## DCPI 1463/2011

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 1463 OF 2011

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##### BETWEEN

TING SIU KI Plaintiff

### and

WUN CHE MING 1st Defendant

CHEUNG YUK CHUN 2nd Defendant

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Before: His Honour Judge Andrew Li

Date of Hearing: 27 & 29 November 2013

Date of handing down Assessment of Damages: 13 December 2013

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ASSESSMENT OF DAMAGES

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1. This is an assessment of damages in respect of the injuries sustained by the plaintiff as a result of an accident happened on 15 May 2009.

*Background*

1. At the time of the accident, the plaintiff was working as a fireman for the Fire Services Department. On the day of the accident, he was assigned to work with his colleagues on a small rescue vehicle (“the rescue vehicle”). At about 4:11 pm, they were sent to participate in a rescue operation as a result of a traffic accident on Yuen Long Highway. The plaintiff, together with five of his colleagues, travelled in the rescue vehicle to the scene of the accident. The plaintiff was sitting behind the driver on the right-hand side on the passenger row.
2. After the rescue vehicle reached the accident scene, the team leader alighted from the vehicle and checked on the traffic condition first. After ascertaining that it was safe to do so, the team leader instructed the plaintiff and his colleagues to get off from the rescue vehicle in order to participate in the rescue work. As the plaintiff was sitting on the right-hand side on the back row and the other side was against the oncoming traffic, he was the first one to alight from the vehicle. Having opened the vehicle’s door and with his right leg already standing on the step by the side of the vehicle, suddenly there was a violent crash coming from behind, causing the rescue vehicle to rush forward and swerve towards the right.
3. At the time of the impact, the plaintiff was holding the handle of the vehicle door with his right hand, having his palm and fingers gripping onto the handle. As a result of the sudden impact, his whole body was thrown forward and his right hand was shaken off from the handle with a jerking motion. He felt that his right hand had hit something during the accident although he could not say for sure what it hit.
4. He immediately felt pain in his right forearm and right palm. Although his team continued with the rescue operation, this time to release the driver who was trapped in the vehicle from behind, he could only assist in directing the traffic due to his injuries.
5. While still at the scene of the accident, the plaintiff already felt numbness in his right hand and pain in his palm near the middle finger. He reported this to his team leader who then instructed one of the ambulances at the scene to take the plaintiff to the hospital.
6. By the time when the plaintiff arrived the hospital, he felt that his middle finger was folded up and could not be straightened. This had never happened to him before. He also felt there was swelling on his right hand finger. He felt there was a difference in his finger both by sight and by feel although he could not see that it was physically swollen.
7. Under cross-examination, the plaintiff stated that he felt pain at the base of the fingers. He also confirmed that prior to the accident, he had never experienced such symptoms before. He said that prior to the accident, he could stretch out and bend his middle finger naturally without any problem at all. He did not know what the doctor at the hospital has diagnosed although the doctor told him that he might have “pulled” his finger during the accident.

*The Injuries*

1. When the plaintiff was first admitted to the Accident and Emergency Department (“A&E”) of Tuen Mun Hospital (“TMH”) at around 5:09 pm on 15 May 2009, it has been recorded by the doctor who attended him on the A&E record sheet (“the A&E record sheet”) that the plaintiff had sustained right hand injury when “pulling on car door today when there is a car collided from back”. It has been recorded that the accident happened at around 4:30 pm on the same day. It has also been recorded that the plaintiff felt “painful over right middle finger PIPJ”, ie the proximal interphalangeal joint. No redness or external wound was found. The examination carried out by the attending doctor revealed that there was tenderness over the right middle finger PIPJ. There was no swelling/redness. The right wrist and finger ROM (range of movement) were reported to be full. Trigger finger over right middle finger PIPJ was recorded.
2. The provisional diagnosis made by the attending doctor at the A&E was “right middle finger injury” and “right middle finger PIPJ trigger finger”. The doctor at the A&E finished examining and treating the plaintiff at around 6:50 pm on the same day. He was discharged and was referred to the outpatient orthopaedic clinic at Pok Oi Hospital (“POH”) for follow-up treatment.
3. By the time when the associate consultant from the A&E of TMH wrote the medical report dated 21 April 2011 in respect of the 15 May 2009 A&E admission, for some unknown reasons, the important findings of “trigger finger” and “right middle finger PIPJ” were not mentioned in the report. The only significant finding mentioned in the report was "tenderness at the proximal interphalangeal joint of right middle finger".
4. What cannot be disputed is that the plaintiff has in fact suffered from a trigger finger condition over the right middle finger PIPJ by the time when he was examined by the doctor at the A&E at TMH. That was within 1 to 2 hour after the accident as he was being treated at the A&E between 5:12 to 6:50 pm on that day.
5. The plaintiff's condition did not improve. After discharged from the A&E of TMH, he found his right hand pain and numbness getting worse. Therefore, instead of waiting for the appointment with the orthopaedic specialist clinic at POH, he went to the family clinic for consultation. On 19 May 2009, the plaintiff attended the Department of Family Medicine at the Tuen Mun Clinic. It has been recorded by the doctor there that the plaintiff complained of right wrist and right middle finger pain and right middle finger triggering after injury at work on 15 May 2009. More specifically, it has been recorded that the plaintiff had “*sprain of R hand* when R hand holding the door handle, he was pulled forward when fireman car was hit from the back of another car” [emphasis added]. Upon examination, his right wrist was found to be tender at the medial side with no redness or wound. The range of movement was reported to be full. His right middle finger was triggering at PIPJ. The passive range of movement was nearly full. The plaintiff was given analgesic for pain relief. It has been reported that the plaintiff continued to attend the same clinic for the same condition with persistent pain. His last attendance at the clinic was on 24 June 2009. At that time, physical examination still showed triggering of the right middle finger at PIPJ. The active range of movement was limited by pain and stiffness. He was being seen by physiotherapists.
6. The plaintiff also attended the Yuen Long Jockey Club Health Centre. He first attended this clinic on 23 May 2009. Similar condition was found as in Tuen Mun Clinic. There was no redness or wound found and the range of movement was normal. Trigger finger was found at right middle finger, active movement was limited by pain. Passive movement was almost full. He continued to consult this clinic until 10 July 2009.
7. The plaintiff also attended the Department of Orthopaedic and Traumatology of the TMH on 13 July 2009. His complaints were similar as before. The clinical examination revealed triggering of the right middle finger. An operation for the release of the right middle finger triggering was performed on 31 July 2009 at POH. The plaintiff was followed up at the outpatient clinic at POH and physiotherapy and occupational therapy treatments were given there. Although there was residual pain over the middle finger scar, the triggering problem was resolved. He was last seen at the outpatient clinic at POH on 22 February 2010.

