# DCPI 800/2019

[2022] HKDC 1284

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 800 OF 2019

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BETWEEN

WONG SIU CHI Plaintiff

and

TAM KUT YU Defendant

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Before: Master Eleanor Yeung in Court

Date of Hearing: 2 November 2022

Date of Assessment of Damages: 30 December 2022

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ASSESSMENT OF DAMAGES

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1. This is an assessment of damages arising out of a personal injury action. The plaintiff appeared at the assessment hearing in person. The defendant, who failed to appear in any of the prior court hearings or file any documents in the action, also appeared at the hearing in person.

*Background*

1. On 19 March 2016, the defendant pushed the plaintiff from a staircase. As a result, the plaintiff fell off the staircase and sustained injuries over her back, sacrum and coccyx.
2. On 5 March 2019, the plaintiff commenced these proceedings against the defendant for damages for personal injury, loss and damages sustained and caused by and arising out of the incident.
3. The defendant had failed to give notice of intention to defend. Interlocutory judgment was entered against the defendants on 18 November 2020. The defendant was adjudged to pay the plaintiff damages to be assessed and costs.
4. The plaintiff filed her statement of damages on 10 November 2021 (“SOD”). In the SOD, the plaintiff claims HK$1,020,832.08 plus interest. The defendant did not file any answer to the SOD.
5. The defendant had failed to comply with the directions given by the court, and therefore were debarred from adducing documentary evidence, expert medical evidence or calling any witness to give evidence at the assessment hearing.
6. The plaintiff has produced 2 medical reports dated 5 December 2017 and 10 August 2017 respectively; a radiological/ultrasound report dated 11 January 2018; and 2 physiotherapy reports dated 1 August 2017 and 12 July 2019. She has elected not to adduce any expert evidence as to quantum.
7. The plaintiff has also filed her witness statement dated 10 November 2021 that was ordered to stand as evidence-in-chief at the assessment hearing.

*The plaintiff’s claim*

1. In the SOD, the plaintiff claims the following heads of damages against the defendant:-
2. general damages for pain, suffering and loss of amenities (“PSLA”) in the sum of HK$500,000;
3. loss of earnings and MPF in the sum of $407,073;
4. special damages in the sum of $113,759.

*The plaintiff’s medical treatments*

1. Following the Accident, the plaintiff was admitted to the Accident & Emergency Department of Caritas Medical Centre (“CMC”). Physical examination showed tenderness and bruising over the plaintiff’s left lower lateral ribs. There were bruises over her left knee as well as tenderness over her sacrum and coccyx. X-ray examination of the said areas did not reveal any obvious fracture. The plaintiff was also diagnosed to suffer from multiple soft tissue injuries.
2. The plaintiff was then referred for physiotherapy at the CMC which she attended for the period from 11 August 2016 to 3 November 2016 for a total of 13 sessions. Treatment in the form of interferential therapy, back mobilization and stabilization exercise were provided to her.
3. The plaintiff began attending other clinics, including the Healthy Chiropractic & Reflexology Clinic (“HCRC”), for the period from 12 September 2017 to 17 January 2018 for a total of 15 sessions. The plaintiff also attended the Mun Sing Chinese Medicine Company with Chinese Medical Clinic (“MSCMC”) for treatment for the period from 17 April 2016 to 3 June 2016; the re:Health Medical Centre (“RMC”) for the period from 18 November 2016 to 19 May 2017; the HCRC for the period from 19 September 2017 to 17 January 2018; and the New York Medical Group – iRad Medical Diagnostic Centre (“IMDC”) for the period from 29 January 2018 to 7 December 2018.
4. On 11 January 2018, the plaintiff obtained a sacro-coccygeal spine examination in the Hong Kong X-ray Ultrasound Medical Lab Centre. The said examination revealed that (a) intercoccygeal subluxation seen between the 1st and 2nd coccygeal segments may be developmental or a result of the incident; and (b) sacrum and the coccygeal segments appear intact with no definite facture.

*The plaintiff’s evidence*

1. The plaintiff herself was the only person who testified at the hearing. She adopted her witness statement dated 10 November 2021 as evidence-in-chief.
2. The gist of the plaintiff’s evidence is that she was 51 years old at the time of the incident. Ever since the incident, she has suffered from residual pain, soreness and stiffness over her lower back which is aggravated upon prolonged stillness; anxiety and emotional instability when she recalls the assaults; and easy irritability and loss of patience. She also experienced flashbacks and frequent nightmares and sleeplessness; signs of depression when she is alone; and psychomotor retardation and poor concentration.
3. In the witness box, the plaintiff updated her evidence and testified that she had been working as a part-time station assistant and earning an average monthly earning of about $5,000 for the period from January 2022 to the date of the assessment hearing.

