## DCPI 942/2018

[2022] HKDC 1104

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 942 OF 2018

BETWEEN

HUANG XINSHENG Plaintiff

and

SCS HK LOGISTICS LIMITED 1st Defendant

(天譽空運物流有限公司)

EMPLOYEES COMPENSATION 2nd Defendant

ASSISTANCE FUND BOARD

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Before: Deputy District Judge Jason Wong in Court

Date of Hearing: 6 and 7 September 2022

Date of Assessment of Damages: 7 October 2022

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ASSESSMENT OF DAMAGES

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1. Mr Huang, the plaintiff, sustained personal injuries on 8 June 2015 whilst under the employment with the 1st Defendant, SCS HK Logistics Limited, as a warehouse porter. He fell on the ground from height while attempting to unload a washing machine.
2. These proceedings were originally begun against the 1st Defendant on 3 May 2018. On the default of filing of a defence, interlocutory judgment on liability was entered against it on 3 April 2019. By the Order of Master Catherine Cheng dated 17 July 2019, the Employees Compensation Assistance Fund Board was joined as the 2nd Defendant to defend the issue of quantum pursuant to s25A(a)(v) of the *Employees Compensation Assistance Ordinance*, Cap 365.
3. Throughout the proceedings thereafter, the 1st Defendant did not make an appearance and neither had so on the first day of trial. An affirmation of service was filed by the solicitors for Mr Huang on 30 August 2022. It was affirmed that the 1st Defendant had been served firstly on 23 August 2022 by ordinary post the plaintiff’s opening submissions and list of authorities, followed by a further letter on 29 August 2022 informing it the date of trial. I am satisfied that sufficient notice of today’s hearing was brought to the attention of the 1st Defendant. Mr Tony Chow, counsel for the 2nd Defendant, has no objection to proceed with the assessment on damages in the absence of the 1st Defendant. I so order.
4. At the start of the trial, Mr Jethro Pak, counsel for the plaintiff and Mr Chow have helpfully indicated that the following heads of claim are agreed: -
5. at the material time, Mr Huang’s salary to be $16,500 a month;
6. on the basis of a sick leave period of 8.5 months, the pre-trial loss of earnings to be in the amount of $147,262.50;
7. no claim is to be made for future loss of earnings and loss of earning capacity;
8. special damages to be in the amount of $16,000.
9. The only outstanding issue between parties is the award for PSLA.

