DCPI766/2007

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES NO. 766 OF 2007

\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

TSO CHUN CHEONG (曹振昌) Plaintiff

and

MAK CHI MING trading as LIK WANG Defendant

INTERNATIONAL SOFA COMPANY

(麥志明經營的力宏國際梳化公司)

\_\_\_\_\_\_\_\_\_\_\_\_

Before: Her Honour District Court Judge Marlene Ng in Court

Date of Hearing: 19th December, 2007

Date of Handing Down Judgment: 8th January, 2008

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

ASSESSMENT OF DAMAGES

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

###### I. Introduction

1. In/about March and April 2005, the Plaintiff was employed by the Defendant as a furniture salesperson. On 11th April 2005, when the Plaintiff was delivering a stack of 7 chair frames by hand, the chair legs were caught in the gap of the lift door. The Plaintiff had to use great force to pull the chair legs free from the gap and sustained personal injuries (“Accident”).
2. The Plaintiff claimed the Accident was caused by the Defendant’s negligence and breach of contract of employment in failing to provide a safe system of work and/or safe plant and equipment, failing to instruct and train him in his assigned task, and exposing him to unnecessary and foreseeable risk of injury which the Defendant knew or ought to have known. He therefore claimed against the Defendant for loss and damages for personal injuries caused by the Accident.
3. No notice of intention to defend was filed by the Defendant and interlocutory judgment was entered against him on 9th August 2007 for damages to be assessed (“Judgment”). The Defendant was made bankrupt pursuant to a bankruptcy order dated 18th September 2007. On 30th November 2007, the Plaintiff was granted leave to continue with the present proceedings against the Defendant.
4. On 29th October 2007, Master C P Pang ordered *inter alia* that (a) the hearing for assessment of damages be fixed to be heard before me on 19th December 2007, and (b) the Plaintiff do file an affidavit of service of the Judgment, the Plaintiff’s list of documents and witness statement, and the court orders dated 20th August and 29th October 2007. Pursuant thereto, the Plaintiff’s solicitors filed the affirmation of service of their process server on 14th December 2007.
5. The assessment of damages proceeded in the absence of the Defendant. The Plaintiff gave evidence and adopted his witness statement as part of his evidence-in-chief. The expert medical report of Dr Johnson Lam (“Dr Lam”), the Plaintiff’s orthopaedic expert, dated 21st October 2007 (“Dr Lam’s Report”) was adduced as evidence.

*II. Application for amendment of the Revised Statement of Damages*

1. In the Statement of Damages and Revised Statement of Damages, the Plaintiff claimed for net *pre*-trial loss of earnings in the sum of HK$53,126.67 (ie accrued loss of earnings of HK$76,300.00 less HK$23,173.33 being received periodical payments under section 10 of the Employees’ Compensation Ordinance Cap.282 (“ECO”)).
2. Such accrued loss of earnings was premised on the Plaintiff’s plea of *pre*-Accident monthly earnings of HK$11,000.00 and comprised (a) full loss of earnings for his sick leave period from 11th April to 27th July 2005 (79 days that excluded 1 statutory holiday) in the sum of HK$28,966.67 (being HK$11,000.00 x 79 days/30), (b) full loss of earnings for March 2007 in the sum of HK$11,000.00, (c) partial loss of earnings for the period from April to September 2007 (6 months) in the sum of HK$27,000.00 (being [HK$11,000.00 – HK$6,500.00] x 6 months), and (d) partial loss of earnings for the period from October to 19th December 2007 (80 days) in the sum of HK$9,333.33 (being [HK$11,000.00 – HK$7,500.00] x 80 days/30).
3. The proposed amendments purported to increase the claim for *pre*-trial loss of earnings to HK$110,458.67 by removing the claim for (b) above and adding further claims for partial *pre*-trial loss of earnings for (i) the period from August to 10th November 2005 (3⅓ months) in the sum of HK$9,999.00 (being [HK$11,000.00 – HK$8,000.00] x 3⅓ months), and (ii) the period from 11th November 2005 to March 2007 (16⅔ months) in the sum of HK$58,333.33 (being [HK$11,000.00 – HK$7,500.00] x 16⅔ months). There was also proposed consequential increase for *pre*-trial loss of mandatory provident fund (“MPF”) contribution, which doubled from HK$2,656.33 to HK$5,522.93. By the proposed amendments, the Plaintiff was prepared to discount total damages claimed by 20% for pre-existing injuries in line with Dr Lam’s opinion.
4. At the hearing on 19th December 2007, I declined to grant leave to the Plaintiff to amend the Revised Statement of Damages as aforesaid. As Mr Tse, solicitor for the Plaintiff, fairly admitted, such application was made orally at the assessment hearing with no prior intimation to either the court or to the Defendant. The Defendant was therefore deprived of the opportunity to deal with the application. Although the Plaintiff proposed an overall reduction of total damages by 20% (which on the Plaintiff’s own case was inevitable given Dr Lam’s opinion – see below), his claim for *pre*-trial loss of earnings would be more than doubled. Although the Plaintiff must have known what he earned during 2005 to 2007, there was no satisfactory explanation for his failure to plead his *pre*-trial loss of earnings during such period in good time. More importantly, even though the application to amend was made at the eleventh hour, there was no “evidence” in the trial bundle (whether by way of discovered documents or Plaintiff’s witness statement) as to the Plaintiff’s earnings during the periods set out in paragraphs 8(i) and (ii) above to support the proposed amendments. Even though the Defendant failed to appear in the present proceedings, the court should still approach the Plaintiff’s application on a just and even-handed basis. In light of the above considerations, I refused the Plaintiff’s application to amend.

*III. Personal background*

1. At the time of the Accident, the Plaintiff was 36 years old. He received education up to Form 3 level. He was married with 2 young daughters. When he left school in 1984, he started to work as a carpenter apprentice and decoration worker. In/about 1996, he became a salesman mainly selling furniture on wholesale basis. In/about 1997 (ie after he worked as such salesman for about a year), the Plaintiff’s employer arranged for the Plaintiff to work at his factory in the PRC. He was responsible for management matters. The Plaintiff returned to Hong Kong in 2000.

