#### DCPI 798/2011

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 798 OF 2011

BETWEEN

PUK CHUNG YU, a minor Plaintiff

suing by his father and next friend,

PUK CHI HIN

and

LAM SHUI KEUNG 1st Defendant

LEE SIU KUEN 2nd Defendant

##### Before: Her Honour Deputy Judge Nancy B Y Leung in Court

Date of Hearing: 18 June 2012

Date of Heading Down Judgment: 10 July 2012

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## ASSESSMENT OF DAMAGES

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*Introduction*

1. This claim arose out of an accident on 1 January 2007 at the streetside near No.85, Kweilin Street, Shamshuipo, Hong Kong (“the Accident”). On that day, the plaintiff (an infant, born on 14 April 2006) was pushed by his mother in his pram somewhere in Shamshuipo. The pram was uncovered. When they reached the scene of the Accident, the plaintiff suddenly cried loudly. When his mother picked him up, she noted a burnt smell and found a 1-cm screw, still red hot, at the back of the plaintiff’s neck.
2. The plaintiff was and is still an infant. Thus, he acts through his next friend who is his father, Mr Puk Chi Hin.
3. As interlocutory judgment on liability was obtained on 9 June 2011 with damages to be assessed. Hence, I am only concerned with the assessment of damages.
4. The defendants have all along been absent at all interlocutory hearings. The defendants were also absent at this assessment hearing. Upon reading the affirmation of Chan Chi Kwong Wilson dated 7 March 2012, and the affirmation of Tsang Wing Pui dated 2 April 2012, I am satisfied that the defendants had been duly notified of the date and time of this assessment hearing and I was, hence, persuaded to proceed with the assessment in the absence of the defendants.

*Injuries/Treatments/Medical Evidence*

1. After the Accident, according to the report of the Caritas Medical Centre (“CMC”), the plaintiff was immediately sent to the A&E of CMC where he was found to have second degree burn over his right neck and back regions.
2. According to the report of the Prince of Wales Hospital (“PWH”), the burn failed to heal on conservative treatment, and thus the plaintiff was transferred to the Department of Surgery at PWH for an operation for debridement and skin grafting on 10 January 2007 with a graft taken from the plaintiff’s right lateral thigh. The plaintiff was discharged on 17 January 2007.
3. According to the report of the Occupational Therapy Department at the Princess Margaret Hospital (“PMH”), the plaintiff was then referred to receive occupational therapy for scar management. Upon his first consultation on 6 February 2007, it was found that hypertrophic scar had already developed at the following places:-
4. Right thigh: red, firm but less than 1mm thick
5. Right chin: red, firm, thicker than 2mm
6. Right shoulder: red, firm, thicker than 2mm
7. Occipital area: red, firm, thicker than 2mm
8. Various treatments including application of silicone gel, pressure therapy and massage of aqueous cream were prescribed to manage those scars.
9. According to the report of the Physiotherapy Department at Kowloon Hospital (“KH”), the plaintiff was referred by Ha Kwai Chung Child Assessment Centre to them for motor training. The diagnosis of his condition was “borderline delay”. The plaintiff started receiving physiotherapy from 22 January 2009. It was stated in the report that, subjectively, his mother was concerned about his limited walking endurance and frequent fall during walking.
10. Dr Ian Nicholson was appointed by the plaintiff as the expert in plastic surgery and he examined the plaintiff on 22 September 2011 and provided a report dated 10 October 2011.
11. According to Dr Nicholson’s report, the plaintiff suffered permanent cosmetic injuries as a result of his burn injury at the following parts of his body:-
12. Right lateral thigh: A skin graft donor area scar was readily noticeable, measuring 14 cm x 4 cm. The scar was pale, flat but with a thickened coarse texture. There is a noticeable raised thickened posterior margin along 1 cm of the scar. Although the scar can be concealed by clothing, it will be evident when the plaintiff wears swimsuit or above-knee shorts. The scar cannot be surgically improved.
13. Upper neck: A scar was readily noticeable at the right upper posterior aspect, measuring 4 cm x 2 cm. The lower 0.5 cm of the margin was raised and thickened. This will always be noticeable and can only be partially concealed by clothing.
14. Lower neck: Another scar was readily noticeable at right lower part adjacent to shoulder region, measuring 6.5 cm x 3.5 cm. The scar is soft and pliable with a slight coarse texture. This will always be noticeable and can only be partially concealed by clothing.
15. Occipital area: A noticeable bald patch scar can be seen at the lower occipital scalp, measuring 1.4 cm x 1 cm. The scar is partially concealed by hair. There was also a raised hairline at the occipital hair margin of about 2 cm. These can be surgically restored by a more complex procedure when the plaintiff grows older.
16. There was also a small stitch sinus measuring 1 cm x 0.5 cm with retained debris and possible stitch remnant on the margin of the scar area, but this can be surgically removed.
17. Dr Nicholson opined that, over the years, the scars would become softer, paler and flatter.
18. Permanent disability of Chung Yu was assessed by Dr Nicholson at 3%. He further opined that there would be no loss of earning capacity.
19. The plaintiff claims damages under 3 heads: (i) PSLA; (ii) special damages; and (iii) future medical expenses.