*PSLA*

1. With the 1st Defendant being absent, Mr Huang was the only witness in this trial. He had on 25 February 2021 filed a witness statement which he adopted as his evidence in chief. In the witness statement, Mr Huang complained that all along he had been affected by numbness and a reduction in the range of motion after the accident which were especially prominent in the right shoulder and left foot. His right little finger was not as flexible as before. By virtue of the pain, Mr Huang claimed that he would become tired easily and felt that he was unable to use strength when lifting heavy objects. Mr Chow did not cross-examine this person.
2. Those being the complaints of Mr Huang, there is, on the other hand as both parties concede, little dispute about the injuries and treatments received by Mr Huang after the accident. They were as follows.
3. Mr Huang first sought treatment from a registered Chinese medicine practitioner who, having taken an X-ray over the right shoulder, found no fracture but a dislocation and contusion in the left ankle. Close reduction to the shoulder was performed and Mr Huang wore an arm sling for 4 weeks. He returned to the Chinese medicine practitioner for a total of 35 sessions between 8 June 2015 and 9 September 2015.
4. On 2 September 2015, Mr Huang attended the A&E Department of Caritas Medical Centre (“CMC”). Physical examination showed full power with good perfusion in his right upper limb. No neurological deficit was found but there were tenderness and a reduced range of movement in the right shoulder. Another X-ray was performed on the right shoulder and left calcaneum to confirm the absence of a fracture or bony lesion. Mr Huang was discharged on the same day with medicine and referred to the orthopaedics clinic for follow up.
5. According to the report of Dr Chen Erh Heng from the Department of Orthopaedics and Traumatology (“DOT”) of the CMC, Mr Huang was first seen on 11 September 2015 when he presented right shoulder pain and stiffness, pain over his right little finger and in the left heel. Upon examination, diffused tenderness was observed in the right shoulder which then had an active abduction of 45 degrees, forward flexion of 90 degrees and internal rotation of 40 degrees. There was, however, no neurovascular deficit. For the right little finger, it had a full range of motion with mild tenderness at the proximal interphalangeal joint. For the left heel, there was localised tenderness on the plantar region but the ankle and subtalar joint showed a good range of motion. Mr Huang was then referred to the physiotherapist for shoulder mobilisation.
6. Mr Huang first attended the Allied Health Department (“AHD”) of the CMC on 22 September 2015 for physiotherapy. Although compared with the time of injury Mr Huang felt that his condition had improved by about 50%, he still complained of pain and stiffness in the right shoulder which affected his sleeping. The pain was also worse with hands placed behind the back (“HBB”). On examination, the attending therapist found tenderness especially over the rotator cuff muscles. The active range of motion was recorded to be 95 degrees for both abduction and flexion, and 50 degrees for external rotation. Shoulder power scored a 3+ over 5. The range of motion in the neck was satisfactory.
7. For the following week, Mr Huang saw further improvement in the right shoulder which lasted through the month. On 22 October 2015, which was his 5th physiotherapy session, Mr Huang, while still experienced similar complaints, had an active range of motion of 145 degrees for the flexion, 160 degrees for the abduction and 50 degrees for the external rotation of the right shoulder. In a follow up session at the DOT on 23 October 2015, the pain in HBB and in the heel had both reportedly decreased. The power in the right shoulder attained a score of 5/5 with a near full abduction.
8. By December 2015, Mr Huang’s condition continued to show improvement. After 9 sessions of physiotherapy, on 3 December 2015 his complaint about right shoulder pain and stiffness had lessened. There was, however as recorded by the AHD, a decrease in shoulder power to 4/5 and also in shoulder flexion to 140 degrees. But then on 4 December 2015, the DOT reported a score of 5/5 in right shoulder power. With an overall reduction in pain, Mr Huang was stated to be able to lie down on the right side. Dr Chen recommended Mr Huang to return to work but avoid heavy manual labour such as container loading and unloading.
9. This led to an assessment by the Occupational Therapy Department of the CMC on 23 December 2015. Mr Huang attended alone. On this occasion, he walked unaided but limped. For complaints, Mr Huang described his pain in the right shoulder with a visual analogue scale of 6/10, pain in the heel 4/10 on walking in the morning and 2/10 in the afternoon, and some pain in the right little finger. Different from before, he claimed that he was unable to lie on the right side and left the activities of daily living to his wife. On physical examination, Mr Huang demonstrated a marked limitation in the active range of motion of the right shoulder to 90 degrees on flexion, 60 degrees on abduction and 50 degrees on external rotation. As his performance did not accord with earlier records, Mr Huang was re-examined. On the second attempt, flexion of the right shoulder increased to 110 degrees. This reading was put down as “at least” because the handling therapist pointed out in the progress notes that Mr Huang had lowered his arm when the measurement was taken. As for abduction, the result was 75 degrees.