*The plaintiff’s evidence*

1. The plaintiff gave evidence during the assessment hearing. He adopted the contents of his witness statement (which was written in Chinese) as part of his evidence. He further supplemented his evidence by giving oral evidence in court. On the whole, I find the plaintiff as a truthful and honest witness. He managed to provide answers to questions asked of him in a direct and straightforward manner. There was no hint of any exaggeration on his part when he gave evidence. The important parts of his evidence was not shaken or damaged in any material way during cross-examination. I accept his evidence.
2. The plaintiff confirmed that prior to the date of the accident on 15 May 2009, he had never experienced any problems with his right hand before. More specifically, he had never experienced any trigger finger before ie that his middle finger could not be held straight or opened naturally. I believe him on this matter as I simply cannot imagine how he could otherwise be able to carry out the onerous duties of a fireman (which would involve repeated movements and gripping actions of the fingers when handling different tools and equipment).
3. The plaintiff also stated in his evidence that after the operation, the situation with his right finger has improved. Although it is not as “natural” (“自然”) as before, on the whole, he thinks that he has recovered from the accident, at least in so far as the ability to use his fingers is concerned.
4. He agreed with counsel for the defendants Ms Yan that he had mentioned to the physiotherapist that he was 70 to 80% recovered from the accident. He also agreed that there was no complication after the operation and he has recovered well from the operation. The plaintiff however still feels that his right hand is weaker than before if he does not do any warm up at work first.
5. The plaintiff denies that he has exaggerated his injuries and his conditions when he was being jointly examined by the two experts instructed by the parties in this case. However, I have reservations on this part of his evidence and would comment further on this below.

*The experts’ evidence*

1. This is one of those rare cases these days where the medical experts are called to give oral evidence at the assessment hearing. The reason seems to be that there was a huge gap between the opinion of Dr Peter Tio (who was instructed by the plaintiff) and Dr Patrick Wong (who was instructed by the defendants). According to the Order of Master J Chow given at the Checklist Review on 19 June 2013, leave was given to allow Dr Tio and Dr Wong to give oral evidence at the assessment of damages hearing. However, the area of cross-examination was limited to paragraphs 56, 59, 66 to 68 of their joint medical report dated 28 February 2013 (“the Joint Report”).
2. It will be useful to set out those paragraphs of the Joint Report here in order to highlight where the difference of their opinion lies :-

“56. **Diagnosis & Causation:** According to Mr Ting, his right hand was injured when he was holding onto a door’s handle while the Fire Service vehicle was hit from behind by another vehicle. His right hand lost grip on the handle and he fell onto the floor. He recalls his head and face hit onto hard objects, and his neck was sprained. It was about 30 minutes later that he experienced pain over his right index, middle and ring fingers. Within the 30 minutes’ time he was capable of performing rescue duty.

When he attended AED of TMH, his main complaint was right middle finger injury (to be more precise, pain was over the PIPJ according to the AED record). Examination showed tenderness over the PIPJ without any swelling or redness. Right wrist and fingers movements were full. Trigger finger found over right middle finger PIPJ. X-ray showed no abnormality. The provisional diagnoses were right middle finger injury and right middle finger PIPJ trigger finger.

Subsequently he attended GOPCs mainly for right wrist pain & trigger right middle finger, orthopaedic clinic of TMH mainly for trigger right middle finger. His right wrist pain appeared to have subsided already by the time he consulted orthopaedic clinic.

