger and/or with a vacuum cleaner tube. I suffered swellings, bruises and cuts throughout my entire body.

14. One time, I ate some bread belonging to the Defendant and she became very angry after she found out and she punched me in the mouth. My lips bled and my front teeth were cracked and displaced from the Defendant's punches. The Defendant never allowed me to see the doctor let alone the dentist. …

15. Sometime between July and October 2013, the Defendant punched me in the face and fractured my nasal bone causing my nose to bleed. …

16. On another occasion, the Defendant hit me on the head with a hard object after which I lost consciousness and fell to the ground. I woke up with pain in my head but the Defendant made me continue with my cleaning chores. I suffered repeated blows to my head and face causing extensive bruises and swelling in the facial area

including my eyes. …

17. 1 was constantly in fear and never slept well throughout my employment. On several occasions, the Defendant forcibly pulled me down from the top of the ladder after catching me dozing off while cleaning. I fell from the top of the ladder and injured the back side of my body. … In another instance, the Defendant inserted the metal tube of a vacuum cleaner into my mouth and twisted the tube in between my lips and teeth which caused my lips to bleed. I have lost all dignity and respect as a person.

18. One time in winter, the Defendant caught me falling asleep while vacuuming. She dragged me into the bathroom and removed all my clothes. She then sprayed cold water on me and forced me to stand naked and wet facing an electric fan for around 1 to 2 hours in the bathroom. I was cold and shivering. I was also extremely embarrassed, humiliated and distressed.

19. I was required to carry out extensive cleaning around the home. Despite my repeated request for cleaning gloves, the Defendant refused to provide me [with] gloves and thus my skin was severely damaged from constant exposure to cleaning fluid. I have recovered from the extensive dermatitis sores which developed on my hands but there are now visible scars. Sores and blisters also developed on my feet, ankles and lower calves from prolonged kneeling while cleaning. Again, the Defendant did not let me see the doctor but instead gave me some ointment to put on the sores which made the condition worse. The dead skin peeled off my feet and the back of my hands bled from the sores which was painful. The Defendant forced me to wrap my feet in plastic bags to prevent the blood and bodily fluids from contacting with the floor. I was punished if I stained anything in the flat. The condition of my feet worsened to a state that I was unable to work. …

20. I have also sustained scars around my neck, forehead, shoulder, wrists and behind my ears caused by the Defendant's repeated beatings with either a steel hanger or ruler or other objects. …

1. The Defendant confiscated [my] phonebook to ensure that I could not contact any of my friends and family or anyone from the outside for help. I was also told by the Defendant that there were many cameras installed around the flat and that she would be monitoring me even when she was out. I was scared and there was no reasonable means of escape.
2. Further, the Defendant constantly threatened me with the safety and wellbeing of my family in Indonesia. She claimed that her husband was very influential and knew a lot of people in Indonesia and could kill my parents if I told anyone about the Defendant's actions. These threats continued until the very last moment when the Defendant watched me go pass the airport checkpoint. I believed her threats were serious and I was very helpless and frightened during the entire period.
3. By early January 2014, I became physically weak from the constant abuse and did not have the strength to walk or even to go to the toilet. I had to use adult diapers. …
4. I was extremely fearful of the Defendant and did whatever as I was told. Before the Defendant took me to the airport by taxi, she dressed me in 6 layers of shirts, 2 layers of pants and told me to put on diapers. The Defendant put makeup all over my face to hide my injuries. She bandaged my feet and put several pairs of socks over my bandaged feet. I was asked by the Defendant to practice walking and she warned me not to tell anyone about her abusive behaviour otherwise she would use her connections in Indonesia and kill my parent.”

