#### DCPI1115/2007

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 1115 OF 2007

BETWEEN

WONG NGAI SHING PRESTON Plaintiff

and

YIU KWONG YUNG Defendant

##### Before: H H Judge Lok in Court

Date of Hearing: 12 March 2008

Date of Judgment: 12 March 2008

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## A S S E S S M E N T OF D A M A G E S

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1. In the present case, the Plaintiff claims against the Defendant for damages resulting from a traffic accident on 14 January 2006.
2. As the Defendant has failed to file the Notice of Intention to Defend, the Plaintiff obtained interlocutory judgment against the Defendant for damages to be assessed on 12 November 2007. This is the assessment of the quantum of the Plaintiff’s claim.
3. The Plaintiff was 46 years old at the time of the accident and is now aged 48. The Plaintiff works as an officer of the Customs and Excise Department in Hong Kong and he is also the owner of the vehicle damaged in the accident.
4. As a result of the accident, the Plaintiff was taken to the Accident and Emergency Department at the Caritas Medical Centre for treatment. The medical officer diagnosed the Plaintiff to have suffered from neck sprain. Painkiller was prescribed and he was discharged on the same day. On 15 January 2006, the Plaintiff was requested by the Caritas Medical Centre to return to the hospital for further treatment. Fortunately, the Plaintiff has no permanent injury as a result of the accident, but he had been suffering from neck pain for more than 3 weeks after the accident, during which his neck motion was restricted.
5. The Plaintiff claims a sum of $60,000 as damages for pain, suffering and loss of amenities (PSLA) as a result of the accident. However, as the Plaintiff has no permanent injury and his neck pain lasted for only 3 weeks, I am of the view that his injury is similar to those of the 2nd Plaintiff in the case of *Wong Shing Kam & Another v Leung Ming Kwong*, unreported, DCPI No. 171 of 2005 (decision of Deputy District Judge S T Poon on 24 January 2006). I adopt the same figure of $30,000 as the quantum for PSLA in the present case.
6. I have no problem with the claim for travelling expenses in the sum of $150 and I allow the claim accordingly.
7. For the claim of tonic food expenses, the Plaintiff claims a sum of $3,000 in the absence of supporting documents. I agree that this is the conventional sum usually awarded to plaintiffs in personal injuries cases. However, since the injury of the Plaintiff is relatively minor in the present case, I reduce the quantum of such claim to $2,000.
8. The Plaintiff’s car was damaged in the accident. According to the surveyor’s report of the Plaintiff, the reasonable repair costs of the Plaintiff’s vehicle were in the total sum of $56,723. I accept the Plaintiff’s surveyor is an expert in the field of car repair and I also agree with his assessment of the reasonable costs of the repair. The sum of $750 claimed as the surveyor’s fee is also reasonable and I allow such claim accordingly.
9. In the surveyor’s report, the expert states that there should be a 20% discount on the repair costs to reflect the element of betterment. However, since there was inevitable betterment or improvement to the vehicle’s condition after repair, the Plaintiff’s counsel, Miss Phyllis To, submits that the Plaintiff’s claim in this regard should not be discounted by reason of betterment. In this regard, she relies on 2 decisions of A Cheung J when he was sitting as a Deputy High Court Judge in the case of *Harbour Front Investments Limited v Lock Kwok Leung & Others*, unreported, HCSA No. 68 of 2002 (decision on 26 February 2003) and as a District Court Judge in the case of *Wong Ping Mui v Mak Hung On*, unreported, DCCJ No. 2874 of 2001 (decision on 12 October 2001). As the repair was necessitated by the negligence of the Defendant and there was bound to be betterment to the vehicle after the repair, I am prepared to follow these 2 decisions and award the whole sum of $56,723 without any discount of betterment.
10. The Plaintiff’s claim can therefore be summarised as follows:

(a) PSLA: $30,000

(b) repair costs of the Plaintiff’s vehicle: $56,723

(c) surveyor’s fee: $750

(d) tonic food expenses: $2,000

(e) travelling expenses: $150

total: $89,623

The Plaintiff is also entitled to interest on the damages for PSLA at the rate of 2% per annum from the date of the writ to the date of assessment, and interest on the other damages at 5.21%, that is half the existing judgment rate, from the date of the accident to the date hereof and thereafter at judgment rate.

1. Finally, I must take this opportunity to remind practitioners the importance of providing the qualifications and the expertise of the surveyors in a case of this sort. There has been previous court order to dispense with the attendance of the surveyor at the trial. I certainly welcome such order as this would reduce the costs of the assessment. However, before the court accepts the contents of the surveyor’s report, the court must be satisfied that the surveyor is an expert in the field of car repair. Time has been wasted, as the hearing has to be adjourned for a short while to enable the Plaintiff to obtain the résumé of the surveyor. To avoid such delay in the future, it is always a good practice to enclose the résumé of the surveyor with a copy of his report. Indeed, the same practice should apply to all the expert reports relied upon by parties in the course of litigation.

# (David Lok)

# District Judge

Miss Phyllis To, instructed by Cheng, Chan & Co., for the Plaintiff

Defendant, in person, absent