*PSLA*

1. Apart from the above medical evidence, the father (who is also the next friend) and the mother of the plaintiff gave evidence in court.
2. The mother gave evidence as to the tremendous suffering of the plaintiff (both physically and mentally) caused by the Accident. The mother said, in court, inter alias, that the plaintiff after the Accident cried every night, the scars were itchy, the plaintiff had to put on pressure garment, from head to toe, for a considerable period which no doubt caused a lot of discomfort to the plaintiff.
3. The plaintiff’s counsel, Mr Cheng, referred me to the following cases as comparables: *Man Kwok Ngai v Fong Hok Wang* HCPI 1033/2001 (Seagroatt J; 26.03.2003); *Susi Yanti v Chu Shiu Chuen* HCPI 1176/2000 (Master de Souza; 02.11.2001); *Leung Yuk Kwan v Maple Professional Beauty Centre Limited* HCPI 274/2002 (Master de Souza; 04.12.2002).
4. Mr Cheng submitted that the plaintiff’s injuries were similar to those in *Man Kwok Ngai* and *Susi Yanti*, and more serious those in *Leung Yuk Kwan* since the plaintiff received a skin graft operation; and having taken inflation into account, an award of HK$400,000.00 is reasonable.
5. Taking into account all relevant matters, in particular, the tender age of the plaintiff, the residual impact and scars, the treatments received and the discomfort associated with these treatment; I consider the sum claimed by the plaintiff to be appropriate and I so award.

*SPECIAL DAMAGES*

*Medical expenses*

1. The plaintiff claimed a sum of HK$9,004.00 in his Revised Statement of Damages for Medical expenses incurred. Most of these expenses except for a sum of HK$800.00 are supported by documentary evidence. I find that these expenses were all necessitated by the Accident and incurred reasonably and allow HK$9,004.00 as claimed.

*Travelling expenses*

1. The plaintiff claims HK$5,000.00 as travelling expenses. Various Receipts amounted to about HK$1,800.00 have been provided. The mother said, in court, that for the first year since the Accident, she took taxi for the trips between her home and the hospital(s); and subsequently, she took bus and/or MTR instead which cost her about HK$10.00-HK$20.00 per round trip. Given the numerous trips that had to be made and that it was for a relatively long period, I award HK$3,000.00 for travelling expenses.

*Tonic food*

1. The plaintiff claims HK$4,000.00 for tonic food. No receipt has been provided and there is no reference to tonic food in any of the witness statements. In court, the mother testified that she bought fish maw and bird’s nest for the plaintiff to try to assist his recovery, apparently on the advice of friends, and she estimated the sum paid to be about HK$10,000.00. There is no evidence that these items were recommended by any doctor and there is not sufficient evidence to support that this sum has in fact been incurred reasonably and/or necessitated by the Accident. Having taken all relevant factors into account, I shall disallow such claim.