*IV. Pre-existing condition and disability*

1. According to Dr Lam’s Report, the Plaintiff said he had cervical problem in 1992 with numbness in both hands and lower limbs. He said “he developed such symptoms over 2-3 day’s times insidiuously, with no definite history of injury at that time”. He sought medical treatment from various doctors including the orthopaedic clinic (“Clinic”) of Caritas Medical Centre (“CMC”). MRI examination revealed “some disc protrusions compression on the cervical spine, and anterior spinal fusion [“ASF”] was performed, although [the Plaintiff] said he was not sure about which level”.
2. According to the medical report by Dr Wong Kwok Ho of the department of orthopaedics and traumatology (“OTD”) of CMC dated 26th July 2006 (“Dr Wong’s Report”) and the medical report by Dr C L Yip of the OTD of Prince of Wales Hospital (“PWH”) dated 3rd August 2006 (“Dr Yip’s Report”), the Plaintiff had a known history of cervical spine prolapsed disc at C5/6, and cervical spine surgery with discectomy and ASF was done at CMC in 1992. Afterwards the Plaintiff had regular follow-up at the Clinic.
3. According to CMC’s operation record notes of 19th November 1992, the discectomy and ASF were performed by a team of surgeons including Dr Y F Ho (“Dr Ho”). The diagnosis was “cervical PID C5/6 with myelopathy”. The position of the bone grant inserted was confirmed to be satisfactory with wet film taken.
4. According to Dr Lam’s Report, the Plaintiff claimed he was 80% improved after the operation, and the “numbness in the limb” gradually disappeared in the following 2-3 years. He also told Dr Lam that for, say, 10 years before the Accident, he did not require further active treatment or physiotherapy for his neck problem. The Plaintiff also claimed that although he would experience neck stiffness and discomfort 1-2 times every 3 years prior to the Accident, these would usually resolve with analgesics, and did not cause much disability. He said he was quite well before the Accident, and could perform his daily work with no disability.
5. Dr Lam’s Report noted that Dr Lam reviewed a “large bundle of medical record from [CMC]”, but the Plaintiff only included in the hearing bundle extracted medical records selected by Dr Lam.
6. As early as in 1994 (ie 2 years after ASF), the Plaintiff experienced deterioration of neurological signs with increased paraesthesia of hand. An MRI report made on 9th April 1994 noted the following clinical history by the referring doctor Dr Ho : “cervical PID C5-6 with prolapsed disc and with cervical myelopathy. …… X-ray and CT scan recently done show no compression. Patient experienced deterioration of neurological finding with [illegible] and increased paraesthesia of hand. CT scan shows [illegible] PID at C6-7. Diagnosis is cervical PID with myelopathy.” The opinion expressed in the MRI report was as follows :

“Previous [ASF] at C5-6 is noted. Bony alignments are good. No cord compression is shown. No intrinsic cord lesion is identified. C6-7 level showed no prolapsed disc. Myelopathy remains unexplainable on the basis of this MRI study.”

1. More importantly, the Plaintiff needed hospitalisation in 2001 for “physical therapy exercises”. According to the Discharge Summary dated 27th May 2001, the Plaintiff was hospitalised for 4 days from 27th to 30th May 2001 mainly for neck pain and also for “varicose veins in leg (with OT done)” and “intervertebral disc disorder with myelopathy, cervical region (with OT done in 1992)”. The discharge note recorded as follows :

“Hx of PID cervical spine C5/6 with myelopathy. Discectomy + ASF done in 1992 in CMC

Now 90% improved

No FU already

Also Hx of varicose vein of left leg long saphaeous vein with OT done 11/94

E admission x neck pain for few days

no hx of trauma

mechanical pain mainly

……

no UL and LL neurology

P/E: neck: non-tender, slight AROM on all plane

UL and LL power normal 5/5

sensation diminished Left C8 dermatone

……

Dx: Neck pain for Ix

……

physio. X for pain Mx

MRI C-spine was booked as outpatient

……

Now condition stable and afebrile

decrease in neck pain

numbness over left C8 dermatone

no deterioration in neurology

Home”