**Dr Wong**: Judging from the above evidence, Mr Ting probably sustained mild soft tissue sprain of his right wrist and mild soft tissue compression injury of right middle finger PIPJ as a result of the accident if it did occur the way he described. The trigger finger problem was most likely to be pre-existing and co-incidental finding. In order to understand the reasons behind my opinion, it is necessary for me to explain what a ‘trigger finger’ is. Reference can be made from 2 articles A & B attached to this report. A is extracted from a standard orthopaedics textbook and B is from a patient’s education leaflet. Article from Al Hasan Makkouk offered by Dr Tio is a good reference as well.

In short, trigger finger is a very common condition in the general population. The proper medical term is ***‘stenosing tenosynovitis of the digital flexor tendon’***. A finger required pulling actions of tendons to the joints to extend or flex it, the flexor tendon which bend a finger goes through a series of tendon sheaths like a train going through a tunnel. Normally the tendon goes through the sheath smoothly. In the case of trigger finger, either the tendon sheath’s tunnel is narrowed or the tendon becomes swollen (or both), such that snapping occurs when the tendon is suddenly forced through the relatively narrowed tendon sheath. It is normally the ‘A1 pulley’ located at the proximal end of the proximal phalange (located at the distal palm) that causes the narrowing. However, as the snapping tendon’s action is to flex the PIPJ, the snapping is effected at the PIPJ. Sometime inflammation is present over the A1 pulley so tenderness may be found over the distal palm but usually not over the PIPJ.

As far as the etiology of trigger finger is concerned, though repetitive use of finger is believed to be the cause by many patients, it is unknown in most cases but congenital pre-disposition is likely. In majority of patients with trigger fingers, it usually starts with pain upon finger movement without triggering then gradually triggering occurs and later on locking in the worst case. The references do state trauma may be implicated because **contusion to the palm** (at the A1 pulley) may initiate symptoms of triggering (probably days or weeks later). However, a single episode of acute trauma initiating the triggering **immediately** is rare (personally I have never encountered such).

Going back to Mr Ting’s case, the mechanism of accident (grip on handle being loosened off by the impact) might exert compression force on the PIPJ, it was definitely NOT contusion to the palm, it was consistent with the findings in AED showing tenderness over the **PIPJ** but not over the A1 pulley at the distal palm. There was no swelling or redness to indicate any serious soft tissue injury anyway. This was compatible with Mr Ting being capable of performing rescue duties. More importantly, the narrowing of the tendon sheath or thickening of the tendon enough to cause triggering, either caused by repetitive movement or direct contusion normally takes at least weeks to develop following inflammation / thickening of the soft tissue. It is definitely not possible for a normal finger to develop triggering within a few hours after the accident (even if soft tissue contusion did occur over the distal palm area).

The pathophysiology discussed in Article from Al Hasan Makkouk (first & second page) included *“degeneration & inflammatory cell infiltrate” & “fibrocartilage metaplasia form (sic) repeated friction & compression”.* Such processes obviously cannot be accomplished within a few hours after direct contusion even exactly onto the A1 pulley. This is supportive of Mr Ting’s trigger finger found already in A&E on same day of accident must be pre-existing.

Taking into account of all the above, it is almost certain that Mr Ting’s trigger finger condition is **not** caused by the alleged accident.

**Dr Tio**: It was described by him that during the injury, he was holding the hand rail of the fire engine when he was thrown forward and fell inside the engine. Such sudden impact could cause a strain injury to the flexor tendon rendering inflammation and triggering to develop subsequently.

Classical teaching had always linked trigger finger to repetitive micro-trauma but current concepts have shown that trigger finger can be either due to repetitive micro-trauma or a singer (sic) local injury. (Article from Al Hasan Makkouk – Yale University School of Medicine enclosed. Line 3, 2nd paragraph, page 93). In reality, the causes of trigger finger can be multifactorial in different individuals. Although trigger finger typically causes snapping during extension from a flexed position of the affected finger, it is not uncommon for patients to complain of pain over the PIPJ.

In Mr Ting’s case, it was likely that he suffered from sprain or strain injury to his right middle finger with a forceful flexion rendering the flexor tendon to have subsequent inflammation and swelling, thus causing the subsequent triggering.

59. **Present Condition:** In this joint assessment performed 3.5 years after the accident, Mr Ting complains of persistent right middle finger pain over the operated A1 pulley area, at base of his right middle finger. There is no more triggering but he complains that his finger cannot move smoothly. He avoids using his right hand for heavy duty at work, and taking precaution when playing sports.

Physical examination shows 1.5 cm surgical scar over base of his right middle finger, well-healed.

There is no muscle wasting of his right forearm or right hand to be consistent with much reduced use of his right hand fingers or much weakness right hand.

He demonstrates reduced right middle finger active movement but passive movement is full.

He reports tenderness extending from the A1 pulley at base of the finger all the way to the distal middle phalange (*Dr Wong: Such diffuse tenderness is probably an exaggeration in the absence of other sign of acute inflammation of the flexor tendon at 3 years after the minor operation.)*

There is no more triggering observed.