*Medical treatments and findings*

1. Shortly after returning to Indonesia, the plaintiff was admitted to Amal Sehat Islamic Hospital Sragen in Solo, Central Java on 11 January 2014 due to multiple injuries on her head and limbs. She was examined and treated by a number of doctors and various scans were performed during her hospitalisation. The examinations and scans revealed the following:-
   1. Injuries to the head region – three 3cm lacerations on the forehead, bleeding at the sub-conjunctiva, bruises on upper and lower eyelids, red dots over her face, laceration with a length of 2cm on the nose, scar on the upper lip, two upper front teeth broken, old nose bone fracture, maxilla fracture.
   2. Neurology – brain concussion, cerebral edema and cerebellum edema, gliosis or neural brain damage, ataxia, double vision.
   3. Infection wounds – scars on hands in the form of laceration wounds and scar wounds caused by allergy (contact dermatitis), infection wounds (cellulitis) on the legs probably caused by dermatitis with secondary infection.
   4. Others – two 2cm laceration wounds on left shoulder region, two blister wounds measuring 2cm on the back, one old wound at the rear part of the left ear, and one old wound about 1 to 2cm in diameter on the back just about the hip.
   5. Brain MRI findings – lesions in the left frontal region with hypo-intense lesions on the axial T1, T2 and T2 flair and GRE, ambient cistern narrowed slightly, suspected light cerebral edema with an image of gliosis in the left frontal region.
2. On 2 February 2014, the plaintiff was discharged.
3. From February to April 2014, the plaintiff attended Kasih Ibu Hospital and was further examined and treated.
4. As part of the criminal investigation conducted by the Hong Kong Police, a number of doctors in Hong Kong examined the plaintiff in about April 2014, including a specialist in forensic pathology, a dermatologist, a neurologist, an eye, nose and throat surgeon and an oral and maxillofacial surgeon. They made a number of findings showing multiple and extensive injuries on the plaintiff’s scalp, nose, eyes, teeth, hands and feet. Multiple scars on the plaintiff’s face and body were observed. Photographs taken by the police at that time showing the extent of the physical injuries and the scars are disclosed in these proceedings.
5. The plaintiff attended follow-up consultations in Indonesia throughout 2015. A Head CT scan was performed in late 2015 which showed no significant abnormality. Her cracked and displaced front teeth have also been repaired in Indonesia.

*Psychiatric injuries*

1. Physically, the plaintiff says that she has now recovered satisfactorily with little abnormality or residual disability except for dermatitis scars and discolouration of the skin on her feet, ankles and lower calves. Because of the scars and the discolouration, however, she feels embarrassed to wear clothing revealing her injuries such as skirts, dresses or sandals. Although she is physically capable of returning to her previous job as a domestic helper, she has now chosen to pursue a university degree in management and economics in Indonesia.
2. In her witness statement made in June 2016, she described how she has felt since:-

“28. My fears have slightly improved after meeting some supportive friends and volunteers. However, I still feel ashamed and afraid to mingle with my classmates and others. I continue to have headaches and flashbacks of the incidents every so often. The imageries are very real and I sometimes cry. I also have difficulty sleeping and sometimes wake up from nightmares. I easily feel tired throughout the day and have lost pleasure in my interests.

29. I lose concentration easily and sometimes my mind becomes completely blank. I have also become more forgetful. I am generally unhappy and I blame myself for coming to Hong Kong. This would not have happened to me had I not come to Hong Kong in the first place.”

1. In examination-in-chief, she was asked if her psychiatric symptoms are now the same, better or worse than in 2016 when she made her witness statement, she said she felt better now but if someone asked her about her past, she would still remember and it would never disappear.
2. The plaintiff was examined by Dr Hung on 4 May 2016 to assess the psychiatric and/or psychological injuries sustained by her arising out of the repeated assault and false imprisonment. In his report, Dr Hung stated his opinion as follows:-
3. He found the plaintiff to be reliable. There was consistency in the symptoms reported by her during the course of the examination and the information previously given to him. There was also consistency in the symptoms reported by her and her emotions and behaviour observed by him during the examination. “In particular, her anxiety, fear and distress exhibited by the Plaintiff while recalling the physical assaults were genuine”.
4. The diagnosis is post-traumatic stress disorder:-

“The Posttraumatic Stress Disorder started in the first one month after returning back to Indonesia. The symptoms have improved with time. Currently the level of severity is assessed to be moderate.” (at paragraph 15.7)