1. The MRI report dated 8th August 2001 noted the clinical data as follows : “C5/6 PID with discectomy and fusion in 1992. Asymptomatic after OT. Neck pain for 5 days.” The report showed no definite abnormal signal intensity changes in the underlying spinal cord to suggest associated myelomalacia, but there were posterior disc protrusions at C3/4, C4/5 and C6/7 levels, essentially at C3/4 and C6/7 levels (left side). The posterior disc protrusions caused compression of the underlying thecal sac and spinal cord. At C6/7 level, there were also L postero-lateral disc protrusions with narrowing of L intervertebral foramen and possible compression of exiting nerve root. Dr Lam’s Report noted that C4/5 appeared to be less involved.
2. Various consultation notes recorded the following :
   1. 14th December 2001 : “disc prolapse C3/4 + C/4/5 mild C5/6 moderate upper limb, no neurological deficit”;
   2. 14th June 2002 : “PID C5/6 ASF 1992, - symptom improved after OT, - c/o neck pain & both hand numbness x 1year, - neck pain radiate to scapular area, - both hand numbness affecting ulnar 3 digits, - hand grip R 32 kg L 42 kg, - L knee jerk brisk compare to R”;
   3. 30th August 2002 : “refer from A&E on 12/8/2002, hx of [illegible] 3/52 ago, neck pain & numbness [illegible] both sides, seen A&E, neck full ROM, upper limbs normal power, neck x-ray taken in A&E ……”;
   4. 13th December 2002 : “P/E : brisk jerk Lt UC, myelopathic hand sighs Lt ……”
   5. 21st November 2003 : “1st OT C5-6 ASF 92 so far OK; Repeat MRI Aug 01 → C3-4 C6-7; 3rd MRI Oct 03 → C3/4 C4/5 C6/7; 2 options: ASF C6-7 + C4-5 +/- C3-4 or laminoplasty; patient will consider; see 1/12”;
   6. 30th April 2004 : “- Age 36, - Neck pain & numbness, - Refer physio, -see 4/12”;
   7. 20th August 2004 : “- stop physiotherapy, - P/E: myelopathic hand signs not that obvious, mild trunk and lower limb tightness, - see ½ yr ……”.
3. According to the MRI report dated 25th May 2005 by Dr C F Lo (“Dr Lo”) of Vision MRI Centre in respect of a MRI scan done in May 2005, a comparison was made with the previous MRI scan performed on 26th October 2003. The referring doctor for the MRI scan in May 2005 was Dr Ho. The clinical history provided by Dr Ho was as follows : “History of C5/6 PID presented with cervical myelopathy. Discectomy and ASF were performed in 1992. Started to develop neck pain in 2001 with hand numbness and weak grip. Repeated MRI showed C6/7 PID and C4/5 cervical spondylosis. Recent ½ year showed further deterioration of signs and symptoms of myelopathy with right foot drop.”
4. Dr Lam opined that the medical notes suggested the Plaintiff had occasional neck pain and neurological symptoms before the Accident, “but the severity was not to severe”. However, according to my reading of the extracted medical notes and records relied on by Dr Lam as disclosed in the hearing bundle, which regrettably did not include the full set of relevant medical records, the Plaintiff’s *pre*-Accident neck pain and neurological symptoms were more severe than that suggested by the Plaintiff and/or Dr Lam :
   1. At the time of the discectomy and ASF in 1992, there was prolapsed disc at C5/6 with myelopathy (ie numbness of both hands and lower limbs).
   2. Although the Plaintiff appeared asymptomatic for a short while after the discectomy and ASF, there was already deterioration of neurological finding and increased paraesthesia of hand (ie cervical myelopathy) by April 1994.
   3. By May 2001, the Plaintiff had neck pain for 5 days with diminished AROM on all planes and diminished sensation or numbness over left C8 dermatone, so much so he had to be hospitalised for 4 days for “physical therapy exercises”. Posterior disc protrusions were noted at C3/4, C4/5 and C6/7 with C4/5 less involved, but Dr Ho’s clinical data as noted in the MRI report dated 25th May 2005 stated there was cervical spondylosis at C4/5. The Plaintiff also developed cord compression at C6/7 with possible compression of exiting nerve root.
   4. By December 2001, disc prolapse at C3/4 and C4/5 was mild and at C5/6 was moderate, and there was intermittent upper limb numbness.
   5. By June 2002, the Plaintiff himself complained of neck pain that radiated to the scapular area and numbness of both hands affecting ulnar 3 digits *for 1 year* with weakened right hand grip.
   6. By August and December 2002, there was already *history* of neck pain and numbness and myelopathic hand signs, so much so that the doctors at CMC discussed with the Plaintiff possible ASF or laminoplasty to tackle the problem.
   7. In April and August 2004, although the neck pain and numbness decreased and myelopathic hand signs were not so obvious, the Plaintiff was still given physiotherapy treatment and he still had mild trunk and lower limb tightness.
   8. In/about the first half year of 2005, there was further deterioration of myelopathic signs and symptoms with right foot drop.
5. In light of the above persistent signs/conditions for which medical treatment was given, I reject the Plaintiff’s claim that he was asymptomatic with very occasional mild stiffness/discomfort and had no need of therapeutic treatment. I am not persuaded that prior to the Accident the Plaintiff could perform his daily work (which he claimed included a lot of walking to call on potential customers and carrying heavy samples and catalogues) with no disability. I find he suffered from neck pain, numbness of hands, myelopathic signs/symptoms and right drop foot which would cause discomfort and interfere with his work efficiency.

*V. Injuries and treatment*

1. According to the Plaintiff, at the time of the Accident he felt pain over his right neck and right shoulder, and numbness over his hands. He wanted to return to the office, but when he reached the lift door, his legs were numb and had no strength, and his neck felt tight and painful. He dared not move around due to previous injury to his neck and immediately sat down on the floor to telephone the office for help. He was taken to PWH’s accident and emergency department (“AED”) and was hospitalised on the same day under the care of PWH’s OTD until 14th April 2005.
2. However, according to the medical report by Dr Woo Wing Keung (“Dr Woo”) of PWH’s AED dated 6th August 2006, the Plaintiff only complained of “sprained neck during work with neck pain and hand numbness”. Mild tenderness was elicited over posterior neck, and there was subjective reduced sensation over right hand and mild weakness of right hand grip. Dr Woo stated that the mode of injury was compatible with a sprain. Further, Dr Yip’s Report also noted that when the Plaintiff attended PWH’s AED, his “main complaint was of neck sprain and pain with bilateral hand numbness after lifting a heavy object”.
3. Dr Yip’s Report noted that physical examination did not reveal any neurological deficit. The Plaintiff made good progress with improvement in the neck pain and was discharged home after 4 days on 14th April 2005. He was referred back to the Clinic for follow up.
4. The consultation notes of 13th May 2005 noted “? IOD 11 April 2005 while lifting chairs. Admit AED of PWH & O&T. …… Now still c/o persist neck pain rt side → radiate back → both hand numbness → walk with drop foot ® - will try one course of phsyio, neck collar given”.
5. As acknowledged in Dr Lam’s Report, notwithstanding the Plaintiff’s complaint of back pain after the Accident (and the Plaintiff’s evidence that he had told his doctors at CMC’s OTD and PWH’s AED about his back problem), the doctors who treated him after the Accident did not refer to any back injury or mention any back pain and/or numbness/weakness of lower limbs. The first time the Plaintiff’s back was mentioned *post*-Accident was in the consultation notes of 13th May 2005, but they referred to neck pain that radiated to the back rather than to any back injury. Still further, as the Plaintiff accepted, no x-ray of the back was done and he did not receive physiotherapy treatment for the back. I am not persuaded that the Accident caused any back injury independent of the neck injury.
6. The Plaintiff told Dr Lam he re-attended the Clinic and had an MRI scan done in May 2005. Dr Lo’s findings in the MRI report dated 25th May 2005 included the following :
   1. evidence of ASF noted at C5/6 level;
   2. central posterior disc protrusion present at C4/5 level showed no significant change in appearance when compared with previous study and it was compressing on cervical spinal cord;
   3. the compressed cervical spinal cord showed mild T2 signal change extending from C4 to C5 level likely due to myelomalacia;
   4. the mild central posterior disc protrusion present at C3/4 and the wide base posterior bulging disc present at C6/7 level showed no significant change when compared with previous study and the spinal cord appeared not compressed;
   5. there was hypertrophy of intervertebral uncal joints at C6/7 level, more prominent over left side with associated posterior osteoplytosis causing mild narrowing of left intervertebral foramen;
   6. there was loss of normal cervical lordosis that could be due to spasm of paraspinal muscles;
   7. no abnormal paraspinal soft tissue thickening could be seen in cervical region.

Dr Lam opined that the most prominent disc protrusion was at C4/5 level with narrowing of the neural canal and evidence of cord compression that accounted for the myelopathy.