He also reports pain extending to the adjacent index and right fingers with passive full extension of his middle finger. *(Dr Wong: This is probably exaggeration as there is no anatomical basis of such at all).*

During the grip-strength testing he demonstrates very much weakened right hand grip strength, only about 1/5 that of his left hand, the figures plotted on a graph are far from a normal bell-shaped distribution (as shown by his left hand). This indicates sub-maximal effort being exerted. Again the lack of muscle wasting does not support weakness to the extent he demonstrates.

He also complains of reduced sensation over volar side of his middle finger. Such a complaint has never been recorded by his attending doctor/physiotherapist before. Digital nerve damage during the operation although possible, is rare, damaging both the radial & ulnar nerves would be most unlikely.

**Dr Wong:** The lack of objective sign and presence of many ‘inappropriate’ physical signs suggests Mr Ting is probably exaggeration his symptoms and disabilities.

**Dr Tio:** Most patients with operative treatment for trigger finger should have a better result than that described by Mr Ting. There should not be such a weak handgrip in most of the patients after the operation. Some pain over the operative site as a result of post operative surgical scarring is expected but should be self limiting. Numbness over the scar can sometimes present but it is quite unlikely to have reduced sensation over the volar side of the whole finger.

66. **Return to Work**

**Dr Wong:** From the orthopaedic perspective, Mr Ting should be fully capable of returning to full duties of his pre-accident job as a fireman, taking into account of both is mild soft tissue injury and his treated trigger finger condition.

**Dr Tio:** He should be able to resume his duty with mild degree of reduced efficiency such as pain over the operative scar upon prolonged or heavy physical exertion. It is also possible for him to have some pain over the scar when he is required to hold or operate heavy machineries especially those with a vibrating nature.

67. **Sick leaves**

68. **Dr Wong:** As far as the mild soft tissue injury sustained by Mr Ting during the captioned accident is concerned, 4-6 weeks of sick leaves should be adequate for full recovery. Sick leaves granted for the trigger finger condition should not be attributed to the accident. Anyway, considering he completed physiotherapy with good recovery by 11/11/2009, further sick leave up to 20/2/2010 was not indicated.

**Dr Tio:** With refer to his job nature, the sick leave given should be considered to be reasonable and appropriate.

69. We agree that there is no indication for Mr Ting to be further assessed by other medical specialist.”

[emphasis appeared in original text]

