###### DCPI 638/2004

### IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

**PERSONAL INJURIES ACTION NO. 638 OF 2004**

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##### BETWEEN

## MADAM KWAN TING by her son

## and next friend CHENG WUI Plaintiff

### and

#### LAU WAI FONG trading as

#### SUNY ELDERLY HOME Defendant

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Coram: Deputy Judge J. Ko in Court

Dates of Hearing: 7th July 2005

Date of Handing Down Judgment: 25th July 2005

Assessment of Damages

1. This is an assessment of damages in relation to the Plaintiff, arising out of an accident on 9th October 2003.
2. The Defendant has never taken part in this action. I am satisfied by the two Affirmations of Tang Po Yi filed herein on 30th June 2005 that the Defendant has been notified of this assessment.

# Background

1. The Plaintiff is an old lady. She was born on 4th August 1906, was 97 years old at the time of the accident and is now almost 99 years old. The Defendant was the sole proprietor of one Suny Elderly Home (hereinafter called “the Elderly Home”).
2. The Plaintiff was a resident of the Elderly Home from 2001 to 2003. She was already unable to speak and had difficulty walking or in movement when she was admitted to the Elderly Home. Consequently, she depended on the staffs at the Elderly Home to take care of her and to maintain her personal hygiene.
3. On 9th October 2003 and inside the Elderly Home, the staffs of the Plaintiff were washing the Plaintiff when very hot water was splashed onto the naked skin of the Plaintiff’s buttock area causing personal injuries to the Plaintiff.
4. The Plaintiff, by her next friend and son Mr. Cheng Wui, obtained legal aid and issued the Writ in this action on 7th July 2004 against the Defendant. As I have said before, the Defendant has not entered an appearance in this action. There could not have been any defence on liability to the Plaintiff’s claim and, on 3rd February 2005, judgment was entered for the Plaintiff against the Defendant with damages to be assessed.

The Plaintiff’s claim

1. According to the Plaintiff’s Statement of Damages filed herein, the Plaintiff is claiming under 3 heads of damages, namely, damages for pain, suffering and loss of amenities, traveling expenses, and interest.

Injuries and treatment to the Plaintiff

1. The Plaintiff was conveyed to the Accident and Emergency Department of Ruttonjee and Tang Shiu Kin Hospitals immediately after the accident. On examination, the Plaintiff was found to have suffered second degree scald (or burns) over the perineum region with broken blister. The scalded area was observed to be pink, mostly blanching and painful. The total area scalded was about 3 per cent of the total body area. The Plaintiff was then admitted to Ruttonjee Hospital. She was nursed with daily wound dressing and the recovery was uneventful. The Plaintiff was discharged from hospital on 27th October 2003. The Plaintiff then attended outpatient follow-ups. She was last assessed by a doctor on 8th December 2003 and the injury was said to have completely healed.
2. The Plaintiff’s injury, treatment and care highlighted above are all detailed in the medical reports produced at Section D of the Bundle. They have been admitted in evidence pursuant to the Order dated 21st April 2005 without calling the makers thereof. I accept all these medical evidence.

