DCPI 1070/2019

[2021] HKDC 181

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 1070 OF 2019

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BETWEEN

LEE CHEUK HO (李卓豪) Plaintiff

and

CHOW BENJAMIN Defendant

also known as TSENG WESLE

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

Before: Master Matthew Leung in Court

Date of Hearing: 10 February 2021

Date of Assessment of Damages: 1 March 2021

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| ASSESSMENT OF DAMAGES |

Background

1. This is an assessment of the Plaintiff's damages in a personal injury case.
2. The Plaintiff’s case is that on 22 April 2016 when he approached his neighbour, i.e. the Defendant, to make a complaint against the noise generated from the Defendant’s unit, the Defendant confronted him, stabbed his right chest with a Swiss knife causing bleeding, pain and shock of the Plaintiff.
3. The Plaintiff claims against the Defendant for damages and loss for personal injuries suffered as a result of the assault and/or battery and/or trespass to person on 22 April 2016.
4. The Writ of Summons in this Action was issued on 22 March 2019. Interlocutory judgment was entered against the Defendant on 3 June 2019 leaving damages to be assessed.
5. On 6 November 2020, the Court set down this action for assessment of damages on 10 February 2021. On 30 December 2020, the Plaintiff issued the Notice of Appointment for Assessment of Damages. The Notice was served on the Defendant on 30 December 2020 by post at the Defendant’s address stated on the writ. Affirmation of service was filed on the same day. The Court had also on 5 January 2021 sent a notice of hearing for the assessment of damages to the Defendant.
6. The Defendant did not attend the assessment hearing. I was satisfied that notice of the assessment hearing had been duly given to the Defendant. It was the Defendant’s choice not to attend the assessment hearing. I proceeded with the assessment of damages in this case in the absence of the Defendant.

The Plaintiff’s case

1. The Plaintiff was born in 1967 and was aged 48 at the time of the accident (22 April 2016).
2. After the assault, the Plaintiff was sent to the Accident & Emergency Department of Princess Margaret Hospital for treatment. Medical examination showed that he had multiple wounds on right index finger, superficial wound on right middle finger, 30cm horizontal laceration over anterior chest, stab wound over right-side chest, 1 linear laceration over each shoulder, 5 cm right cheek cut wound, and a small laceration over nose and a chest drain wound.
3. Computer tomography of the whole body revealed right hydro pneumothorax with associated right lung contusion and right chest wall emphysema. Right chest drain was inserted.
4. The Plaintiff was admitted to the Department of Cardiothoracic Surgery of Queen Elizabeth Hospital for treatment on the same day. Evacuation of blood and clot, and the skin wound and haemostasis exploration were performed. The skin and subcutaneous tissue were sutured.
5. The Plaintiff was granted sick leave from 22 April 2016 to 21 October 2016.
6. The Court directed on 6 November 2020 that expert medical evidence is limited to one expert in cardiothoracic surgery for each party, and the Medical Report made by Dr Chung Shiu Shek for the Plaintiff dated 24 February 2020 (“the Medical Report”) be adduced as evidence without calling the maker.
7. The Medical Report stated, *inter alia*, that Dr Chung, having examined the Plaintiff on 9 December 2019, i.e. about 3 years and 7 months after the incident, opined that the Plaintiff met with a major life-threatening injury, and fortunately the source of bleeding was due to one intercostal artery (not a major vessel to important organs) in the chest wall. The prompt coordination of medical care personnel to facilitate resuscitation, intra-thoracic chest drainage and subsequent operation prevented major sequelae or complication of blood loss. The injury was major trauma with potential threat of life, namely traumatic haemothorax with injury to intercostal artery, coexisting open pneumothorax.
8. Dr Chung opined that the Plaintiff suffered from chronic pain of neuropathic nature and scar-related and shoulder residual disability as a result of the chest wall injury, scar related residual disability including chest wall scar, facial scar, and shoulder, and mild asthma. The Plaintiff was assessed with 13.5% whole person impairment as a result of the incident.
9. The Plaintiff himself was the only person who testified at the hearing. He adopted as evidence in chief his Witness Statement which was written in Chinese.
10. The Plaintiff stated in the Witness Statement that he had developed a phobia after the incident and had a fear of being attacked again if remained as a neighbour of the Defendant. He made an application to re-locate to another public housing unit. The application was eventually granted.
11. In his oral testimony, the Plaintiff confirmed that he had consulted Chinese bonesetter for 4-5 times, of which the costs would be about $300 - $400 each. Travelling expenses were incurred for follow up consultations at Queen Elizabeth Hospital and for the bonesetter treatments. He would go there either by MTR or by taxi.

Factual findings

1. The Plaintiff’s testimony is not subject to any challenge as the Defendant has not been present in these proceedings. The Plaintiff gave testimony in a clear and straightforward manner. I accept his evidence. Separately, I also accept Dr Chung’s evidence in his Expert Medical Report.
2. Based on these factual findings, I now turn to each head of claim. The Plaintiff’s claim herein is simple. He only claims for damages for PSLA and special damages as pleaded in the Revised Statement of Damages.

