DCPI 691/2012

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 691 OF 2012

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BETWEEN

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| --- | --- | --- |
|  | CHEA HUNG CHEUNG | Plaintiff |
|  | and |  |
|  | LO TAK YIU  CHINA PING AN INSURANCE  (HONG KONG) CO. LTD. | 1st Defendant  2nd Defendant |
|  |  |  |

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Coram: Before Master D. HO in Court

Date of Hearing: 9th May 2013

Date of Handing Down Judgment: 14th May 2013

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**ASSESSMENT OF DAMAGES**

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1. This is an assessment of damages limited to damage to property occasioned in a traffic accident on 18th January 2011 in which the Plaintiff’s motorcycle bearing registration number NT3549 (“NT3549”) was damaged by the 1st Defendant who was driving a private motor vehicle bearing registration number MX4049 (“MX4049”).

1. The 1st Defendant filed an acknowledgment of service of writ but then filed no defence. On 30th July 2012, interlocutory judgment on liability was entered against the 1st Defendant with damages to be assessed.
2. Soon after the commencement of these proceedings, China Ping An Insurance (Hong Kong) Co. Ltd. was granted leave to intervene and became the 2nd Defendant herein. On 8th February 2013, the 2nd Defendant settled with the Plaintiff’s personal injuries claim leaving the property damage claim against the 1st Defendant to be dealt with by way of assessment of damages, hence today’s hearing.
3. The 1st Defendant was absent at the assessment hearing. Being satisfied that the 1st Defendant had been duly notified of the hearing, I proceeded with assessment of damages in the absence of the 1st Defendant.
4. The Plaintiff was the only witness who testified in court. He adopted his witness statement filed herein as his evidence in chief. In brief, he was driving NT3549 along the nearside lane of Fanling Highway (Fanling bound) around 7:35 p.m. on 18th January 2011 at about 100 kilometres per hour while MX4049 was travelling on the next lane in the same direction. When NT3549 was about one metre behind MX4049, MX4049 suddenly cut into the nearside lane. The Plaintiff applied brake and swerved to his left to avoid colliding with MX4049 but to no avail. NT3549 hit the left rear wing of MX4049, fell to the right and skidded to the road side on the left, resulting in serious damage to its front and right side.
5. The Plaintiff consulted one Hop Ping Engineering Limited (“Hop Ping”) which deals in second hand motorcycles and was advised that it would take at least $80,000 to repair NT3549 with replacement parts having to be ordered from Japan. Subsequently, the Plaintiff was advised by the surveyor he engaged that the likely repair cost would far exceed the market value of NT3549, so much so that this was a case of total loss.
6. As directed by the P.I. Master, the Plaintiff adduced in evidence a motor survey report dated 15th March 2011 by General Surveyor & Adjusters Limited (“Motor Survey Report”) without calling the maker thereof.
7. According to the Motor Survey Report, there was damage to more than twenty body parts of NT3549 with the body frame being distorted. The same is evidenced by the 22 photos taken of NT3549 during inspection. The author opined that the possible repair cost would far exceed the pre-accident market value of the motorcycle, which was in the region of HK70,000 to HK$75,000 with the salvage of wreckage valued at approximately HK$10,000. In the light of the extensive damage to NT3549, a case of total loss was recommended. The author did not see fit to give an estimate of the likely repair cost other than describing the necessary repair and replacement as uneconomical.
8. It is settled law that in general the measure of damage arising out of collision is the cost of repairing the damaged vehicle. But there is an exception if it can be proved that the cost of repair greatly exceeds the market value of the damaged vehicle. See ***Darbishire v Warran*** [1963] 1 WLR 1067.
9. Despite the lack of a formal estimation as to the likely repair cost of NT3549 other than the informal advice obtained by the Plaintiff from Hop Ping, on balance I am prepared to accept the conclusion of the Motor Survey Report that this is a case of total loss in the light of the extensive damage to and the market value of NT3549.
10. The Plaintiff paid HK$700 for the Motor Survey Report as evidenced by a receipt of General Surveyor & Adjusters Limited dated 15th July 2011. The Plaintiff also produced a receipt for the towing fee he paid at $300 and a letter issued by Hop Ping certifying its purchase of NT3549 as scrap at HK$10,000 which the Plaintiff duly received.

1. In the light of the above, I award the Plaintiff $62,500 (being the median of HK70,000 and HK$75,000 less scrap value) for the damage to NT3549. I further award the Plaintiff $1,000 for disbursements.
2. I therefore assess the Plaintiff’s damages at $63,500 and adjudge the same to be payable by the Defendant. There shall be interest on that sum at judgment rate from the date of writ until today and thereafter at judgment rate until payment.
3. Costs of the assessment of damages, summarily assessed at HK$14,000, be paid by the Defendant to the Plaintiff.

(Signed)

Dick HO

Master of the District Court

Representation

Mr. Ho Ching Hung Antonio of Messrs. Cheng, Chan & Co., Solicitors for the Plaintiff

The Defendant in person, absent