10. For the passive range of motion of the right shoulder, there was flexion of 90 degrees and abduction of 40 degrees. During the tests, however, the therapist noticed active resistance on the part of Mr Huang. For the DIP joints of the right little finger, its motion ranged from -4 to 90 degrees. Mr Huang performed poorly in the hand grip tests, with a strength of 17.8 kgf for the right hand compared to 31.4 kgf for the left. For the left ankle, plantar flexion of 60 degrees and dorsiflexion of 5 degrees were measured. Mr Huang was observed to have ambulation with mild limping but he could do a full squat without support.
11. Mr Huang was then asked to participate a job analysis by performing activities simulating a container unloader. In the isometric arm lifting exercises, he lifted an average weight of 76.8 lbs and a maximum weight of 82 lbs. In the floor to knuckle isotonic lifting, Mr Huang gave an asymmetrical result on his first trial with 35 lb weights. He performed symmetrically on his second and third tries. After these activities, Mr Huang complained about mild soreness in the neck and dizziness. For job planning, the handling therapist found that there was a mismatch between work performance and the corresponding job demands. In response, Mr Huang believed that he was able to cope with those demands despite being advised to change jobs. Mr Huang also refused to be referred to the resettlement services available from the Government. In that regard, it is significant that the progress notes recorded a suspicion of submaximal and inconsistent efforts exerted by Mr Huang on the aforementioned activities. The therapist provided an example of exaggeration and pain avoidance behaviour when Mr Huang displayed a painful expression even though he was being touched on the unaffected joints.
12. At a follow up physiotherapy carried out in about a week thereafter on 31 December 2015, Mr Huang felt better by more than 50% with his pain in the right shoulder. Flexion was recorded to be of 140 degrees, abduction of 120 degrees and external rotation of 45 degrees. There was also HBB pain at the L5 level of the spine.
13. The same results were observed for the active range of motion in the right shoulder when Mr Huang attended his 14th physiotherapy on 15 January 2016. He complained about tenderness over the rotator cuff muscles giving rise to a shoulder power scored of 4/5. In the out-patient progress report signed by the Occupational Therapy Department on the same day, job training was not recommended because Mr Huang had not acted consistently in the physiotherapy activities. Although his performance did not match with the job demands, submaximal efforts was recorded to be a possibility. In the consultation carried out by the DOT on the same day, the progress of Mr Huang was found to be static and he was referred to the Medical Assessment Board for assessment.
14. In a further out-patient progress report dated 29 February 2016 prepared by the Occupation Therapy Department of the CMC, Mr Huang complained of pain in the right shoulder with a visual analogue scale of 6/10 and pain in the left heel of 4/10. The active range of motion for the right shoulder had also reportedly decreased to a flexion of 110 degrees, abduction of 105 degrees and external rotation of 30 degrees. For the left ankle, plantar flexion was measured at 65 degrees and dorsiflexion at 10 degrees. The report similarly recorded a possibility for Mr Huang to be demonstrating pain avoidance behaviour and that he had actively resisted the passive range of motion exercises. Upon distraction, flexion became 145 degrees, abduction 120 degrees and external rotation 50 degrees. For the power grip tests, Mr Huang’s right hand gave a reading of 24.4 kgf and his left hand 38.8 kgf.
15. Physiotherapy for Mr Huang was discontinued on 7 March 2016 as his condition was considered static. At that time, his right shoulder had a flexion of 130 degrees, abduction of 130 degrees and external rotation of 50 degrees. Mr Huang also had his last consultation at the DOT on 11 March 2016. He complained of pain at a same scale of 6/10. Despite giving the advice that Mr Huang would not be able to return to his previous occupation, Dr Chen noted active resistance on the part of Mr Huang during the tests for active range of motion of the right shoulder. Similar findings to that of 29 February 2016 were made when Mr Huang was distracted in the tests. For isometric arm lifting, Mr Huang was able to lift a weight of 76.9 lbs. Upon closing the case, Dr Chen further decided to refuse sick leave for Mr Huang after the assessment by the Medical Assessment Board scheduled on 5 May 2016.
16. As shown in Form 7, the Employee’s Compensation Board gave an assessment of 1.5% loss of earning capacity against a diagnosis of right shoulder dislocation and left foot injury resulting in right shoulder stiffness, pain and weakness. A sick leave period from 11 September 2015 to 5 May 2016 was also granted.
17. There was then a turn of events when Mr Huang attended the A&E Department of CMC on 30 June 2016. He was recorded to have sustained a second injury to the lower back while lifting rocks at a construction site in the morning of 29 June 2016. Mr Huang complained about lower back pain, left lower limb numbness and pain on squatting. An X-ray was taken on the same day which showed degenerative changes in the lower spine.
18. Mr Huang attended the A&E Department of CMC again on 28 August 2016 for a 1 cm long wound in the left middle finger reportedly cut by the edge of a pipe during work on 27 August 2016. This was followed by a third visit to the A&E Department on 4 October 2016. On that occasion, Mr Huang described that a loaded cart, which he was pushing up a slope in a construction site, fell on his right shoulder. On physical examination, there was tenderness at the lateral deltoid region with no obvious fracture or dislocation. Both active and passive ranges of motion were limited by pain. No neurovascular deficit was found. On 28 November 2016, Mr Huang obtained an MRI of his right shoulder from the Nan’an Hospital in China. There were findings of injury to the supraspinatus and infraspinatus with possible tearing, abnormal signals in the infraspinatus, joint effusion, and degenerative changes.