Other evidence

1. Given the Plaintiff’s present physical condition, it is not surprising that the Plaintiff has not testified. Instead, the Plaintiff called her son, Mr. Cheng Wui, to give evidence at the assessment.
2. Mr. Cheng has adopted the content of his witness statement at Section C of the Bundle as his testimony. There is no challenge to his testimony and I accept it in full.
3. I have noted the following aspects of Mr. Cheng’s testimony, which is of particular relevance to assessment of damages in this action:
   1. Despite the Plaintiff’s age and frailty and the fact that she had a stroke in the 1970s or 1980s and 1993 respectively, the Plaintiff has apparently retained her faculty. She can understand and respond to others. She could recognize Mr. Cheng and his family when they visited her in hospital.
   2. Mr. Cheng did not witness the accident.
   3. When Mr. Cheng visited the Plaintiff in hospital on 9th October 2003, he noticed that the Plaintiff’s buttock’s surface was red and some skin had already been worn out. The scalded area was covered by a stainless steel frame without any bandage or gauze pad on it. The Plaintiff was not lying dorsally on the bed but lying on the side of her body. Mr. Cheng understood from the doctor attending the Plaintiff that the Plaintiff had to remain in that condition with the metal frame fixed on her until the skin on the scalded area dried up. The Plaintiff could recognize Mr. Cheng and Mr. Cheng observed that the Plaintiff was in pain and discomfort.
   4. Mr. Cheng regularly visited the Plaintiff during the period when she was hospitalized. He observed that the Plaintiff remained in the same condition, namely, the scalded area was covered by a steel frame and the Plaintiff was lying on the bed on the side of her body. The metal frame was only removed when the Plaintiff was discharged on 27th October 2003.
   5. Mr. Cheng and the Plaintiff’s 5 grandchildren had visited the Plaintiff whilst she was hospitalized. They traveled to and fro the hospital by bus and incurred a total of $242 traveling expenses.
   6. After her discharge, Mr. Cheng has arranged her to stay in another home for the elderly. The Plaintiff attended Ruttonjee Hospital twice for outpatient treatment. She was taken to the hospital by ambulance arranged by the new home for the elderly.
   7. All medical expenses have been paid by the Government and so there is no claim under this head.

# Pain, suffering and loss of amenities

1. Ms. Walsh, Senior Legal Aid Counsel representing the Plaintiff at the assessment referred me to 3 authorities in relation to burn injuries.
2. In *Leung Pui Yin (an infant suing by her father and next friend Leung Chi Ming) v. Wong Yin Kuen & Others*, HCPI 453/2000 (by Seagroatt J. on 18/5/2001), the plaintiff was a young girl, 8 years old at the time of the accident and 10 years old at trial. She was enjoying an evening meal with her family when hot soup was spilled onto her. The total surface of her body scalded was 3 per cent. There were first to second degree burns to her forehead, right cheek and a small area over her right shoulder, arm and back. She was discharged from hospital 20 days later. It appeared that she had made a very good recovery. A specialist in cosmetic surgery commented that the facial scars were under control and would probably continue to improve over the years. The pigmentation of her shoulder would remain to some extent but would not be of real cosmetic significance. Another doctor had observed a mild degree of emotional and psychological difficulties under ordinary, everyday conditions of stress and recommended psychological therapy to assist her to put the incident into the past and to come to terms with her injuries. Mr. Justice Seagroatt awarded general damages for pain, suffering and loss of amenity at $225,000.
3. I have also been referred to *Wong Po Kin v. Hopewell Construction Co. Ltd.*, HCPI 406/2001 (by Master Lisa Wong on 15/1/2003), and *Cheang Kam Ian v. Hong Kong Prime Printing Company*, HCPI 143/1998 (by Suffiad J. on 13/1/2000) but I do not find them to be of great assistance.
4. Since there is no evidence of any functional disability upon the Plaintiff and having regard to her injuries, I am of the view that the Plaintiff’s injuries are far less serious than the “serious category” laid down in *Li Ting Lam v. Leung Kam-ming an infant by his next friend Leung Shu-wing* [1980] HKLR 657. Taking everything into account, I accept Ms. Walsh’s submission that $150,000 would be a reasonable compensation for the Plaintiff’s pain, suffering and loss of amenities.

# Travelling expenses

1. The claim for traveling expenses totaling $242 appear to be very reasonable and I allow them in full.

# Assessment

1. The total amount of damages assessed for the Plaintiff therefore comes to $150,242.
2. Interest at 2 % per annum will be awarded on the $150,000 for pain, suffering and loss of amenities from the date of the Writ to the date of handing down of this judgment. Interest at half judgment rate, currently at 8.245% per annum (i.e. 4.1225 per annum), will be awarded on the $242 traveling expenses from the date of accident to the date of handing down of this judgment.
3. There will also be a costs order *nisi* that the costs of this assessment is to be borne by the Defendant, to be taxed on common fund basis if not agreed.
4. Pursuant to Order 80, rule 12, all money should be paid into court and subject to further directions of the court.

J. Ko

Deputy Judge

Representation :

Miss A.M. Walsh, Senior Legal Counsel of Legal Aid Department for Plaintiff.

Defendant: In Person, Absent.