1. The Plaintiff told Dr Lam PWH’s doctors suggested surgery whilst CMC’s doctors said surgery would be difficult and if further surgery were performed he would have 3 levels of the spine fused and the neck would be stiff. The Plaintiff opted for conservative treatment and received a course of physiotherapy. The Plaintiff attended the Clinic on various occasions between 13th May and 22nd July 2005.
2. The consultation notes of 3rd June 2005 recorded as follows : “- Age 36; - mild PID C4-5 C5-6 → C6-7 fusion OK, no compression; - prefer conservative treatment; - discuss [with] patient; - salesman: need to carry wt; - advice on working posture/way to relief; - self-hydrotherapy; see 6/52; resume job”. The first tranche of sick leave commenced on the day of the Accident and ended on 3rd June 2005.
3. According to Dr Wong’s Report and the Discharge Summary of CMC dated 9th July 2005, the Plaintiff was admitted into the hospital ward of CMC’s OTD from 6th to 9th July 2005 through CMC’s AED for “physical therapy exercises” for “orthopaedic aftercare (previous ASF C5/6 now neck pain)”. The discharge note in the aforesaid Discharge Summary stated *inter alia* “…… - complain of sudden neck pain and back pain recently; - no recent trauma; - upper and lower limbs no definite neurological deficit; - response well with physiotherapy and analgesic; - x-ray fusion site ok and no new lesion; - home with FU [at the Clinic] 2/52”.
4. The consultation notes of 22nd July 2005 noted the Plaintiff’s complaint of local pain over the trapezius (which is a large superficial muscle that spanned a person’s neck, shoulders and back).
5. The medical assessment board carried out assessment on 6 October 2005. The consultation notes recorded as follows : “MAB cervical PID C4/5 with compression – 15% - pain, radi[illegible] symptoms”. According to the Certificate of Assessment dated 20th October 2005 (“Form 7”), the injury was described as “neck and back injury resulting in prolapsed intervertebral disc at C4/5” and the board assessed the period of absence from duty as a result of the injury was from 11th April to 3rd June, 7th to 10th June and 6th to 27th July 2005 (ie 79 days), and the loss of earning capacity permanently caused by the injury was 15%.
6. The consultation notes of 14th October 2005 recorded as follows : “mainly persistent back and neck pain + bilateral calf numbness”.
7. As a result of objection by the Defendant, the medical assessment board carried out re-assessment on 5th January 2006. The consultation notes of 5th January 2006 recorded as follows : “MAB cervical myelopathy 15%”.
8. According to the Certificate of Review of Assessment dated 19th January 2006 (“Form 9”), the Plaintiff’s injury was described as “neck and back injury (detected prolapsed intervertebral disc cervical C4/5)” with a remark that “[the] abovenamed sustained previous neck/cervical injury in 1992 the information of which regarding prognosis is not available for the Board. The Board therefore only assesses the current medical conditions already in existence” (“Remark”). The board maintained its previous assessment of the period of absence from duty as a result of the injury and of the loss of earning capacity (subject to the Remark) in Form 7.
9. According to Dr Wong’s Report, the Plaintiff was assessed by CMC’s OTD in May 2006 at the Clinic, and he complained of neck pain at that time. An MRI scan of the Plaintiff’s cervical spine showed that “there is only mild prolapsed disc at multiple levels *which may not related to the injury in April 2005* and the scan also showed that the previous spinal fusion site united well” (my emphasis). When he was last assessed on 26th May 2006, the Plaintiff complained mainly of left foot pain rather than neck problem.
10. The consultation notes of 4th August 2006 noted that the left foot pain had subsided and x-ray of the Plaintiff’s left foot showed no apparent problem. More importantly, the notes recorded “no neck pain” and “FU ½ yr”.