19. On 19 December 2016, Mr Huang returned to the A&E Department of CMC with complaints of pain and tenderness in the right shoulder. Examination, however, showed a full range of motion. Thereafter, Mr Huang continued to receive treatments in China until October 2019.
20. On 20 November 2019, Mr Huang was examined by the joint orthopaedic experts, Dr Tio Man Kwun Peter (“Dr Tio”) appointed by the Plaintiff, and Dr Lam Kwong Chin (“Dr Lam”) appointed by the 2nd Defendant. At the time of the joint examination, which would have been more than 4 years after the accident in question, Mr Huang continued to complain about on and off pain and stiffness in the right shoulder. The pain and stiffness increased with movement and had worsened by 1 to 2 folds despite treatment. There was also stiffness when rotating the forearm. Reportedly, Mr Huang did not rely on painkillers for these symptoms.
21. For the left heel, Mr Huang complained about onset pain on the next day after the accident. He claimed that the problem was static and with the pain he could only walk for 15 minutes. Mr Huang also claimed to have onset numbness in the left toes. No other complaint was recorded by the experts who confirmed with Mr Huang that he was able to handle activities of daily living and domestic chores. Mr Huang had no issue using his right hand to hold a spoon for eating.
22. Upon physical examination, it is useful to note that the joint experts found no significant asymmetrical muscle wasting in the upper limbs including the shoulders of Mr Huang. Forward flexion of the right shoulder was measured at 100 degrees, backward extension at 10 degrees, sideward abduction at 45 degrees, inward abduction at 20 degrees and external rotation at 45 degrees. The ranges of motion were significantly less compared to the left shoulder and the joint experts noted that Mr Huang exhibited some resistance behaviour during the passive movement exercises.
23. In the presence of the joint experts, Mr Huang walked unaided but with a mild limping gait. He was able to stand single legged with less stability on the right side. Although he claimed that he could not tiptoe or stand on heels, Mr Huang stood from a full squat without hand support. He also showed no apparent distress when sitting and could stand from a sitting position smoothly. In the straight leg raising tests, Mr Huang complained about pain in the right lower limb. Separately, there was tenderness in the right knee and over both heels, but more on the right side. The doctors saw no significant muscle wasting or spasticity in the lower limbs, or any significant deformity in the knees or in the ankles. Hip, ankle and toe movements were symmetrical. For the knees, Mr Huang had a more restricted extension in the left knee but a more restricted flexion in the right knee. An X-ray of the shoulders, knees and ankles was taken on 20 November 2019.
24. The opinion of Dr Tio and Dr Lam did not differ materially. For the accident in question, they agreed that Mr Huang sustained a right shoulder dislocation, right little finger sprain and left heel contusion. They also agreed that the treatments received by him for those injuries were appropriate.
25. For the 3 accidents after 2015, Dr Tio and Dr Lam agreed that the injuries Mr Huang had sustained on 29 June 2016 and 28 August 2016 were unrelated to the accident in 2015. They further made the joint observation from the A&E Department records that Mr Huang had been actively at work as a construction site worker by June 2016.
26. A number of X-rays were taken on the date of the joint examination. In summary, the two doctors agreed that:-
27. for the shoulders, there was bilateral hypertrophic osteophytic changes at both AC joints with greater tuberosity of the right humeral head. The subcoracoid space on the right side had also narrowed. However, bony alignment was found to be normal. The doctors noted the absence of any deformity, sign of recent fracture, abnormal soft tissue swelling or calcification;
28. for the knees, Mr Huang developed osteoarthritis with mild degenerative marginal osteophytosis and mildly narrowed medial compartment in both knees. The osteophytosis and osteoarthritis were more severe on the right side. Bony alignment was otherwise normal. The doctors saw no bony deformity or sign of fracture;
29. for the ankles, there was bone spur at the Tendo Achilles with breakage of the tip in the right foot. Planter bone spur was also more marked on the right. Similarly, no bony deformity or sign of fracture was observed. Bony alignment and joint spaces were seen to be normal.
30. With regard to the right shoulder, it is common ground between the two doctors that the MRI taken on 28 November 2016 showed the presence of pre-existing degenerative changes. They agreed that there were also supraspinatus and infraspinatus changes which were caused by the combination of degeneration, the accident in 2015 and the accident on 4 October 2016.