*DISCUSSION*

1. Before I go into the analysis of the expert's opinion in this case, there are a number of general observations I would like to make in respect of the role of a medical expert in a personal injury case.
2. First, in my view, it is unhelpful for a medical expert to merely rely on his own clinical experience when stating an opinion without giving the basis of how he has formed such opinion and the medical theory or literature in support.
3. Secondly, when citing any authorities in support of their opinion, it is preferable to cite articles or materials from published medical journals or literature (and preferably update ones), with empirical evidence and/or research data rather than from general information leaflets supplied to patients or from a standard medical textbook for students or practitioners.
4. Thirdly, the experts are only allowed to clarify whatever remains unclear in their opinion as stated in the joint medical report and to make themselves available for cross-examination by the other side during the trial. It is not for them to produce or try to produce new materials or supply new information or opinion for the first time during their evidence. If there are any new materials or new information that they wanted to include, this should have been done by way of a joint supplemental expert report during the case management stage of the proceedings, like at the checklist review hearing, rather than at the assessment hearing or trial itself so that the other side and the court will have plenty of notice of those materials or information.
5. Fourthly, after the introduction of CJR in 2009, on those rare occasions when the court allows the parties to call the experts to give oral evidence at trial or at the assessment hearing, often the main purpose is to provide an opportunity for the other side to cross-examine the expert and to challenge the basis of how the expert opinion was arrived at. It is not meant for an expert to have a platform to recite his opinion all over again or to expand on his already expressed opinion as all his opinion should have been stated in the joint medical report. It is also not meant for an expert to try to supplement his opinion by giving further medical materials or literature to strengthen his or her opinion at the trial for the first time, least it is for them to have an opportunity to show off their medical knowledge in the witness box by giving a mini medical lecture in that area.
6. Regrettably, the above are the exact problems I find with Dr Wong’s evidence. With respect, I do not find his evidence to be helpful at all.
7. First, Dr Wong based his opinion mainly on two references he has attached in the joint medical report, ie (i) a leaflet under the heading of "Trigger Finger" published by an education company called *Krames Communications* for patients; and (ii) extract from a standard orthopaedic textbook in orthopaedics medicine by Stuart L. Weinsein and Joseph A. Buckwalter on the topic of "acquired trigger finger”. In the leaflet, which was published in 1996 and was clearly designed as general information for patients who suffer from such a condition, it gives very general information written in layman's terms on the causes, symptoms and treatments of such condition. In my view, this can by no means be treated as medical literature and/or serious reference. As to the standard orthopaedic textbook, it is what it is, a standard text written for either medical students or medical practitioners. In less than two pages of writing, it gives an overview of what is “trigger finger”. No reference is made to other medical literature or any update research as to the current knowledge of such condition.
8. Secondly, where he cannot find any support from the references he produced, he supplemented that by his own clinical experience. With greatest respect, when reading his opinion, he was acting more like an advocate for the defendants than an independent medical expert. For example, when he discussed trauma is a likely cause of the injury, he would add in the words that such symptoms of triggering due to the contusion to the palm at the A1 pulley level would occur "probably days or weeks later". Dr Wong admitted during cross-examination that this was his own view on the matter and was not based on any published materials or research. He further admitted that when he stated "a single episode of acute trauma initiating triggering immediately is rare” and of which he has not encountered any was merely his own personal experience which was not based on any medical theory or published materials or research. I find this to be most astounding when an expert will come to court to try to justify his own opinion by merely relying on his own clinical experience and little else.
9. Thirdly, when giving evidence in court, Dr Wong tried to supplement his opinion (which had already been stated in the Joint Report) by trying to rely on articles he read after writing the Joint Report. This was not allowed by the court for the simple reason that such evidence or opinion must be stated in a supplemental medical report to be disclosed to the other side in good time so as to allow the other side’s expert the opportunity to respond to the matter. That was not done in this case and I disallowed Dr Wong to do so when he gave evidence.
10. In the article produced by Dr Tio, under the discussion of etiology, it has been stated by the learned writers of the article that although several causes of trigger finger have been proposed, the precise aetiology has not been elucidated. Repetitive finger movements and local trauma are considered to be possibilities, stress and degenerated force also accounted for an increased of trigger fingers in the dominant hand. Although there are reports linking trigger finger to occupations requiring extensive gripping and hand flexion, the writers consider the relationship is questionable. They conclude that "in reality the causes of trigger finger are *multiple* and in each individual often *multifactorial*." [emphasis added] Under the discussion of presentation, the writers of the article specifically stated that "a history of recent trauma to the area may also be reported." An injury to the palm of the hand or contusion to the palm have also been mentioned as possible cause of trigger finger in the two "references" produced by Dr Wong.
11. I find Dr Wong’s opinion lacks of objectivity and a solid foundation. On the other hand, I thought Dr Tio gave his evidence in a very measured and fair manner. His opinion was based on very clear medical theory which can be found in the article cited by him in a medical journal published in November 2007. I accept Dr Tio’s evidence when he says that the "sudden impact could cause a strain injury to the flexor tendon rendering inflammation and triggering to develop subsequently." I think he was right when he says that although the classic teaching had always linked trigger finger to repetitive micro-trauma, current concept have shown that trigger finger could be caused by a single local injury. I accept his opinion that the causes of trigger finger can be multifactorial in different individuals. This is in accordance with the view expressed by the writers of the article. I further accept his opinion that in the case of the plaintiff, it was likely that he suffered from sprained or strain injury to his right middle finger during the accident causing a forceful flexion rendering the flexor tendon to have subsequent inflammation and swelling, thus causing the subsequent triggering.
12. Dr Tio in evidence states that trigger finger was caused by incompatibility of the tendon size and the internal size of the tendon sheath. He also agrees that the incompatibility will take time to develop. When it reaches a point in time when the sizes become incompatible, then signs of trigger will appear. Before that point of time, even though the incompatibility may be developing, the patient may still not have the symptoms of triggering. Before triggering occurred, there might or might not be pain experienced by the patient. He says that sometimes the triggering condition could occur out of a sudden and the patient will start to develop trigger finger without any notice. Dr Tio also agrees that it is most likely that a trauma may result in inflammation and swelling to the body tissues. However, it will all depend on the severity of the trauma. If it is mild form of trauma, there may not be any swelling at all. Generally speaking, Dr Tio agrees that if a trauma is more severe, more likely than there would be swelling. He further states that swelling due to trauma to tendon and tendon sheath depends on the relative size between the tendon and tendon sheath. If discrepancy is big enough, then triggering will result. I prefer the opinion of Dr Tio than that of Dr Wong’s.
13. In my opinion, judging from the way the plaintiff described how the accident happened, it was possible that he had suffered a sprain injury to his flexor tendon which resulted in the trigger finger. In my view, this is consistent with the findings made by the doctors at the A&E at TMH and the Tuen Mun Clinic.

*Causation*

1. When deciding the issue of causation in this case, I am fully aware that causation is a matter to be determined by the judge using a common sense approach, and of applying the standard of the balance of probabilities to the medical expert evidence. It is not to be determined by the medical experts who may apply some other standard: see *Lee Kin-kai, a patient by his father and next friend* *Li Wah v Ocean Tramping Co Ltd t/a Ocean Tramping Workshop* [1991] 2 HKLR 232.
2. Hunter JA in giving judgment of the court at pp 235-236 laid down the principles of how the court should approach the issue of causation in a personal injury case:-

“First causation is essentially a matter for the judge not for the doctors. It is a matter upon which the judge will no doubt be assisted by the medical evidence but he is not dictated to by it. Secondly it is important to bear in mind that the law and medicine here, it seems to me, apply quite different standards. In law there is a sufficient causal connection if it is shown on the balance of probabilities that the accident was a substantially contributing cause of the injury. A cause is sufficient; it need not be shown to be the sole cause. The doctors’ practice, what is known as the science of aetiology. In the words of one in particular, they look for “clinical cause”, proof certainly beyond reasonable doubt and perhaps beyond any doubt. They are looking for what Lord Kilbrandon called in *McGhee v National Coal Board* [1973] 1 WLR 1 at p 10” an irrefragable chain of causation”.