*VI. Pain, suffering and loss of amenities*

1. The Plaintiff claimed that after the Accident his neck pain made it difficult for him to sleep. He had limited movement of his limbs, and felt numbness in his limbs from time to time. He could not carry heavy objects, or squat, walk or sit for long periods due to right leg pain. Climbing and descending stairs were more difficult than before, and his balancing ability was diminished. When he went out for a walk, his legs had more aches/pain than before the Accident, and sometimes when he returned home his legs would be shaking. Pain from his injuries would increase on change of weather, and there would be tightness and cramping.
2. Dr Lam’s Report noted that since the Accident the Plaintiff complained of numbness and occasional cramps (which he did not have prior to the Accident) of his right lower limb, frequent tripping of right foot due to weakness of leg muscles (drop-foot), occasional numbness of right upper limb (from elbow downwards) on wakening, milder degree of numbness in left upper limb as well as pain over the paraspinal area of lumbar spine and the lower lumbar region. The Plaintiff claimed he required analgesics every alternate night because of the neck and back pain, but the pain over the neck improved after swimming.
3. During physical examination, Dr Lam noted there was muscle guarding over the paraspinal area of the cervical spine, theracapular area and right trapezius with reduction in the range of motion of the neck. There was impaired sensation over ring and little ringers and ulnar aspect of hand, forearm and arm, and mildly impaired sensation over the radial aspect of forearm on the right side. For the left side, there were areas of impaired sensation similar to the right hand but lesser in degree. Rotation of right shoulder and flexion/extension of right elbow were slightly diminished. There was mild muscle guarding over the lumbar area and tenderness over the spinous processes at L5/S1 level with diminished range of flexion/extension. There was slight decrease of flexion/extension of right knee and right ankle/big toe. X-ray of cervical spine showed satisfactory fusion of C5/6 and decrease of normal cervical lordosis. Degenerative changes were noted in the lumbar spine with slight decrease in lumbar lordosis.
4. Dr Lam’s diagnosis was “sprain injury to the neck”. Judging from the sudden/acute onset of the symptoms, he opined that it was probable the injury in 2005 caused aggravation and deterioration of the original status of the neck (with worsening of hand numbness) and probably also right lower limb weakness. Although the medical reports of PWH and/or CMC did not refer to any back injury, Dr Lam relied on the description of injury in Form 9 to say that the doctors of the medical assessment board must have reviewed the case to confirm there was back injury. Dr Lam opined that back injury was also consistent with the mechanism of injury (sudden sprain when lifting heavy stack of chairs stuck in a gap).
5. Dr Lam opined that the Plaintiff’s neck and back injuries as a result of the Accident had reached maximum medical improvement. But he acknowledged there was difficulty in assessment over the neck injury due to (a) ASF of C5/6 in 1992 and (b) the Plaintiff’s occasional (but not too severe) neck pain and neurological symptoms since 2001. Based on the present status of the Plaintiff’s cervical condition, and considering the physical, x-ray and MRI scan findings, Dr Lam opined that the Plaintiff’s complaints were justified and he would be expected to have upper limb and right lower limb weakness (with frequent tripping) and neck/back pain.
6. Dr Lam suggested the Accident should account for about 80% of the Plaintiff’s present impairment and disability in the neck (or 16% whole person impairment) and about 20% (or 4% whole person impairment) should be due to his pre-existing neck condition. Although there were degenerative changes in the Plaintiff’s lumbar spine, Dr Lam said the Plaintiff did not have pre-existing back pain, and he took the view that had it not been for the Accident it was likely the Plaintiff should have continued to enjoy satisfactory and painless back function. Dr Lam opined that the present impairment/disability in the back was caused by the Accident and the sprain back injury should carry 2% whole person impairment.
7. In light of the limited primary medical records available, I find I am unable to accept Dr Lam’s opinion in its entirety. I have explained in paragraph 27 above why I came to the view there was no back injury. The first mention of back pain (as distinct from neck pain that radiated down the back) was in the Discharge Summary of 9th July 2005 (see paragraph 31 above), which also recorded there was no recent trauma for such “recent” complaint of back pain.
8. The only basis offered by Dr Lam for his conclusion that the Plaintiff “probably” suffered back injury as a result of the Accident was his *assumption* that the medical assessment board must have been satisfied there was such injury when the description of injury in Forms 7 and 9 included “back injury”. But I am not persuaded that such assumption was reliable given Dr Lam’s failure to note the Remark by the board that it would only assess “current medical condition” without taking into account pre-existing condition in making the assessment. I note that the MAB consultation notes for 14th October 2005 and 5th January 2006 did not mention any “back injury” although the former referred to back pain and bilateral calf numbness (ie the “current medical condition”).
9. I find on balance the Plaintiff suffered sprain injury to the neck that caused neck pain which radiated down his trapezius and back (see paragraphs 26, 31 and 32 above). Although I do not dispute Dr Lam’s opinion that a sprain back would have been consistent with the mechanism of injury, I am not satisfied there was any back injury independent from the neck injury. I also disagree that the Plaintiff’s back was symptom-free prior to the Accident. By 14th June 2002 and 20th August 2004, the Plaintiff’s neck pain radiated to the scapular area and there was mild trunk and lower limb tightness. Bearing in mind the *degenerative changes* to the Plaintiff’s lumbar spine with slight decrease in lumbar lordosis, I find that the Plaintiff’s mild back discomfort had a pre-existing element.
10. Although there was undoubted pre-existing element in respect of the Plaintiff’s neck pain and cervical myelopathy (eg numbness and weakness of upper limbs), I accept the trauma of the Accident caused cervical injury to C4/5 level with compression of cervical spinal cord and myelomalacia causing mild T2 signal changes. In such circumstances, I find that even though the Plaintiff’s pre-existing neck disability accounted for the present condition to a larger extent than suggested by Dr Lam, a substantial part of the Plaintiff’s cervical disabilities were caused by the Accident. However, in contra-distinction to the Plaintiff’s present complaints, the medical records in May and August 2006 noted that his neck problem/pain had largely subsided by 2006 (see paragraphs 37-38 above).
11. Interestingly, although the Plaintiff complained of persistent lower limb (especially right lower limb) numbness, weakness, aches/pain, shaking and cramps that affected all aspects of his daily life including squatting, walking, sitting, balancing and using the stairs (see paragraphs 39-40 above), there was fairly little discussion in Dr Lam’s Report on this aspect save to say (a) there was slight decrease of flexion/extension of right knee and right ankle/big toe, and (b) the Plaintiff’s complaints were justified and he would be expected to have right lower limb weakness with frequent tripping of right foot (ie drop foot).
12. Further, Dr Lam only briefly opined that the 2005 injury “probably” caused numbness/weakness of the right leg. There was no explanation why such problems with the right leg were not in any way related to lumbar spine degeneration.
13. The Plaintiff claimed that although he had right leg numbness prior to the discectomy and ASF in 1992, his right leg was symptom-free thereafter. However, it was unclear how the *cervical* operation would “cure” the Plaintiff’s problem with his right *leg*. More importantly, the Plaintiff’s first complaint about his legs after the Accident as noted in the medical records was “walk with drop foot ®” (see paragraph 26 above). But the Plaintiff already had history of right drop foot for 5 months prior to the Accident (see paragraph 20 above). Even the Plaintiff gave evidence that the drop foot was caused by the “ankle bone” and not by the cervical injury. Further, although the Plaintiff’s key complaint in May 2006 was left foot pain, it had subsided by August 2006, so much so that the Plaintiff was only required to be followed up half a year later (see paragraphs 37-38 above).
14. I also bear in mind the relevant legal principles on causation of damages. The courts have long accepted that they are not dictated but only assisted by medical opinion, and there are differences between causation in medicine and causation in law. In *Ocean Tramping Co. Ltd v. Lee Kin Kai* [1991] 2 HKLR 232, Hunter JA said at p.235 that :

“First causation is essentially a matter for the judge not for the doctors.  It is a matter upon which the judge will no doubt be assisted by the medical evidence but he is not dictated to by it.  Secondly, it is important to bear in mind that the law and medicine here, it seems to me, apply quite different standards.  In law there is a sufficient causal connection if it is shown on the balance of probabilities that the accident was a substantial contributing cause of the injury.  A cause is sufficient; it need not be shown to be the sole cause.”

Ultimately, the courts must adopt a common sense approach.