31. Dr Tio and Dr Lam, however, held slightly different opinions on the extent of contribution by the three agreed causes to the symptoms of the rotator cuff. Dr Tio opined that the shoulder symptoms presented by Mr Huang at the joint examination were more likely than not caused by the accident in 2015. Dr Tio explained that it was common for patients in the same age group to develop partial tears in the rotator cuff from degeneration. The changes were mostly asymptomatic and did not affect Mr Huang when he assumed an occupation as an unloading worker. The accident in 2015 had aggravated the pre-existing conditions which led to the residual stiffness, pain, tenderness and weakness experienced by Mr Huang all along until early 2016. The symptoms went worse after the accident on 4 October 2016. Dr Tio relied on the findings by the AHD made in the physiotherapy discharge summary dated 7 March 2016 and the findings by DOT on 11 March 2016 to be indicative of the condition of Mr Huang’s right shoulder before the accident on 4 October 2016. On those views, Dr Tio attributed 40% of the tendon changes to Mr Huang’s pre-existing degeneration, 30% to the accident in 2015 and the remainder 30% to the accident in 2016.
32. Dr Lam took the view that the accident on 4 October 2016 played a major role. This was based on the observation that Mr Huang’s right shoulder had attained satisfactory functions by October 2015. After the Medical Board assessment in May 2016, Mr Huang further stopped attending follow up treatments at the orthopaedic clinic and started to work in June 2016. Hence, as Dr Lam saw it to be the case, when an MRI was taken half a year later, it was because of a deterioration of the shoulder condition which had been brought about by the accident on 4 October 2016. From the MRI, Dr Lam did not find any sign of the 4 classic lesions as they were unusual from a single shoulder dislocation. If a violent traction injury to the rotator cuff were to happen, Dr Lam expected fractures to result instead. The pain experienced by Mr Huang, Dr Lam found, was a common condition from chronic overuse giving rise to an inflammation of the tendons.
33. Dr Lam, on the other hand, believed that Mr Huang had magnified his complaints. Dr Lam pointed out that Mr Huang demonstrated a flexion of 145 degrees and an abduction of 160 degrees in October 2015. Rather than to improve gradually with time, the reduced functionality found and complaints of worsening pain recorded at the joint examination were inconsistent with a shoulder dislocation that occurred more than 4 years ago. Dr Lam suspected that Mr Huang used only submaximal effort as he had done so in the course of the various treatments received at the CMC. On the reverse, had the symptoms been genuine, then Dr Lam would find that they related more to the accident on 4 October 2016 and to the natural degeneration process.
34. In response to the apportionment made by Dr Tio, Dr Lam opined that at most 30% of Mr Huang’s shoulder disabilities found at the joint examination was attributable to the accident in 2015. Dr Lam further commented that Mr Huang was 63 at the time of accident. Given his age, it would be probable for Mr Huang to develop degenerative changes without the trauma caused by the accident in question. Dr Lam expected Mr Huang to achieve the same degree of symptoms as a natural progression since degeneration was an on-going process.
35. For completeness sake:-
36. based on the clinical findings, Dr Tio took the view that the osteoarthritis in the knees and the left heel contusion both contributed to Mr Huang’s mobility, with the former being more significant, while Dr Lam found the bilateral knee pathologies to have affected Mr Huang more than the heel pain;
37. for the left heel contusion, Dr Tio remarked that most people could present on and off pain with reduced endurance in walking and standing. Dr Tio further highlighted Mr Huang’s complaint of numbness in the left toes. Dr Lam observed that the pain experienced by Mr Huang was out of proportion to a simple contusion injury which should have recovered from conservative treatment within a short time. Mr Huang’s complaints also related markedly to the right heel which was unconnected to the accident in question;
38. the two doctors agreed that the injury to the right little finger was minor which recovered well. Mr Huang did not have any complaint about it towards the latter part of the treatments or at the joint assessment;
39. the two doctors also agreed that Mr Huang had reached maximal medical improvement for the injuries sustained from the accident in question. Particularly for the injuries in the shoulder, their effect on Mr Huang’s activities of daily living was mild. Sick leave between 11 September 2015 and 5 May 2016 was also agreed to be acceptable.
40. As a final prognosis, Dr Tio found that Mr Huang “could” have residual pain, stiffness and weakness in the right shoulder from a dislocation and residual pain over the left heel. Dr Tio concluded that Mr Huang should be able to return to work as an unloading worker in 2016 but with residual deficits including pain in the shoulder and heel upon heavy manual work, physical exertion and extreme range of movements. Mr Huang might also need intermittent breaks of 15 minutes every 1.5 hours of work because of a reduction in overall endurance. Dr Tio gave an overall 3% assessment for whole person impairment and loss of earning capacity for the accident in 2015.
41. Dr Lam held the view that most people could return to their previous employment or sports activities, even strenuous ones, after a recovery from shoulder dislocation. Mr Huang had started to work at construction sites in 2016 with duties that were not lighter than an unloading worker. Dr Lam accepted that Mr Huang might have some residual shoulder symptoms but the overall adverse effect on work performance with overhead actions should be mild. At the age of 68 during the joint assessment, retirement was considered to be more suitable for Mr Huang. Dr Lam assessed the whole person impairment and loss of earning capacity both at 2%.
42. In his closing submissions, Mr Jethro Pak, counsel for the plaintiff, places emphasis on Mr Huang’s right shoulder injuries and argues the following: -