1. She is also diagnosed with major depressive disorder:-

“The Major Depressive Disorder started during her time in Hong Kong and the symptoms have improved with time. Currently, the level of severity is assessed to be moderate.” (at paragraph 15.9)

1. “Her psychiatric illnesses arose directly from the Incidents that occurred while she was living and working at the home of the Defendant.” (at paragraph 15.11)
2. The reasonable period of sick leave would be two years after the incidents of assault and false imprisonment.
3. Dr Hung recommended the following treatments:-

(a) psychiatric follow-up on a monthly basis for two years, with antidepressant medication treatment to be taken for at least one year (and likely to require two years depending on response); and

(b) psychological treatment by a clinical psychologist (each session for 40 to 50 minutes) on a weekly basis for half a year, and every two weeks afterwards for another one year.

*Findings*

1. As noted above, in the course of these proceedings, the defendant has not put in any evidence within the prescribed time limit and she has therefore been debarred from adducing any evidence at the assessment hearing.
2. At the hearing itself, she also chose not to cross-examine the plaintiff. She said that she just wanted to get over with this action quickly.
3. Yet, in her closing speech, the defendant embarked on a barrage of criticisms against the plaintiff, making wide-ranging allegations doubting whether the plaintiff’s injuries are really as serious as she now claims. She mentioned some messages and photographs posted on social media by the plaintiff in 2015 in which she apparently looked happy and cheerful. The defendant asked – if the plaintiff has really suffered from psychiatric injuries, why would she look so happy? The defendant also said that when the plaintiff started to work for her, the plaintiff mentioned that she had some pre-existing medical conditions, eg incontinence. The plaintiff’s teeth, the defendant claimed, were already chipped and broken when she arrived in Hong Kong.
4. As I made clear to the defendant at the assessment hearing, all these allegations were factual allegations. She had earlier forgone her opportunity to put in factual evidence in these proceedings. These factual claims, which emerged for the very first time at the very last stage of these proceedings, would not form part of her evidence and the court would not take them into account.
5. As such, the plaintiff’s factual case and the medical reports on which she relies remain unchallenged.
6. Having considered the evidence as a whole, I accept in full the factual account given by the plaintiff as true, including the abuses and maltreatment which she had gone through and endured while under the defendant’s employment and her physical injuries and psychiatric symptoms. Her account is coherent and consistent. It is substantiated by the findings of her treating doctors. The photographs really speak for themselves. I therefore find that her injuries have been caused by the defendant’s repeated assault and false imprisonment. I accept Dr Hung’s diagnosis and also consider that the recommended treatment is reasonable and suitable.
7. With these findings, I now turn to assess quantum under each head of claim. I note here that the defendant has made no submission at all on any of the claimed amounts.

*Pain, suffering and loss of amenities (“PSLA”)*

1. The plaintiff claims $450,000 under this head.
2. Having considered the cases cited by Mr Ko, in particular, *Faridha Sulistyoningsih v Mak Oi Ling Karen* DCPI 1575/2005, 4 April 2007 and *Chung Lai Ha v Ching Mei Yee* DCPI 2755/2012, 20 January 2014, I consider that the claimed amount should be allowed in full and I make an award accordingly.
3. In fact, given that the injuries inflicted on the plaintiff were intensive, repetitive and continuous over a sustained period of seven months, it may be said that her “pain and suffering” experienced as a result is much more serious than the cases cited. However, Mr Ko submitted in closing that in the present case, there is no permanent physical disability save for the scars and some discolouration of the skin. The plaintiff is therefore content with a PSLA award of $450,000.

*Aggravated damages*

1. The plaintiff claims $180,000 under this head – $80,000 in respect of the repeated assault and $100,000 in respect of false imprisonment.
2. Aggravated damages are compensatory in nature and the award is made to compensate a plaintiff for injury to his feelings, distress and humiliation and the amount should reflect this. A court should be careful to ensure that there is no double recovery between the “basic” and “aggravated” damages: see *Clerk & Lindsell on Torts* (21st ed) at paragraphs 28-133 to 28-134.
3. Mr Ko has cited a number of cases in which aggravated damages were awarded for assault and/or false imprisonment. I accept that the following two are comparable cases by the nature of the wrongful act, although the present case is more serious in degree:-

(1) *Achacoso Warly Cabaneros v Liu Man Kuen*, HCPI 121/2001, 11 June 2004; and

(2) *Faridha Sulistyoningsih* (see above).