1. In light of the aforesaid analysis, I accept that although there was a pre-existing element, the Plaintiff did injure his neck at the time of the Accident, which injury aggravated his neck pain that radiated to his back and caused myelopathic signs/symptoms to his hands and arms. I also accept the Plaintiff suffered back pain and right leg numbness/weakness with drop foot, but plainly his pre-existing condition also contributed to such impairment. I find on balance that the Plaintiff’s pre-existing condition accounted for a third of his overall impairment and disability.
2. In respect of the claim for pain, suffering and loss of amenities, I have carefully considered the following authorities cited by Mr Tse :
   1. *Sin Kin Man v Hsin Cheong Construction Company Limited* HCPI740/2004 (unreported, 30th November 2005);
   2. *Lee Kit Ha v The Kowloon Motor Bus Company (1933) Limited* HCPI539/2000 (unreported, 7th October 2002);
   3. *Ma Kwai Lan v Chiu Yun Yau & anor* DCPI703/2005 (unreported, 13th July 2005);
   4. *Chong Leung Sung v Chau Kai Keung, Wong Kwok Keung and Wong Yau Hung trading as Hop Kee Construction Company (a partnership) & anor* HCPI709/1998 (unreported, 13th December 1999);
   5. *Li Yuk Ching v Secretary for Justice (sued on behalf of the Director of Urban Services)* HCPI724/1995 (unreported, 21st July 1998).
3. The plaintiffs in some of the above cases suffered more severe injuries, eg post-concussional syndrome with head injury, severe depressive illness with need for extended psychiatric help, loss of consciousness and amnesia and/or concussion/contusion to various parts of the body. Mr Tse placed strong reliance on *Chong Leung Sung*, but the condition of the plaintiff in that case (including limited movement of his neck, pain and weak grip) was so debilitating that he was unable to hold down a job of any kind. It was not so with the Plaintiff in the present case. He was able to work for an extended time as furniture salesman/proprietor and cross-border lorry driver albeit with some limitation. Subject to the one-third discount for his pre-existing condition, I award HK$300,000.00 for pain, suffering and loss of amenities.

*VII. Pre-Accident work and earnings*

1. The Plaintiff claimed that since 1st May 2004 he was employed by the Defendant as a salesman until his resignation on 28th June 2005 (although he told Dr Lam he was dismissed by the Defendant). His daily duties included promotion work (eg visiting furniture shops to seek business opportunities, solicit orders and promote the Defendant’s products) and office work (eg placing and following up purchase orders). He sometimes had to meet with and entertain customers for business purpose, and to follow up on production and management aspects. The Plaintiff told Dr Lam that his *pre*-Accident job required carrying heavy catalogues and a lot of walking as he was out of the office most of the time, and that occasionally he had to help fix furniture.
2. The Plaintiff said he had a licence to drive taxis/lorries, and he would occasionally drive such vehicles to earn his living.
3. The Plaintiff claimed that whilst employed by the Defendant his basic monthly salary was HK$10,000.00 and his average monthly commission was 2-3% of his turnover, so his average total monthly income was about HK$11,000.00. Since his monthly salary and commission were paid by cash cheques and cash respectively, sometimes he would cash the cheques without depositing them into his bank account.
4. But according to the Form 2 dated 25th May 2005 prepared by the Defendant (“Form 2”), it was stated that the Plaintiff’s basic monthly salary was HK$8,000.00 and his monthly commission was HK$2,000.00, totalling HK$10,000.00.
5. According to the Certificate of Compensation Assessment dated 27th October 2005 (“Form 5”) and Certificate of Review of Compensation Assessment dated 26th January 2006 (“Form 6”), the Commissioner for Labour assessed the compensation payable to the Plaintiff based on his monthly earnings of HK$10,000.00.
6. I bear in mind that it was the Defendant and not the Plaintiff who raised objection to the assessment in Form 5 which resulted in the issuance of Form 6. The Plaintiff then commenced employees’ compensation proceedings in the District Court against the Defendant (DCEC272/207). By my order dated 1st June 2007, Form 6 (ie including the assessment based on monthly earnings of HK$10,000.00) was made an order of the court. At that time the Plaintiff was legally represented by the same firm of solicitors who acted for him in the present proceedings. No attempt was made to challenge the assessment in Form 6 or to apply to cancel the Form 6 and seek re-assessment of the compensation by the court.
7. The Plaintiff gave evidence that the Defendant’s assertion in Form 2 was wrong although he accepted the assessments in Forms 5 and 6. He claimed he accepted the assessments because he did not wish to challenge the certificates and his monthly earnings of HK$10,000.00 stated therein were not too different from his claimed actual monthly earnings of HK$11,000.00.
8. In my view, it is not open to the Plaintiff to challenge the fact that his *pre*-Accident monthly earnings were HK$10,000.00. First, the Form 6 (which included the fact that the Plaintiff’s monthly earnings were HK$10,000.00) was binding and conclusive on the matter of quantum of employees’ compensation unless application to cancel the same was made pursuant to the ECO (see *Lam Chi-biu v Mak Kee Limited* CACV191/2004 (unreported, 9th June 2005)). No such application was made. Secondly, the present case went further in that the Form 6 was made an order of court. In the circumstances, there was issue estoppel between the parties in respect of the Plaintiff’s *pre*-Accident monthly earnings of HK$10,000.00. Thirdly, even if I am wrong on the above 2 points, I still would not have accepted the Plaintiff’s evidence that his *pre*-Accident monthly earnings were HK$11,000.00. The only documentary evidence adduced by the Plaintiff in support of his contention was various deposit entries in his bank passbook for HK$10,000.00, HK$4,000.00, HK$7,226.00, HK$5,320.00, HK$2,500.00 and HK$4,300.00 on 30th April, 4th June, 3rd September, 3rd October, 1st November and 3rd December 2005 respecively. But the Plaintiff did not explain why the entries after 28th June 2005 (ie after his resignation) were reflective of his earnings from the Defendant. Further, since his basic monthly salary was paid by way of cash cheques, the relevant deposit entry (if his monthly salary was deposited into his bank account) should be in the sum of HK$10,000.00. Presumably the deposit entries which were not in round sums of HK$10,000.00 were payments for commission. However, the Plaintiff did not offer any explanation why they did not tally with his assertion that his average monthly commission was about HK$1,000.00.
9. In the circumstances, I find on balance the Plaintiff’s *pre*-Accident monthly earnings were HK$10,000.00.