*Other expenses*

1. The plaintiff claims HK$41,536.00 as other expenses incurred as a result of the Accident. Receipts provided amounted to HK$1,872.40. Neither Mr Cheng nor the witnesses were able to give me a breakdown of this figure (HK$41,536.00). No explanation as to how this specific figure claimed was arrived at was provided either. In court, both witnesses testified that these expenses were incurred for the purchase of scar treatment gel sheets and the mother suggested that such sheets were expensive (about HK$100.00-HK$300.00 each) and the plaintiff had used the sheets for almost 3 years. On balance, I allow a lump-sum figure of HK$15,000.00 for other expenses.

*Summary*

1. In summary, I award a total of HK$27,004.00 as special damages (being HK$9,004.00 for medical expenses, HK$3,000.00 for travelling expenses; and HK$15,000.00 for other expenses).

*Future medical expenses (and expenses related thereto)*

1. The plaintiff claimed a lump-sum of HK$50,000.00 for removing the stitch sinus and the bald patch; other expenses related thereto; and potential time off (if the procedures are to be done at a much later stage when the plaintiff is already in employment).
2. According to Dr Nicholson’s report, he opines that the aforesaid procedures can all be performed in the government plastic surgery centre. He, however, also provided an estimate of costs for these procedures if the same is done in the private sector as follows: the cost of removing the stitch sinus (HK$6,000.00), and the cost for removing the bald patch at the plaintiff’s occipital scalp (HK$16,000.00).
3. Mr Cheng submitted that private sector rates should be allowed as there is simply no evidence to prove that the public sector will certainly be available to the plaintiff when he wants to undergo such procedures in future. He further submitted that public hospitals are generally reluctant to perform cosmetic operations which are solely for improving the appearance.
4. Taking all relevant matters into account, in particular, the fact that there is no evidence to show to this court that the procedures will in fact be available to the plaintiff when he decides to undergo them when he reaches an older age; I am prepared to allow the expenses for such procedures to be performed at the private sector at the rates as estimated by Dr Nicholson.
5. As to the additional balance claimed on top of the fees for the procedures, Mr Cheng submitted that they are for expenses like hospitalization fees and/or, for time off from work.
6. As the defendants were absent, such claim was uncontested. However, the plaintiff still have to satisfy the court that such claim for additional expenses related to the procedures are justified. There is no evidence in any form to support that hospitalization is in fact required for those procedures; nor is there any evidence to support that the procedures can only be performed so many years later when the plaintiff is already in employment. I consider such claims for further sum of HK$28,000.00 to be speculative and unjustified.
7. Hence, having taken all relevant matters into account, I allow a lump-sum of HK$23,000.00 for further medical expenses and other expenses related thereto (eg travelling expenses).

*Summary*

1. In summary, I award the plaintiff the following:

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| --- | --- |
| PSLA | HK$400,000.00 |
| Special Damages | HK$27,004.00 |
| Future Medical Expenses and expenses related thereto | HK$23,000.00 |
| Total: | HK$450,004.00 |

*Interest*

1. I also award interest on general damages (PSLA) at 2% per annum from the date of the service of the writ to the date of the judgment; and interest on special damages at half judgment rate from the date of accident to the date of judgment.

*Costs & others*

1. There is no reason why costs should not follow the event. I make a costs order nisi that the 1st and 2nd defendants do pay the plaintiff’s costs of the assessment of damages (including all costs reserved, if any) with certificate for counsel, to be taxed on District Court Scale and on a common fund basis, if not agreed. The plaintiff’s own costs are to be taxed in accordance with the Legal Aid Regulations. Unless an application has been made to vary such costs order nisi, the order shall become absolute 14 days after this judgment is handed down.
2. Any damages recovered should be paid into court, but I make it clear that the sums for past expenses already incurred (ie HK$27,004.00 for special damages) should be reimbursed as soon as any damages are recovered.

# (Nancy B Y Leung)

# Deputy District Judge

Mr Alfred C P Cheng instructed by Messrs Szwina Pang, Edward Li & Co for the plaintiff on the assignment by the Director of Legal Aid

The 1st and 2nd defendants, acting in person and absent