43. by the time of his witness statement made on 25 February 2021 which was more than 15 months after the accident. Mr Huang still experienced numbness and a reduced range of movement in the right shoulder, tiredness and a reduced capability in lifting heavy objects;
44. there is no medical evidence to contradict Mr Huang’s complaints;
45. hence, the casual link between the present symptoms in the right shoulder and the accident in question cannot be disputed. An apportionment as suggested by the joint experts is not warranted because Mr Huang’s current disabilities are caused by the accident in 2015 rather than by his pre-existing degeneration changes;
46. Mr Huang underwent a closed reduction and wore an arm sling for 4 weeks, which were followed by physiotherapy and occupational therapy for his right shoulder. This meant that the PSLA suffered by him would be far greater than a simply soft tissue shoulder injury;
47. the dispute between the joint experts about the occurrence of a rotator cuff tear in the right shoulder should not stop an award of PSLA for the joint dislocation when the majority of pain and suffering lasted from the day of the accident in 2015 till May 2016 the earliest, that being the period of sick leave the joint experts agreed to be appropriate;
48. Mr Huang demonstrated pain and impairment during the sick leave period as evidenced in the A&E Department records of the CMC dated 2 September 2015 and 19 December 2016, the 35 treatments with Chinese medicine, the DOT report on 11 September 2015 and 11 March 2016, the physiotherapy progress notes dated 22 September 2015, 22 October 2015, 3 December 2015 and 15 January 2016, the assessment report from the Occupational Therapy Department of CMC dated 23 December 2015, the out-patient progress report from the same department dated 29 February 2016, and the physiotherapy discharge summary dated 7 March 2016;
49. specifically, for the physiotherapy progress notes between 30 September 2015 and 7 March 2016, there, as Mr Pak puts it, “does not seem to be any notes querying the genuine of the pain complaints”.
50. In support of his arguments, Mr Pak refers specifically to the treatment history and records created over the sick leave period. He invites the Court, as I understand it, to focus on the shoulder injuries and disabilities sustained by Mr Huang during that time. Mr Pak then relies on paragraph 69 of the joint report, which is said to be unchallenged by Dr Lam, where Dr Tio stated, “With reference to the progress, there was all along residual stiffness, pain/tenderness and weakness over his right shoulder till early 2016. Those signs were due to the injury caused by the captioned accident with soft tissue injury and dislocation”. Hence, Mr Pak asks the Court to find the accident in 2015 to be the sole cause of Mr Huang’s shoulder condition during the sick leave period and make an award to the full extent without discount. As for the appropriate award for the shoulder injuries in that context, the following authorities are brought up by Mr Pak:
51. *Tsang Wai Hung v Trustful Engineering & Construction Company Ltd & Others* (unreported, HCPI 30 of 2015, 23 January 2017), where the plaintiff suffered from a right shoulder rotator cuff tear and some psychiatric disorder. PSLA was awarded at $400,000;
52. *Kan Shui Lai Joely v Hospital Authority* [2021] 2 HKLRD 63, where the plaintiff suffered from severe soft tissue sprain of the left shoulder with rotator cuff tear and adjustment disorder. PSLA was awarded at $350,000;
53. *Kong Koon Man Harriman v PBIL Advertising Limited & Another* (unreported, HCPI 517 of 2012, 20 May 2015), where the plaintiff suffered from a right shoulder injury with rotator cuff tear and a mild T12 vertebral fracture. PSLA was awarded at $350,000;
54. *Chung Chi Wing v Secretary for Justice* (unreported, HCPI 436 of 1997, 28 July 1998) where the plaintiff suffered from right shoulder injury with impingement of tendon. PSLA was agreed at $350,000;
55. *Fui Shing Yuk v Po Leung Kuk* [2022] HKDC 291, where the plaintiff suffered from a left should injury with sprained rotator cuff. MRI showed a partial tear of the subscapularis tendon. The plaintiff was treated with drugs and intensive physiotherapy. By the time of trial, she continued to experience intermittent pain and weakness. PSLA was awarded at $200,000;
56. *Wong Ching Ha v Manbright Co Ltd t/a Ngan Lung Restaurant* (unreported, DCPI 886 of 2007, 31 March 2008) where the plaintiff suffered from a right shoulder injury with pain radiating down the right arm, laceration over the upper lip and slight fracture of an incisor. PSLA was awarded at $200,000;
57. *Lee Lap Pang v Yuen Tat Wah t/a Chong Hing Motor Co & Another* (unreported, HCPI 1111/1997, where the plaintiff suffered from right shoulder pain due to bicep and rotator cuff tendenitis, and right elbow pain from ulnar neuritis. PSLA was awarded at $200,000;
58. *Lam Hing Choi v Yip King On and Others* (unreported, HCPI 263 of 2006, 20 March 2008), where the plaintiff developed a post-traumatic frozen shoulder after being hit by an opening partition of a lorry which led to injuries at the right arm and index finger. There were residual pain and restrictions of movement for handling heavy materials. PSLA was awarded at $150,000;
59. *Ho Shuk Man v Norman Wong Wai Nok & Another* (unreported, HCPI 314 of 2010, 8 September 2015), where the plaintiff suffered from a right shoulder rotator cuff injury which developed into a supraspinatus tendon tear, AC joint sprain and bone contusion. PSLA was awarded at $250,000;
60. *Lau Kwok Chiu v Senfield Limited trading as Tsui Wah Restaurant* (unreported, HCPI 245 of 2006, 8 March 2007) where the plaintiff suffered from a dislocated right shoulder with a fractured glenoid. Close reduction was performed and an immobilizer was given which the plaintiff did not wear. PSLA was awarded at $200,000.