*VIII. Pre-trial loss of earnings*

1. The Plaintiff claimed his neck/back pain greatly affected his work capacity. He said he chased the Defendant for compensation for his work injury. As a result, their relationship deteriorated until it became intolerable, so he resigned and left. He claimed the Defendant continued to spread rumours amongst fellow tradesmen about his injuries.
2. According to Form 9, sick leave was issued until July 2005 (ie 79 days) (see paragraphs 33 and 36 above). The Plaintiff claimed for full loss of earnings for the whole sick leave period, but acknowledged he received a total sum of HK$34,012.60 from the Defendant being income payment as well as periodical payments under section 10 of ECO :

|  |  |  |
| --- | --- | --- |
| Month | Relevant period | Amount (HK$) |
| April 2005 | 20 days sick leave and 10 work days | 10,000.00 |
| May 2005 | 30 days sick leave and 1 work day | 8,668.00 |
| June 2005 | 7 days sick leave and 21 work days | 9,507.00 |
| July 2005 | 22 days sick leave | 5,837.60 |
|  | Total | 34,012.60 |

1. However, Form 6 assessed periodical payments on the basis of 69 (and not 79) days of sick leave with the following remark : “as the injured employee returned to work and earned full wages on 3.5.2005 to 12.5.2005, those days were deducted from the number of sick leave days in calculating the periodical payments”. As discussed above, there was no challenge to the binding and conclusive Form 6 which was made an order of the court. In the circumstances, I find that subject to discount for the Plaintiff’s pre-existing condition, the Plaintiff was only entitled to net loss of earnings for the sick leave period in the sum of HK$4,600.00 being HK$23,000.00 (ie HK$10,000.00 x 69 days/30) less HK$18,400.00 (ie HK$10,000.00 x 69 days/30 x 4/5).
2. The Plaintiff gave evidence that after his resignation in late June 2005 he found a full-time furniture salesman job in August 2005. The job required a lot of walking to visit potential customers to solicit business and carrying of heavy product samples and catalogues etc for long periods on the road. He experienced right lower limb numbness afterwards and could not handle the work. So he resigned on 10th November 2005. It was only when the Plaintiff was in the witness box that he mentioned his monthly salary as such salesman was about HK$8,000.00. He further claimed it was paid in cash, but he did not adduce any documentary evidence (eg MPF documents) in support. However, there was no claim for *pre*-trial loss of earnings over this period.
3. Thereafter the Plaintiff applied for business registration and started his sofa wholesale business on a self-employed basis. He rented a small office space for office work (eg taking telephone calls, placing orders etc), but most of the time he would be visiting furniture shops to solicit business. He also had to go to the PRC for 2-3 days a week to follow up on production matters with the factory. It was a full-time job which required him to work on Saturdays and sometimes even on public holidays. However, according to what he told Dr Lam, his situation became better because the job required less walking and less lifting of heavy objects.
4. The Plaintiff said his business ceased after 1 year 2 months (ie until 28th January 2007) because there were problems with the market condition, cash flow, his company structure (“公司規模”), and his business style (“生意經營方式”). He claimed business was not good even during the new year.
5. It was only when the Plaintiff was in the witness box that he mentioned his monthly earnings as proprietor was HK$6,000.00 odd. Although the Plaintiff agreed that (a) he issued invoices/receipts to customers and kept records of his expenses on a cash basis, and (b) he retained a bundle of such records even though he was unsure where he kept them, no documents in respect of his earnings during the relevant period were disclosed. However, the Plaintiff did not claim for loss of earnings during such period.
6. The Plaintiff claimed that between 28th January and October 2007, in order to make ends meet to support his family, he worked on a part-time and freelance basis doing “傢俬散單買賣” for which he earned an irregular income. When a customer placed an order for some furniture, he would make drawings and offer a quotation for the customer’s approval. Then he would arrange for production by the factory, and would later engage delivery and installation workers to complete the project for the customer. Upon payment of the price by the customer, he would earn the profit after deducting all expenses. The Plaintiff mentioned for first time in the witness box he would have 1-2 such jobs *per* month and his monthly earnings during such period were about HK$5,000.00 to HK$6,000.00. But in his Revised Statement of Damages, he conceded his average monthly earnings were HK$6,500.00.
7. In the Revised Statement of Damages, the Plaintiff claimed for loss of earnings for the whole month of March 2007 as he was unemployed. This was refuted by the Plaintiff’s evidence which confirmed that he was already engaged in freelance work at that time. I find the Plaintiff only suffered partial loss of earnings of HK$10,000.00 – HK$6,500.00 = HK$3,500.00. The Plaintiff also claimed for partial loss of earnings from April to September 2007, and I find the quantum thereof was (HK$10,000.00 – HK$6,500.00) x 6 months = HK$21,000.00.
8. The Plaintiff claimed that in October 2007 his friend introduced him to join the transportation industry and he became a self-employed cross-border lorry driver. He borrowed a bank loan to purchase a second hand lorry, and made the relevant registrations with the authorities to start his own business. He then accepted delivery orders from transport companies to go to PRC factories in Shenzhen and Dongguan to collect goods for delivery to Hong Kong. Each trip would take about 2 hours.
9. The Plaintiff claimed that on average he carried out 13-15 delivery jobs per month, but since he only started to carry on business as a cross-border lorry driver for 2 months, the workload was not certain as yet (“暫時未定”).
10. The Plaintiff agreed that his work as a cross-border lorry driver rarely required him to move heavy objects. He claimed in his witness statement there was still pressure on his injuries if he drove over long distances, but he had to endure the pain and work as best as he could in order to support his family. This was contradicted by his *viva voce* evidence that he in fact concentrated on accepting delivery jobs to Shenzhen or Dongguan or any place within 2 hours’ driving distance and he considered he could take on more of such delivery jobs.
11. The Plaintiff explained that the transport companies would normally pay delivery charges to him after 45-60 days by cheque payments and he would deposit the cheques into his bank account. However, if he needed money, he would ask the transport companies for advance payment, which would be paid in cash.
12. The Plaintiff claimed the delivery charges for each delivery job was agreed between himself and the transport company. He had records of his delivery jobs because (a) the transport companies faxed delivery orders to him and (b) he made his own records in respect of urgent delivery jobs for which there were no written delivery orders. The Plaintiff also kept records of his expenses (including fuel and road charges) and in particular he kept all the receipts for payments to the PRC authorities.
13. In the circumstances, the Plaintiff agreed his records would show the number of delivery jobs he carried out each month as well as his monthly earnings. However, other than his bare assertion that his average net monthly earnings were HK$7,500.00 (which would vary according to fuel price and amount of road charges etc), the Plaintiff did not disclose any document in support of the same.
14. Even so, in the absence of other countervailing evidence, I accept that the Plaintiff’s partial loss of earnings for the period from October to 19th December 2007 (ie date of the assessment hearing) was (HK$10,000.00 – HK$7,500.00) x 80 days/30 = HK$6,666.67.
15. In the circumstances, subject to discount for pre-existing condition, the Plaintiff’s loss of earnings was HK$4,600.00 + HK$3,500.00 + HK$21,000.00 + HK$6,666.67 = HK$35,766.67 (see paragraphs 67, 73 and 80 above).

