## DCPI 618/2017

[2018] HKDC 1071

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 618 OF 2017

-------------------------

BETWEEN

LAI YIP NGAN（黎叶銀） Plaintiff

and

馬志文 1st Defendant

CHAN YUK LAN（陳玉蘭） 2nd Defendant

-------------------------

Before: Master Eleanor Yeung in Chambers (Open to public)

Dates of Hearing: 30 August 2018

Date of Assessment of Damages: 7 September 2018

---------------------------------------------

ASSESSMENT OF DAMAGES

---------------------------------------------

1. This is an assessment of damages arising out of a personal injury action. Counsel Mr Richard Sham represented the plaintiff at the assessment hearing. The defendants, who failed to appear in any of the prior court hearings or file any documents in the action, were not represented and were absent at the hearing.
2. Affirmation of service had been filed by Messrs Bobby Tse & Co, Solicitors to confirm that the order dated 18 July 2018 setting out the date and time of the hearing, the assessment bundle, and the plaintiff’s opening submissions, had all been served on the defendants. I am satisfied that the defendants had been properly notified of the hearing. Upon the plaintiff’s application pursuant to O 35 r 1(2) of the Rules of the District Court, I proceed with the hearing in the absence of the defendants.

*Background*

1. On 29 March 2014, when the plaintiff was walking on the pavement outside of Wing Chun House, Wing Cheong Estate, Sham Shui Po, Kowloon, a trolley carrying a refrigerator that was handled by the 1st defendant hit her from behind (“Accident”). As a result, the plaintiff fell forward and sustained multiple injuries. At the material time, the 1st defendant was the employee/agent of the 2nd defendant who was and still is the proprietor of 新樂燈飾電器直銷中心.
2. On 20 March 2017, the plaintiff commenced these proceedings against the defendants for damages for personal injury, loss and damages sustained and caused by and arising out of the Accident.
3. The defendants had failed to give notice of intention to defend. Interlocutory judgment was entered against the defendants on 30 June 2017. The defendants were adjudged to pay the plaintiff damages to be assessed and costs.
4. The plaintiff filed her statement of damages on 12 October 2017 (“SOD”). In the SOD, the plaintiff claims HK$322,109.80 plus interest. The defendants did not file any answer to the SOD.
5. On 7 August 2018, the plaintiff issued a notice of appointment of assessment of damages. The defendants had failed to comply with the directions given by the court in relation to the filing of witness statements as to quantum, and therefore were debarred from giving evidence or calling any witness to give evidence at the assessment hearing. Further, the defendants were deemed to have elected not to submit any case on quantum at the assessment hearing.
6. The plaintiff has produced 4 medical reports dated 19 September 2014, 26 September 2014, 10 October 2014 and 15 October 2014 respectively; and a physiotherapy report dated 12 September 2014. She has elected not to adduce any expert evidence as to quantum.

*The plaintiff’s claim*

1. In the SOD, the plaintiff claims the following heads of damages against the defendants:-
2. general damages for pain, suffering and loss of amenities (“PSLA”) in the sum of HK$312,500;
3. special damages in the sum of HK$9,609.80.

*The plaintiff’s medical treatments*

1. Following the Accident, the plaintiff was taken to the Accident and Emergency Department of Caritas Medical Centre. According to the medical report dated 15 October 2014, physical examination showed that there was periorbital swelling over the plaintiff’s right eye and there was a 3 cm deep laceration over the plaintiff’s right calf, with depth down to muscle layer. The range of movement of her right shoulder was significantly limited by pain. X-ray examination of the plaintiff’s right shoulder, hip, tibia, pelvis and skull showed that there was fracture over right proximal humerus.
2. The plaintiff was then transferred to the Department of Orthopaedics and Traumatology of Caritas Medical Centre for further treatment. According to the medical report dated 10 October 2014, the plaintiff suffered right periorbital bruise with tenderness and small conjunctival haemorrhage, and right proximal humerus tenderness and right calf full thickness skin laceration on right posterior calf. X-ray examination of the plaintiff’s right shoulder showed fracture of her right proximal humerus with minimal displacement. Exploration and repair of right calf wound was performed on 30 March 2014. Collar and cuff was given to the plaintiff for immobilization of her fracture right shoulder. The plaintiff was discharged on 3 April 2014 but continued to receive further treatment for right shoulder weakness.
3. The plaintiff was also referred to the Physiotherapy Department of Caritas Medical Centre for follow-up treatment. According to the physiotherapy report dated 12 September 2014, the plaintiff was referred to physiotherapy sessions from 21 May 2014 to 30 May 2014. She only attended two sessions of physiotherapy because she was also receiving bone-setting treatments from April to June 2014.
4. On 11 July 2014, the plaintiff attended the General Out-Patient Clinic of Caritas Medical Centre to seek treatment for right calf pain and swelling. According to the medical report dated 26 September 2014, physical examination showed that there was a right calf laceration wound healed with scaring. Mild swelling of the plaintiff’s right lower leg was still noticeable. She was given medication for pain relief and was referred to physiotherapist for limbs physiotherapy.