1. From the award for the basic shoulder injuries, Mr Pak then submits that:-
2. no deduction for the pre-existing degenerative changes should be made as there is no evidence of Mr Huang experiencing any shoulder problem when he worked before the accident in 2015;
3. but an upward adjustment to reflect the rotator cuff tear to which Dr Lam also found to be partly contributed by the accident in 2015;
4. another upward adjustment to account for the left heel injury. For similar injuries, Mr Pak cites two authorities. In *Chu Chung Man v East Asia Moving Limited* [2020] HKDC 362, where the plaintiff suffered from a minor soft tissue injury to the left heel and back with minimal residual pain. PSLA was suggested at $120,000. In *Tsang Yee Man v Chanel Hong Kong Limited formerly known as Chanel Limited* (unreported, HCPI 918 of 2015, 23 June 2017), where the plaintiff suffered from a low energy soft tissue injury to the left foot and ankle. Adjustment disorder and depressed mood had developed. PSLA was awarded at $150,000;
5. and to add a further $10,000 to $20,000 as compensation for the right little finger injury albeit a minor one.
6. Finally, and above all that, Mr Pak reminds the Court about inflation which has long been recognized in cases such as *Ko Chu Keung v Temmuk Engineering Co. Limited & Another* [2018] HKCFI 2723. For the injuries and disabilities sustained by Mr Huang, Mr Pak suggests an overall PSLA award between $270,000 to $345,000.
7. With respect, I do not agree with Mr Pak. His analysis is, in my view, devised by taking a constrained reading of the joint expert report. Having identified the pain and disabilities presented by Mr Huang on 20 November 2019, Dr Tio and Dr Lam underwent a detailed examination of each of those symptoms. They came to an agreed overall conclusion that a total of 3 causes had contributed to the complaints identified to be relevant and proceeded with making their own assessments on apportionment for those causes. It may be that the doctors had related one or more symptoms to a particular cause in different sections of the joint report, but to read those parts in isolation will be to bring the views expressed out of context. I also have reservations about adopting Mr Pak’s approach by looking at the shoulder injuries up to a certain point in time separately as a foundation, if it can be described in that way, and then top up with the other disabilities developed concurrently or afterwards.
8. It is likewise incorrect for Mr Pak to say that there is “no medical evidence to contradict” or “there does not seem to be any notes querying the genuineness of” the pain complained by Mr Huang, whether at the time of the witness statement or during treatments between 30 September 2015 and 7 March 2016. Quite the contrary, the complaints of Mr Huang were questioned by different treating doctors from time to time. By way of an example, as I have set out the medical history at length above, after the accident in 2015 the condition of Mr Huang showed consistent improvement in the second half and towards the end of the year. However, his symptoms plummeted inexplicably in the occupational therapy assessment conducted on 23 December 2015. In the corresponding report, the occupational therapist recorded an observation of pain avoidance behaviour and provided an example where Mr Huang expressed pain which was unexpected from an unaffected part of his body. On 15 January 2016, the physiotherapist raised the possibility of submaximal effort given the performance that was inconsistent with the degree of injuries.
9. Dr Lam shared a similar opinion. Apart from the findings that could not be reconciled with a shoulder dislocation or a heel contusion which occurred 4 years prior to the joint examination, Dr Lam stressed rather repeatedly in different parts of the report the circumstantial evidence such as Mr Huang had ceased to attend follow up treatments after the Medical Board assessment and chosen to return to work in 2016. Even after the second accident on 4 October 2016, Dr Lam questioned the genuineness of the shoulder pain Mr Huang appeared to still be experiencing.
10. Clearly, the burden is on Mr Huang to prove the degree of injuries and disabilities that he sustained from the subject accident. In his somewhat short witness statement, Mr Huang did not lead evidence to explain the inconsistent findings identified by the various treating doctors or the 2nd Defendant’s expert. Mr Huang has not elected to cross examine Dr Lam on the unfavourable parts of the joint report. I do not accept Mr Pak’s submission that the complaints of Mr Huang have gone unchallenged. It is quite the reverse and Mr Huang has not sought to provide proper explanations.
11. For the award on PSLA, Mr Chow refers to the following additional authorities:-