*IX. Loss of pre-trial MPF contribution*

1. Subject to discount for pre-existing condition, the Plaintiff’s loss of accrued income gave rise to loss of MPF contribution in the sum of HK$35,766.67 x 5% = HK$1,788.33.

*X. Post-trial loss of earnings*

1. Dr Lam opined that the Plaintiff should be able to return to many of the duties of his *pre*-Accident occupation as a salesman, but he would have difficulty performing tasks that required heavy manual labour, prolonged walking or carrying heavy objects. So some reduction in work efficiency and endurance was expected due to the injury and aggravation of the neck condition as a result of the Accident. Alternatively, Dr Lam was of the view the Plaintiff should be able to work in jobs that required less heavy physical demand and that allowed him to have more time for rest/stretching during work (eg salesman selling light goods, watchman or driver).
2. The Plaintiff gave evidence (and I agree) that he worked on a self-employed basis because it would be difficult for him to work as an employed furniture salesman given the extent of walking and carrying heavy weights that were involved. Although not mentioned in his witness statement, he gave evidence that he had attended job interviews for security guard and furniture salesman that offered monthly earnings of HK$7,000.00 and HK$6,500.00 respectively without success. He said he would have accepted those jobs if they were offered to him.
3. The Plaintiff did not explain why the monthly income offered for the furniture salesman job referred to above was only HK$6,500.00 when his *pre*-Accident monthly earnings were HK$10,000.00. It was unclear whether it was the current market rate or due to the special circumstances of the particular job.
4. I also bear in mind that driving was a job which Dr Lam regarded as suitable for the Plaintiff’s physical condition. Although the Plaintiff could not drive long distances, he could handle trips that were up to 2 hours and indeed he admitted he could have handled more than the current 13-15 trips *per* month. Since his cross-border transportation business was still in its infancy, I agree with the Plaintiff that his workload was not yet stabilised. I expect there will be room to grow the business. But even if there is no such future improvement, his work capacity is higher than the current workload and such limitation is not due to his physical condition but due to the available business. I also bear in mind that the Plaintiff chose not to provide any documents to support his bare assertion of his current monthly earnings. Taken all the above matters into account, I consider it would be appropriate to adopt HK$8,000.00 as the Plaintiff’s notional income for the *post*-trial stage.
5. The Plaintiff is now 39 years old and I agree with Mr Tse that a multiplier of 12 is appropriate (see *Chow Tai Loi v Leung Kam Hung & anor* HCPI320/2002 (unreported, 24th December 2003), *Limbu Muni Parsad v Hyundai Engineering &Construction Company Limited* HCPI1167/2003 (unreported, 19th August 2004), *Cheung Koon Wah v Leung Ka Heng & ors* HCPI76/202 (unreported, 30th November 2002) and *Lam Mo Bun (suing through his next friend Yung Mei Wa) v Hong Kong Aerosol Company Limited trading as 平湖寶盛公司雅素制造廠 & ors* HCPI1313/1999 (unreported, 22nd March 2001).
6. Subject to discount for pre-existing condition, the Plaintiff’s future loss of earnings is (HK$10,000.00 – HK$8,000.00) x 12 months x 12 = HK$288,000.00.

*XI. Loss of post-trial MPF contribution*

1. Subject to discount for pre-existing condition, the Plaintiff’s loss of future income gives rise to loss of MPF contribution in the sum of HK$288,000 x 5% = HK$14,400.00.

*XII. Special damages*

1. There was no claim for special damages because the Plaintiff’s medical expenses of HK$4,300.00 had been paid by the Defendant pursuant to section 10A of the ECO.

*XIII. Future medical treatment*

1. Dr Lam opined that surgery was not required at the time of his assessment, but with further degeneration of the spine as a result of ASF in 1992 with aggravation by the injury in 2005, it was possible the Plaintiff might require future surgery, say, 5-10 years later which would cost HK$200,000.00 in the private sector and minimal sum in the public sector. The Plaintiff confirmed that if it became necessary to have future operation for his injuries, he would undergo such operation in a private setting. Subject to discount for pre-existing condition, I am prepared to award HK$200,000.00 under this head of claim.

*XIV. Employees’ compensation*

1. According to Form 9, the loss of earning capacity permanently caused by the injury was assessed to be 15% subject to the Remark. According to Form 6 and based on the aforesaid loss of earning capacity of 15% and *pre*-Accident monthly earnings of HK$10,000.00, compensation for permanent incapacity under section 9 of the ECO was assessed at HK$10,000.00 x 15% x 96 months = HK$144,000.00. Pursuant to my order dated 1st June 2007 in DCEC272/207, Form 6 was made an order of the court, and the Defendant was ordered to pay the sum of HK$144,000.00 with surcharge in the sum of HK$21,600.00 to the Plaintiff. The Plaintiff agreed to give credit for the employees’ compensation so awarded to the Defendant.

*XV. Conclusion*

1. I assess the quantum of the Plaintiff’s loss and damages as follows :

|  |  |
| --- | --- |
|  | HK$ |
| Pain, suffering and loss of amenities | 300,000.00 |
| *Pre*-trial loss of earnings | 35,766.67 |
| *Pre*-trial loss of MPF contribution | 1,788.33 |
| *Post*-trial loss of earnings | 288,000.00 |
| *Post*-trial loss of MPF contribution | 14,400.00 |
| Special damages | -- |
| Future medical treatment | 200,000.00 |
| Sub-total : | 839,955.00 |
| Less ⅓ discount for the Plaintiff’s pre-existing condition (HK$839,955.00 x ⅓) | (279,985.00) |
| Sub-total : | 559,970.00 |
| Less credit for employees’ compensation | (144,000.00) |
| Total : | 415,970.00 |

1. I therefore grant judgment in favour of the Plaintiff in the sum of HK$415,970.00 against the Defendant. I award interest on the award for pain, suffering and loss of amenities at 2% pa from the date of the writ of summons to the date of judgment herein. In respect of loss on accrued earnings, interest is awarded at half judgment rate (ie 5.21% pa) from the date of the Accident to the date of judgment herein and thereafter at judgment rate until payment.
2. I grant a costs order *nisi* that the Defendant do pay the Plaintiff costs of the assessment of damages (including all costs reserved, if any) to be taxed if not agreed. The Plaintiff’s own costs to be taxed in accordance with Legal Aid Regulations.

(Marlene Ng)

District Court Judge

Mr Charles Tse of Messrs Yip, Tse & Tang the Plaintiff.

The Defendant in person and absent.