Thirdly, a judge when considering causation is not only entitled, he is bound, to use his common sense, to approach the question in the same way as would a juror. The point was conveniently made in *McGhee v National Coal Board* which was a case where owing to limitations of medical knowledge, the plaintiff was unable to prove a strict causal connection in the medical sense between the negligence and his injury. He failed in the courts below. The House of Lords agreed that common sense could be used to fill the gap. Lord Reid at p 5 said:-

“It has often been said that the legal concept of causation is not based on logic or philosophy. It is based on the practical way in which the ordinary man’s mind works in the everyday affairs of life.”

Lord Salmon, at page 11, repeated an earlier dictum of his own where he said:-

“I consider, however, that what or who has caused a certain event to occur is essentially a practical question of fact which can best be answered by ordinary common sense rather than abstract metaphysical theory”.

1. I entirely agree with the principles propounded in the above case and shall adopt the same approach when deciding causation in the present case.
2. In my view, once one applies the common sense approach, the inevitable conclusion is that the trigger finger must have been resulted from the accident. I say so for the following reasons.
3. First, the plaintiff had never experienced such problem or symptoms prior to the accident despite he admitted that as fireman he had injured his fingers from time to time. The fact that he was diagnosed with a trigger finger within an hour or so after the accident shows that there was a close connection between the accident and the finger injury. The impact in the accident must be a substantial contributing if not the sole cause of the injury.
4. Second, as admitted by the experts, the etiology of trigger finger is often unknown and multifactorial. Although it is believed that repetitive finger movement is the more common cause rather than local trauma, one cannot simply exclude local trauma as the cause of such condition. In fact local trauma has been specifically mentioned by the medical literature cited by Dr Tio as one of the possible causes. I remind myself that as a judge, I am not dealing with etiology of the disease or condition which the medical experts are looking for. Instead, I am looking for what is the likely cause of his condition by using a common sense approach and by applying the standard of the balance of probabilities to the medical evidence. On balance of probabilities and by applying common sense, I am of the view that the more likely cause of the trigger finger was due to the trauma sustained in the accident.
5. Third, while it is true to say that Dr. Tio’s finding that the plaintiff may have sustained a sprain or sprain injury to his right hand with a forceful flexion does not fit in the “classic case” of repetitive micro-trauma, one cannot simply exclude the possibility that the plaintiff’s hand or finger might have hit something after it was shaken off from the handle by the sudden motion when the vehicle from behind rammed into the back of the rescue vehicle. In fact the plaintiff specially mentioned this at the end of his evidence although he could not say what he might have hit at the time.
6. Fourth, I do not believe the plaintiff’s could have suffered from a pre-existing condition as suggested by Dr Wong as I simply cannot imagine how he could have been able to carry out his duties as a fireman had he suffered from a trigger finger before. As a fireman, he is dealing with life and death issues on a daily basis. It he had such a pre-existing condition as suggested by Dr Wong, in my view it would be impossible for him to carry out his duties prior to the accident.
7. For the above reasons, on a balance of probabilities, in my judgment, the most likely cause of the trigger finger condition suffered by the plaintiff was due to the trauma sustained by him in the accident for which the defendants are liable.