1. The things which the defendant did to the plaintiff over those seven months were not done merely to inflict physical pain. They were meant to insult, and to subdue the plaintiff to a state of total submission to the defendant’s authority. The incident of the defendant inserting the metal tube of a vacuum cleaner into the plaintiff’s mouth and the one about the defendant stripping the plaintiff of her clothes, spraying her with cold water and then forcing her to stand naked and wet in front of an electric fan one day in winter (all these just because the plaintiff dozed off when vacuuming) are particularly (and regrettably) revealing. The defendant’s acts were designed to “teach a lesson” to the plaintiff that she, as the defendant’s domestic helper, was inferior and must do as ordered.
2. The defendant’s conduct was physically abusive and violent. Her treatment of the plaintiff was inhumane, degrading and abhorrent. It was meant to bring about humiliation, distress and loss of human dignity. The plaintiff had suffered profoundly. The circumstances of this case clearly warrant the award of aggravated damages. It should be granted in addition to the “basic” PSLA award made above as compensation for the distress and humiliation which she was forced to go through by the defendant.
3. The plaintiff’s claim for the amount of $180,000 is a modest and restrained one. I allow the claim in full as sought.

*Pre-trial loss of earnings*

1. The plaintiff claims $86,249.03 under this head on the basis that but for the defendant’s wrongful act, she would have been able to complete the two-year employment contract and earn $115,080 in total, ie ($3,920 + $875) per month x 24 months. Credit should then be given for the wages paid to her in the sum of $28,830.97 since the criminal proceedings.
2. Dr Hung opined that a sick leave period of two years after the incidents would be reasonable.
3. For that reason, this head of claim is valid and I award the claim in full, ie $86,249.03.

*Loss of earning capacity*

1. The plaintiff claims $50,000 for loss of earning capacity.
2. Dr Hung opined that as a result of her psychiatric injuries, there would be mild impairment in her social and occupational functioning.
3. I am satisfied that this claim is made out and would make an award of $50,000.

*Pre-trial expenses*

1. The plaintiff claims $29,269 for medical expenses and $4,000 for travelling expenses. The former item is supported by receipts.
2. I make an award of $33,269 under this head.

*Future medical expenses*

1. It would be reasonable for the plaintiff to receive the psychiatric and psychological treatments, as recommended by Dr Hung. I allow a sum of $9,912 for the treatments which are expected to be received in Indonesia.

*Interest*

1. In his closing submissions, Mr Ko asked for interest for the PSLA amount at 2% per annum from the date of writ to the date of judgment; and, interest on pre-trial loss of earnings and special damages at half the judgment rate from 9 January 2014 to the date of judgment. I make an award of interest as sought.

*Summary on quantum*

1. The total award of damages, excluding interest, is assessed at $809,430.03, as tabulated below:-

PSLA $450,000.00

Pre-trial loss of earnings 86,249.03

Loss of earning capacity 50,000.00

Pre-trial expenses 33,269.00

Future medical expenses 9,912.00

Aggravated damages 180,000.00

**Total $809,430.03**

*Conclusion*

1. Accordingly, there be judgment against the defendant in the sum of $809,430.03, together with interest.
2. I make an order *nisi* that defendant pay the plaintiff’s costs of the assessment of damages, to be taxed if not agreed, with certificate for counsel and that the plaintiff’s own costs be taxed in accordance with the Legal Aid Regulations.
3. I shall direct my clerk to inform the defendant that should she wish to have this decision translated to her in Chinese orally, she should inform the court within 14 days from today.

( Winnie Tsui )

District Judge

Mr Tony Ko, instructed by Boase Cohen & Collins, assigned by the Director of Legal Aid, for the plaintiff

The defendant appeared in person