12. *So Yuk Kam v Lau Kam Yuen trading as Ngai Shing Construction & Anor* (unreported, HCPI 5 of 2011, 24 May 2013) where the plaintiff sustained a right shoulder dislocation with fracture, much associated pain and bruising to his face and knee. The plaintiff was left with a significant impairment, continual right shoulder pain and stiffness that could not be entirely ameliorated by physiotherapy, and an inability to lift heavy objects. The plaintiff had also lost his ability to return to work as a welder. PSLA was awarded at $450,000;
13. *Zarir Khalid v Gurung Durga Bahadur and Another* (unreported, DCPI 2562 of 2011, 8 April 2014) where the plaintiff suffered from multiple injuries including an anterior dislocation of the left shoulder with labrum and bone damage. There were permanent residual stiffness and weakness as a result. PSLA was awarded at $250,000;
14. *Or Chun Kwong v Fu Sau Lun, Jason and Others* (unreported, HCPI 384 of 2005, 8 December 2006) where the plaintiff sustained a right shoulder AC joint subluxation. Having underwent 3 operations the residual disabilities were described as minor without affecting his previous employment. PSLA was awarded at $200,000;
15. *Limbu Jas Maya v H K Scafframe System Limited* (unreported, DCPI 2790 of 2008, 20 May 2010) where the plaintiff suffered from a 3 cm laceration to the forehead, anterior dislocation to the right shoulder requiring an immobiliser for 4 months, contusion of the abdomen and fracture to the L2 vertebrae. Experts of the case agreed that the plaintiff’s condition would not significantly affect her daily activities except for overhead activities with her right upper limb. PSLA was awarded at $160,000;
16. *Yiu Yuen Yee v Johnson Cleaning Services Company Limited* (unreported, DCPI 2479 of 2016, 16 August 2019) where the plaintiff suffered from a tendon tear to the left shoulder which required immediate surgery. Three years of sick leave was granted and the plaintiff had residual symptoms of intermittent pain, weakness and stiffness. PSLA was awarded at $150,000.
17. Mr Chow suggests to start with an award of $150,000 for the present complaints of Mr Huang. Mr Chow then cites *Cheung Hon Yu v Chun Lee Engineering Company Limited & Anor* [2021] HKCFI 1687 and *Chan Kam Hoi* *v Dragages et Travaux Publics* [1998] 2 HKLRD 958, and submits that the award of $150,000 is to be discounted, in this case by 2/3 as recommended by Dr Lam, to reflect the effects of pre-existing degenerative changes and the accident on 4 October 2016. Mr Chow accepts however that the Court is not bound to adopt the degree of discount proposed by the experts and is entitled to arrive at its own appropriate apportionment.
18. There is little difference between the joint experts that the injuries sustained by Mr Huang were relatively minor. He returned to heavy manual work in the second half of 2016. I accept the opinion of Dr Lam that the pre-existing degenerative changes had not significantly affected Mr Huang at that time and that the medical findings showed that there were satisfactory function in the right shoulder by October 2015. The experts agreed there to be no abnormality in the left heel and that there was good recovery for the right little finger. The sick leave period was also agreed to be acceptable.
19. In my view, this is a straightforward claim which does not require the formulation suggested by Mr Chow as may be seen in other cases involving multiple incidents of injuries. I find that Mr Huang had obviously exaggerated his pain and disabilities. An award for PSLA can simply be based on the injuries and treatments up to the time when apparently Mr Huang also found himself fit for work again soon after the expiry of the sick leave period. Considering all the circumstances in the round, I make an award of $220,000 for PSLA.

*Conclusion*

1. Based on the above, the Plaintiff’s damages are assessed as follows: -
2. PSLA $220,000.00
3. Pre-trial loss of earnings $147,262.50
4. Special damages $16,000.00

Less employees’ compensation ($128,000.00)

Total $255,262.50

1. As for interests, I award the usual rates at 2% for general damages from the date of the writ until judgment and half judgment rate for special damages from the date of accident to the date of judgment.
2. As for costs, I make an order nisi as follows:
3. the 1st Defendant do pay the Plaintiff costs of this action to be taxed if not agreed;
4. there be no order as to costs between the Plaintiff and the 2nd Defendant;
5. The Plaintiff’s own costs to be taxed in accordance with the Legal Aid Regulations.

( Jason Wong )

Deputy District Judge

Mr Jethro S H Pak, instructed by Michael Pang & Co, assigned by the Director of Legal Aid, for the plaintiff

The 1st defendant was not represented and did not appear

Mr Tony Chow, instructed by Cheng, Yeung & Co, for the 2nd defendant