*Factual findings*

1. The plaintiff’s evidence was subject to challenge by the defendant on two main points: If the plaintiff was injured as seriously as claimed, (1) why would she be able to walk up storeys of staircases after the incident; and (2) why would she be able to work as supermarket assistant after the incident.
2. Since both parties were unrepresented and appeared in person at the hearing, the exchanges during cross-examination were less than well-mannered and often provoking. That said, the plaintiff was able to answer the defendant’s questions in a straightforward manner. Her answers were supported by contemporaneous evidence, i.e. a WhatsApp message complaining about pain over her coccyx at 5:18 pm on 19 March 2016 [II/86], about 4 hours after the incident. Her oral evidence regarding being able to work as a part-time supermarket assistant despite injuries after the incident due to: (1) understanding of her fellow colleagues and (2) being permitted to avoid carrying heavy loads at work, was mentioned in her witness statement [I/37]. I find her oral evidence consistent with that spoken to in her witness statement and documentary evidence.
3. In addition, when asked by the court regarding her latest work situation and earnings, the plaintiff answered in a forthcoming manner. I find her a reliable and honest witness and I accept her evidence.
4. 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 incident.
5. Based on these factual findings, I now turn to each head of claim.

*PSLA*

1. In the SOD, the plaintiff claims HK$500,000 under this head.
2. This court finds the following cases, which involved either subluxation or fracture of the coccyx, are comparable to a degree to the present case:-
3. *Lau Li Wing v Secretary for Justice*, HCPI 481/1996, 29 October 1999 – HK$500,000;
4. *Law Ka Fong v Best City Limited*,HCPI 436/2004, 27 May 2005 – HK$300,000;
5. *Chan Kwei Duen v East Country Company Limited trading as Gold River Vietnamese Food Shop*, DCPI 665/2005, 3 February 2006 – HK$200,000;
6. *Leung Lee Jasmine v Go Fresh (Hong Kong) Company Limited*,DCPI 2425/2014, 28 October 2016 – HK$350,000;
7. *Wu Lai Shun v Chan Kwai Yu trading as 匯隆食品批發公司*, DCPI 3618/2019, 13 January 2022 – HK$300,000.
8. The PSLA awarded in those 5 cases ranged from HK$200,000 to HK$500,000. Having considered them, I think the PSLA in the present case is less serious than that in *Lau Ka Fong*, *Leung Lee Jasmine* and *Wu Lai Shun*, and more comparable to *Chan Kwei Duen*.
9. In my judgment, given the nature of the plaintiff’s injury and the treatments underwent by her, a fair and reasonable award for PSLA should be at $250,000 after taking into account inflation. I award such sum as damages for PSLA accordingly.

*Pre-trial loss of earnings and MPF*

1. Prior to the incident, the plaintiff was a housewife and occasionally worked as a part-time supermarket assistant with an average monthly earning of about HK$5,603.98. As a result of the incident, the plaintiff was granted sick leave intermittently for the period from 23 March 2016 to 9 January 2019 for a total of 84 days.
2. The plaintiff then started to work as a station assistant intermittently from December 2016 to May 2019 with an average monthly earning of about $10,628.50. The plaintiff was dismissed in April/May 2019 in light of her residual injuries. Based on the oral evidence of the plaintiff, she remained unemployed until January 2022.
3. In the SOD, the plaintiff claims that:-
4. From 23 March 2016 to 9 January 2019 (sick leave period), the plaintiff was unable to work and claims for pre-trial loss of earnings and loss of MPF: HK$5,603.98 x 2.8 months x 1.05 = HK$16,475.70;
5. From April 2019 to the notional trial date, the plaintiff remained unemployed and claims for pre-trial loss of earnings and loss of MPF: HK$10,628.50 x 35 months x 1.05 = HK$390,597.38.
6. Based on the oral evidence of the plaintiff, the unemployment period would be from April 2019 to January 2022 making the pre-trial loss of earnings and loss of MPF: HK$10,628.50 x 32 months x 1.05 = HK$357,117.60.
7. I accept that the total pre-trial loss of earnings and loss of MPF is in the sum of HK$373,593.30 (HK$16,475.70 + HK$357,117.60) and I award such sum accordingly.

*Special damages*

1. In the SOD, the plaintiff claims HK$99,140 for medical expenses, HK$5,000 for travelling expenses, HK$5,000 for tonic food expenses and $4,619 for medical equipment.
2. The plaintiff has produced receipts for the medical expenses and medical equipment. As to the travelling and tonic food expenses, I accept that those were sums reasonably incurred and should be allowed in full. I therefore award her loss under this head at HK$113,759.

*Award of damages*

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

PSLA HK$250,000.00

Pre-trial loss of earnings and MPF HK$373,593.30

Special damages HK$113,759.00

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HK$737,352.30

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 incident 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, to be taxed if not agreed.

( Eleanor Yeung )

Master, District Court

The plaintiff was not represented and appeared in person

The defendant was not represented and appeared in person