*Damages*

1. I now turn to the different heads of damages that the plaintiff is claiming under the Revised Statement of Damages.
2. *Pain, suffering and loss of amenities*
3. I agree with Dr Tio’s view that there was underperformance on the part of the plaintiff when he attended the joint examination of the experts. This may be due to a deliberate attempt to exaggerate his injuries in order to impress the examiners or simply due to nervousness. Whatever that is, he was clearly not giving a true and accurate picture of his injuries to the experts on the day when he was being jointly examined by them. I agree with Dr Tio’s observation that after operative treatment, most patients should have better results than those described by the plaintiff. Further, there should not be such a weak grip in the gripping test performed by the plaintiff. While some pain over the operative site as a result of post-operative surgical scarring are expected, it should not be to the extent as described by the plaintiff at the joint examination. Further, I agree with Dr Tio that while numbness over the scar can sometimes appear, it is unlikely that the plaintiff will have reduced sensation over the volar side of the whole finger.
4. On the residual impairment and prognosis, I agree with both experts that there is no reason why the plaintiff cannot achieve a good result from the operation which resulted in no complications. I cannot see how the function of his hand will be affected as a result of the accident. I believe that the plaintiff has in fact substantially recovered from the accident with no or very little residual symptoms.
5. I accept that the degree of the whole person impairment is at most at 2% as assessed by Dr Tio. The loss of earning capacity should be at no more than 2% as assessed by Dr Tio.
6. Counsel on both sides have referred me to a number of cases which they submit are similar to the injuries sustained by the plaintiff in our case. As the injuries of the plaintiff in the form of a trigger finger are rather unusual, understandably there is not one case which falls on all fours with the present case here. The closest I can find is the case of *Singh Harpel v Najib Transport* (2009) DCPI 494 of 2009 (HH Judge Lok; 23 Nov 2009) cited by the plaintiff. In that case, the plaintiff suffering from swelling to his right hand with no fracture or dislocation. For the swelling and impending compartment syndrome, an emergency operation of fasciotomy was performed. He was hospitalized for 5 days and was re-admitted for suturing of the surgical wounds where he stayed in hospital for 2 days. He was granted sick leave for slightly over 11 months. Some residual stiffness and numbness of the hand was claimed by the plaintiff. An award of $120,000 was made for PSLA in that case.
7. Other cases referred to by the plaintiff’s counsel included *Mehmood Khalid v Million Harvest Wharves & Logistics Limited and others* (HCPI 401/2006); *Chan Ming Yat v Youh Eng Lai Michael t/a Prime Industrial Co (Hong Kong)* (DCPI 201/2003); and *Ho Shu Yau v Lo Siu Ling formerly t/a Chi Wo Civil Engineering Co and Another* (HCPI 1336/2000). However, those cases involved either fracture or amputation of a finger and therefore are not directly comparable with the trigger finger condition suffered by the plaintiff in our case.
8. Ms Yan, counsel for the defendants, referred me to the cases of *Singh Jagdeep v VSC Engineering Products Co Ltd* (DCPI 391/2005; 17 June 2005); *Lai Ka Yin v Chan Yiu Kei* (DCPI 453/2008; 7 January 2009); *Chan Kin Man v Cheuk Siu Tong* (DCPI 1970/2008; 16 November 2009); *Khan Irram v Wai Hing Engineering Co Ltd* [2011] HKEC 1452; and *Leung Siu Wan v Gold Hero (Asia) Ltd* (DCPI 300/2008; 29 April 2009).She submits that if the court finds that there is a causal link between the accident and the trigger finger, then the case of *Khan Irram* and *Leung Siu Wan* are good comparables. In those cases, the plaintiffs suffered either fracture of the distal phalange of left ring finger or compound fracture of the middle finger and awards of $80,000 and $100,000 were respectively made.
9. In my judgment, given the nature of the plaintiff’s injuries, the treatments and the operation underwent by him, a fair and reasonable award for PSLA should be at $120,000. I award such sum as damages for PSLA accordingly.
10. *Pre-trial loss of earnings*
11. The plaintiff was given sick leave by the government doctors from the date of accident ie 15 May 2009 to 22 February 2010, a total of 284 days.
12. Given the fact that the plaintiff worked as a fireman, physically he needs to be at tip top condition when discharging his duties. As such, I consider that the sick leave given by the treating doctors are reasonable given his job nature.
13. The loss of pre-trial earnings is therefore allowed as follows:

$19,745 x 284 / 30 x 1.05

= $196,265.30

1. *Loss of earning capacity*
2. The plaintiff claims a sum of $100,000 for loss of earning capacity on the basis that “due to the persistent pain and permanent disability arising out from the accident, (he) would definitely suffer a reduced efficiency in work performance and would also face a handicap in the labour market due to his injuries and the consequential residual effects”. In addition, it is claimed that due to his limited education background and lack of training in other fields, his injuries will severely limit his employment opportunities.

1. In evidence, the plaintiff told the court that being a fireman has always been his chosen career for life and he has no intention of changing to any other jobs until he retires. In other words, he has not thought of doing any other jobs except that of a fireman.
2. It is clear from the medical evidence that he has recovered well from the accident and, except some minor residual pain, he has not encountered any real problem in discharging his duties as a fireman after returning to work.
3. In my judgment, there is no evidence to show that the plaintiff will suffer any real and substantial risk of losing his present employment as a result of the accident and therefore may run the risk of competing with others in the open labour market as a result.
4. In the circumstances, I see no basis for the plaintiff to make a claim for loss of earning capacity in this case and I will disallow the claim accordingly.
5. *Loss of promotion prospect*
6. A claim for loss of promotion prospect was originally made in the Revised Statement of Damages. When I questioned Mr So, the plaintiff’s counsel, the basis of making such a claim at the opening stage of the hearing, it is clear that the basis was at best tenuous. There was simply no evidence whatsoever, whether in terms of his annual appraisal reports or statements from his superiors, to support such claim.

1. Unsurprisingly perhaps, this claim was dropped by the time when the plaintiff made his final submissions.
2. In my judgment, there was absolutely no basis for the plaintiff to make the claim for loss of promotion prospect in this case. The claim was made without any evidential foundation and should not have been made in the first place. I will not allow any claim under this head.
3. *Other special damages*
4. The plaintiff is entitled to free medical services as a civil servant. Therefore, no claim has been made for medical expenses. Travelling expenses and tonic food has been agreed at $7,000.

*Award of damages*

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

PSLA $120,000

Pre-trial loss of earnings $196,265.30

Loss of earning capacity nil

Loss of promotion prospect nil

Other special damages $7,000

$323,265.30

Less employees compensation received $209,383.75

$113,881.55

1. The plaintiff is entitled to interest at the following rates:-
2. at 2% per annum for general damages from date of issue of writ to date of assessment and thereafter at judgment rate;
3. at half of the judgment rate for special damages from date of accident to date of assessment and thereafter at judgment rate.