*The plaintiff’s evidence*

1. The plaintiff gave evidence at the assessment hearing. She relied on her witness statement dated 6 December 2017 as her evidence-in-chief.
2. The gist of the plaintiff’s evidence is that she was 78 years old at the date of the Accident. Prior to the Accident, she enjoyed good health in general and did not have any problem with her right shoulder. Despite all the treatments she had received, she is feeling weakness, numbness, sense of coldness and discomfort over her right shoulder. The conditions became worse at nighttime and/or during rainy weather. There are also permanent scars on her right lower leg.
3. As the plaintiff was not in employment prior to the Accident and is currently at the age of 82, she is not claiming any loss of earnings but is making a claim for expenses reasonably incurred. In relation to the tonic food expenses, the plaintiff’s evidence is that her son had spent HK$3,000 on tonic food used for special soup to assist her recovery.

*Finding*

1. The plaintiff’s evidence is that prior to the Accident, she enjoyed good health in general except having a history of hypertension since April 2007 and diagnosed to have diabetes mellitus and hyperlipidemia since December 2013. After the Accident, she is feeling weakness, numbness, sense of coldness and discomfort over her right shoulder, with permanent scars on her right lower leg.
2. Considering the medical reports and the plaintiff’s evidence together, I am satisfied that the plaintiff had proved on balance of probabilities that her physical injuries were caused by the Accident.

*PSLA*

1. In the SOD, the plaintiff claims HK$312,500 under this head.
2. Mr Sham cited the following cases in support of the plaintiff’s claim amount:-
3. In *Li Wan Kei v Hyundai Engineering & Construction Company Limited*, HCPI 577/2004, 6 March 2006, the plaintiff had abrasion with mild swelling and tenderness over the right elbow, right hip and left knee. Active range of movement of the affected joint was found to be full. He was hospitalized for 1 month. There was a small ossicle at medial epicondyle of his right elbow and swelling of medial collateral ligament of his left knee. There was residual constant numbness over the whole length of his right arm, left leg and back pain. There was difficulty in returning to the pre-accident job at construction sites. The plaintiff was awarded HK$375,000 for PSLA;
4. In *Chow Wai Ming v Chan Yuk Charm*, HCPI 1111/1996, 13 October 1999, the plaintiff suffered a comminuted fracture of the proximal humerus of the right shoulder that was treated by a collar and cuff sling. He was left with deformity of the humeral head causing bony impingement on a tendon in the shoulder, prolonged course of physiotherapy with limited improvement. He refused surgery. There was pain on abduction, with some loss of strength in the arm. The plaintiff was awarded HK$300,000 for PSLA;
5. In *Tsui Kwan Fai v Goldfield N & W Construction Company Ltd*, DCPI 97/2006, 24 August 2007, the plaintiff was diagnosed to have closed fracture of the head of the right radius and soft tissue injury to the right wrist and right shoulder. He was treated with plaster immobilization of his right hand. He had mild pain on forearm rotation, over distal radius and full right wrist motion. He got sick leave for 9.52 months. The injuries might develop post-traumatic arthritis of the right elbow, deformed articular surface of the radial head caused by the fracture, progressive pain and stiffness of the right elbow. The plaintiff was awarded HK$300,000 for PSLA;
6. In *Lau Tsz Ha v Chui Sang Choy & Others*, HCPI 489/2006, 9 March 2010, the plaintiff sustained injuries whilst travelling on board a taxi driven by the 1st defendant. The plaintiff sustained injuries to her right shoulder and upper arm. The plaintiff was diagnosed to have fracture with displacement of the upper end of humerus at right shoulder. There was also abrasion on bridge of nose and right knee. 6 months’ sick leave was granted. The plaintiff was awarded HK$250,000 for PSLA.
7. In my judgment, given the age of the plaintiff, the nature of her injuries, the treatments underwent by her and the degree of her impairment, a fair and reasonable award for PSLA should be at $312,500 after taking into account inflation. I award such sum as damages for PSLA accordingly.

*Special damages*

1. The plaintiff claims HK$235 for medical expenses, HK$664.8 for travelling expenses, HK$5,710 for bone-setting treatments expenses and HK$3,000 for tonic food expenses. The plaintiff has produced receipts for the former 3 items.
2. The courts have always been ready to award a reasonable amount for tonic food even where no documentary proof has been produced: *Tsang Hing Yuen v Nishimatsu Kumagai Joint Venture (a firm) and Another*, HCPI 906/1998, 17 March 2000. Judging from the age of the plaintiff and the nature of her injuries, I accept that the HK$3,000 spent by her son on tonic food was a sum reasonably incurred. I therefore award her loss under this head at HK$9,609.80.

*Award of damages*

1. Hence, the amount of damages is awarded as follows:-

PSLA HK$312,500

Special damages HK$9,609.80

HK$322,109.80

1. The plaintiff is entitled to interest at the following rates:-
2. at 2% per annum for general damages from date of writ to date of judgment and thereafter at judgment rate until payment in full;
3. at half of the judgment rate for special damages from date of accident to date of judgment and thereafter at judgment rate until payment in full.
4. I make a costs order that the plaintiff do have costs of the action and costs of the assessment, with a certificate for counsel, to be taxed if not agreed.
5. I thank Mr Sham for his assistance.

( Eleanor Yeung )

Master, District Court

Mr Richard Sham, instructed by Bobby Tse & Co, Solicitors, for the plaintiff

The 1st and 2nd defendants were not represented and did not appear