PSLA

1. The Plaintiff claims a sum of HK$340,000 for damages for PSLA.
2. The Solicitors for the Plaintiff referred me to the following cases on PSLA.
3. In ***Chung Chun-man v. Chow Wai-kin & Ors***., HCPI 713 of 2004 (unreported, 21 June 2005), the plaintiff, a rear seat passenger, sustained multiple injuries in a traffic accident, including fractures of four right ribs, right pneumothorax and right lung contusion, liver and spleen lacerations, and laceration to the right flank of abdomen.  He had ongoing pain at the right chest.  PSLA was awarded at $350,000.
4. In ***Teng Wei-yan v Kwok Kai-wai & Ors.***, DCPI 54 of 2005 (unreported, 26 May 2006), the plaintiff had abrasion over forehead and chin, fractured ribs (5th to 8th on the left side) with hemo-pneumothorax, and a fracture of the right clavicle.  She also suffered from a ruptured spleen and pneumonia after splenectomy was performed. PSLA was assessed at $330,000, taking into account the fact that the plaintiff, being young and single, has suffered impairment as a result of scars in the abdomen, and that she suffered from residual pain around the scars, left chest wall, and right shoulder.
5. In ***Chung******La******Ha v Ching Mei Yee***, DCPI 2755 of 2012 (unreported, 20 January 2014), the plaintiff was assaulted by the defendant over her back, chest and face. The plaintiff suffered abrasions, bruises and soft tissue injury and developed post-traumatic stress disorder which was expected to last indefinitely. She could not continue with her career which had been developed for more than 30 years. The plaintiff was awarded $300,000 for PSLA.
6. In ***Tang Yuet Yi, a minor by Tiu Kwai King v Leung Man Chow*** [2018] HKDC 985, the plaintiff, a 9 year old girl, was bitten by a dog and suffered head laceration at right parietal region, left face and upper chest wall, with resultant scars on left face (2 x 1 cm), left chest wall (6 x 2 cm down to muscle level), left posterior shoulder (4 x 2 cm down to deltoid muscle) and right occiput scalp (3 x 0.5 cm down to subcutaneous layer).  She was granted 20 days of sick leave. PSLA was assessed at $300,000.
7. The Plaintiff’s Solicitors drew my attention to the case of ***Ng Tat Kuen v. Tam Che Fu and others*** [2019] 1 HKC 533 in which the court reaffirmed the practice of applying the cumulative percentage change in the Composite Consumer Price Index to the awards of PSLA. In fact, that practice has been applied in the case of ***David John Slater v The Commissioner of Police*** [2018] 4 HKC 1, in which Bharwaney J revised the starting point for general damages for PSLA for “serious injuries” to HK$530,000 in 2017.  In assessing the amount of damages under PSLA in the present case, I have taken into account the element of inflation.
8. No two cases are alike but I think this case is less serious than the cases cited by the Plaintiff as mentioned above. After due consideration of the authorities, and having considered, *inter alia*, that the nature and seriousness of the Plaintiff's injuries and the duration of his healing process, I assess that damages for PSLA should be at **$300,000**.

Special damages

1. The Plaintiff claims the following special damages:

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| (a) | Medical expenses | $1,600 |
| (b) | Travelling expenses | $1,600 |
| (c) | Costs of moving house and renovation expenses | $10,800 |
| (d) | Tonic and nourishing food | $6,000 |
|  | Total | **$20,000** |

1. The medical expenses of $1,600 was spent for Chinese bonesetters. In this regard, I remind myself of the case of ***Yu Ki v Chin Kit Lam & anor*** [1981] HKLR 419, 422 in which the court said that “I regard it as reasonable for any person of Chinese race to decide at any stage that Chinese herbal medicine or the attentions of a bone-setter are likely to be beneficial, whether or not he has previously sought conventional medicine and treatment, or is still receiving it. If he does so, he should be entitled to the reimbursement of reasonable fees for the Chinese treatment as well as for the conventional treatment.” In the present case, although there was no receipt or documentary support but I accept the evidence of the Plaintiff and find that the amount to be reasonable.
2. The travelling expenses were incurred for follow up medical treatments and bonesetter treatments. I consider that the travelling expenses were reasonable and should be allowed in full.
3. I also accept that the Plaintiff had to move house after the incident. In fact, the application was granted by the Housing Authority and the Plaintiff moved into the present unit in September 2017. The Plaintiff claims a sum of $10,800, of which $2,692 was supported by receipts. Having considered the receipts and the evidence of the Plaintiff, I accept that the total costs of $10,800 were reasonable and should be allowed in full.
4. The Plaintiff claims a sum of $6,000 for tonic food, of which he could only produce receipts of $488. I accept that the court may award a reasonable sum for tonic food even no documentary proof has been produced: see ***Tang Yuet Yi, a minor by Tiu Kwai King v Leung Man Chow*** [2018] HKDC 985. Having considered all the circumstances, the amount of $6,000 is on the high side and I assess that a reasonable sum should be $3,000.
5. The total amount of special damages should be: $1,600 + $1,600 + $10,800 + $3,000 = **$17,000**.

Summary

1. The Plaintiff’s damages are assessed as follows:

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| (a) | PSLA | $300,000 |
| (b) | Special damages | $17,000 |
|  | Total | **$317,000** |

Interest and costs

1. Interest will be awarded at 2% per annum on damages for PSLA from the date of the writ to the date of judgment. Interest on special damages will be awarded at half the judgment rate from the date of the incident to the date of judgment. The Plaintiff's solicitors are directed to calculate the amount of interest to be included in the judgment.
2. I also make a costs order *nisi* against the Defendant in favour of the Plaintiff for the assessment of damages proceedings including all costs previously reserved in relation to the assessment of damages.  As the Plaintiff is legally aided, his own costs shall be taxed in accordance with the Legal Aid Regulations.

(Matthew Leung)

Master of the District Court

Mr Herman Chan of Messrs Szwina Pang, Edward Li & Co., assigned by Director of Legal Aid, for the Plaintiff

The Defendant is not represented and did not appear