*Costs*

1. Costs should normally follow the event in a case. In this case, the plaintiff should be entitled to his costs with certificate for counsel in the ordinary event.
2. However, in my view, the way this case has been presented by those representing the plaintiff at the assessment hearing is rather unsatisfactory and leave a lot of room to be desired. This may affect the plaintiff’s entitlement on costs.
3. This hearing for the assessment of damages was fixed as early as on 15 July 2013 by the PI Master. The plaintiff has all along been represented by the same firm of solicitors. The assessment bundle was supposed to be lodged with the court at least 72 hours prior to the hearing in accordance with paragraph 8 of Practice Direction 5.6. The opening submission of counsel was supposed to be lodged at least 48 hours prior to the commencement of the hearing. They were not done.
4. It was not until the court asked the clerk of the court to chase after the assessment bundle and the opening submission on the Monday morning before the commencement of the hearing on Wednesday morning that the solicitors for the plaintiff told the clerk that the bundle was not ready and would only be ready sometime within that day. No explanation was given. They were not sure when their counsel could provide the court with his written opening. When the bundle eventually arrived the court at around 4:30 pm on Monday, together with counsel’s written opening, the court found that one of the important orders made by the master, ie leave to allow the experts to give oral evidence at the assessment hearing, was missing from the bundle. It was only upon the court’s request that the solicitors amended the index and included the relevant order in the assessment bundle the next day, but without as much as a word of apology in the cover letter.
5. Due to the delay in lodging the assessment bundle and opening, the court did not have sufficient time to study the documents in the bundle and the opening that it would otherwise have had the plaintiff’s legal representatives strictly complied with the requirements under the practice directions.
6. Further, the plaintiff’s counsel, Mr So, opened his case on the basis that Dr Patrick Wong, the defendants’ expert, had misinterpreted the report from the A&E of TMH by thinking that the plaintiff had complained of finger triggering on 15 May 2009. He stated in his opening that “it would be a wrong interpretation of that passage of the (19 May) report to think that (the plaintiff) complained of finger triggering on 15 May 2009”. He further stated in his opening that, “Obviously the finger triggering, if ever complained, was on 19 May 2009 and not 15 May 2009.” He stated “this is where the 1st and 2nd Defendants’ misunderstanding on causation lies: you have the accident on 15 May, you complained of trigger on 15 May, that was not possible, so no causation.” The plaintiff’s counsel then went on to elaborate in the rest of his opening as to why there could not have been a complaint or finding of trigger finger on 15 May by the plaintiff.
7. Of course, as revealed during the assessment hearing, the person who has misinterpreted the report was Mr So himself and not Dr Wong. I have no doubt that if he has read all the papers in the bundle carefully, he would be able to find on page 195 of the assessment bundle of the A&E record sheet from TMH (which is where the 21 April 2011 report’s doctor obtained his information from). As mentioned above in the A & E record sheet, the findings of trigger finger have been clearly recorded by the attending doctor while the plaintiff was still at the A&E.
8. Had Mr So read the papers properly when he prepared his case, I simply do not see how he could have missed out such crucial information. By reading his opening, the court was misled into thinking that the first time the plaintiff had complained of trigger finger in fact was on 19 May, 4 days after the accident and not on the date of accident itself. Even after this was pointed out by the defendants’ counsel when she cross-examined the plaintiff, the plaintiff’s counsel did not see fit to take the first opportunity to inform the court and correct his mistake. Further, in his written closing submission, nothing was said about the mistake made in the opening. However, the whole basis of his submission has changed without him referring to the fundamental mistake made in the opening. To say that the court was disappointed with this kind of performance perhaps will be an understatement.
9. As I said to the parties at the beginning of the hearing, the delay in the plaintiff’s legal representatives in lodging the assessment bundle and the opening has almost caused an adjournment of the hearing in this case. As it happened, the court managed to find other time to read those documents before the hearing despite the non-compliance of the practice directions. However, as I told the plaintiff’s legal representatives, I would have no hesitation to adjourn the assessment hearing by a day in order to allow the court sufficient time to read into the papers should this happen again. If that happens, those representing the plaintiff will have to bear the costs of the adjournment.
10. This is not the end of the disappointing performance on the part of the plaintiff’s team. Despite given a full day to do so, the plaintiff’s counsel failed to provide any analysis on the experts’ evidence in his closing submissions. The reasons given in the closing submission are that he could see the court “has taken a very thorough hearing in that respect” and he does not want to “steal their thunder”. In my view, those certainly are not excuses for failing to do the job of a counsel in assisting the court on such important issues in the case. I regret that I have received no help in this aspect of the case from the plaintiff’s counsel.
11. In the aforesaid circumstances, I see no reason why the plaintiff should be entitled to a certificate for counsel in this case as the court has received little assistance from his counsel. I therefore shall disallow a certificate for counsel for the plaintiff in this case.
12. In the aforesaid circumstances, the plaintiff is entitled to the costs of the assessment on a party and party basis, such costs to be taxed if not agreed. There will be no certificate for counsel for the plaintiff.
13. It remains for me to thank Ms Yan for her helpful assistance.

( Andrew SY Li )

District Judge

Mr Selwyn So, instructed by B Mak & Co, for the plaintiff

Miss Stephanie Yan, instructed by Alvin Liu & Partners for the 1st and 2nd defendants