## DCPI 1492/2014

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 1492 OF 2014

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BETWEEN

AMBARINI-BT-SAHARI-KASTO Plaintiff

and

FOK KA CHING Defendant

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Before: Deputy District Judge Eliza Chang in Court

Date of Hearing: 22 December 2016

Date of Assessment of Damages: 5January 2017

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ASSESSMENT OF DAMAGES

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*INTRODUCTION*

1. The plaintiff was sexually abused on a number of occasions by the defendant when she worked as a domestic helper of the defendant’s sister-in-law between July and August 2011 (“the Incidents”). Interlocutory judgment was entered against the defendant on 5 October 2015. This is an assessment of damages for personal injuries.
2. The defendant was imprisoned at Shek Pik Prison and he appeared in court personally under a body order granted by the court. The defendant had no legal representation and he was acting in person. I explained in details the purpose of the hearing, background of the plaintiff’s case and his rights to cross examine the plaintiff and make submission to the court. The defendant confirmed that he had been served with all the relevant documents in the proceedings and understood their nature and contents. The defendant confirmed that he elected not to call any witness, not to cross examine the plaintiff and not to make any submission to the court. I explained to the defendant that he could raise questions and make submission to the court after hearing the plaintiff’s evidence and the submission from the plaintiff’s counsel.

*THE EVIDENCE OF THE PLAINTIFF*

1. At the hearing, Mr Ko adopted his opening submission to open his case and called the plaintiff to give evidence. The plaintiff adopted her witness statement dated 15 December 2015 as her evidence-in-chief. Mr Ko put a few more questions to the plaintiff for clarification. The plaintiff explained in court that her last psychological treatment took place on 24 November 2016 and the next follow up would take place in May 2017. As regards the medical appointment slip issued by Yung Fung Shee Memorial Centre with an appointment date on 28 November 2016, the plaintiff explained that the appointment date was re-scheduled to 24 November 2016 upon the arrangement made by the Centre. The plaintiff also gave evidence on her current mental condition. She had become forgetful and had bad dreams of being chased by someone occasionally. She had a very fast heartbeat but such condition was getting better. Her current employment contract in Hong Kong as a domestic helper would expire on 12February 2017 and her current employer has offered to renew her employment contract.
2. After hearing the plaintiff’s evidence, the defendant confirmed that he would not cross examine the plaintiff. The defendant made no further submission on the plaintiff’s case.
3. I have considered the plaintiff’s evidence and I find her a truthful and honest witness. I accept her evidence in full.

*(1) The plaintiff’s claim for damages*

1. The plaintiff’s claim has been set out in the plaintiff’s revised statement of damages filed on 15 January 2016 which is summarized as follows:-

PSLA $250,000.00

Aggravated Damages $80,000.00

Pre-trial Loss of Earnings $105,914.00

Loss of Earning Capacity $56,220.00

Future Medical Expenses $49,425.00

Miscellaneous Special Damages $21,060.00

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Sub Total $562,619.00

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1. On my request for the benefit of the defendant who was not legally represented in the hearing, Mr Ko verbally submitted in court and explained the basis of the plaintiff’s each head of claim in full details. Mr Ko clarified that since 14 August 2015, the plaintiff has incurred a total sum of $780 instead of $570 on medical expenses. As such the total claim for special damages amounted to HK$21,270 instead of HK$21,060. The total claim was therefore adjusted to HK$562,829. The defendant confirmed his understanding of the plaintiff’s claim for damages and that he would not make further comments or submission thereon. The defendant also indicated his agreement to all the figures as claimed by the plaintiff in the total sum of $562,829 in full including interest.
2. I have carefully considered the plaintiff’s claim, all the documents contained in the assessment bundle, opening submissions for the plaintiff, the plaintiff’s list of authorities and all the cases referred therein, the plaintiff’s evidence and the verbal submission made by the plaintiff’s counsel during the hearing. I find Mr Ko’s submissions solid and convincing.

*(a) The plaintiff’s medical treatment and injury*

1. After the Incidents, the plaintiff attended the A&E department of Queen Elizabeth Hospital on 17 September 2011 and was attended by Dr Chan Ho Kit. The plaintiff requested to have a pregnancy test on that consultation according to the medical report of Dr Chau Chi Wai.
2. Although the plaintiff was experiencing symptoms of PTSD, she deferred seeking medical treatments as she was afraid of letting her new employer know about her situation and was afraid of asking for sick leave. After being fired, the plaintiff took the volunteer’s advice and followed the volunteers to different public hospitals to seek medical treatment.
3. The plaintiff first sought psychiatric treatment from Yung Fung Shee Psychiatric Centre on 14 August 2015.
4. Pursuant to the psychiatric report of Dr Ng Kwok Chuen:-
5. The plaintiff was referred to the Yung Fung Shee Psychiatric Centre and was first seen on 14 August 2015.
6. The plaintiff presented with persistent lowish mood since 2011, with repeated flashbacks of her previous rape incident, associated with hyperarousal experiences of dyspnoea, palpitations, avoidance behaviours and emotional numbness.
7. The plaintiff was diagnosed with Post-Traumatic Stress Disorder (“PTSD”). She was given sertraline 25 mg daily and propranolol 10 mg three times daily. It was difficult to give comment on the prognosis in the early stage of treatment.
8. An interview with a Clinical Psychologist was scheduled on 29 January 2016.

*(b) Medical expert evidence*

*(i) Solo Psychiatric Report*

1. Pursuant to the Check List Review Order dated 9 October 2015, the defendant was required to appoint his psychiatric expert within 21 days of the Order and failure to do so would entitle the plaintiff to obtain a solo psychiatric report.
2. The defendant failed to appoint a psychiatric expert within 21 days. Therefore, the plaintiff attended a solo psychiatric examination on 30 November 2015 with specialist Dr Hung Bing Kei, Gabriel (“Dr Hung”).
3. Dr Hung compiled a solo psychiatric report dated 3 December 2015 (“Solo Psychiatric Report”). In relation to the diagnosis, Dr Hung opined that:-
4. The plaintiff was diagnosed to be having Major Depressive Disorder, Single Episode, Moderate.
5. The plaintiff was diagnosed to be having PTSD. Her PTSD was at a severe level immediately after the Incidents while she was living in the shelter. The degree was assessed to be moderate at the time when the solo psychiatric examination took place.
6. The psychiatric symptoms are as a result of the Incidents and are all attributable to the Incidents. There is no pre-existing psychiatric condition.
7. In relation to the recommended treatments, Dr Hung was of the view that:-
8. The plaintiff had received appropriate psychiatric treatment to date. She had received antidepressant treatment for three months.
9. She should continue medications and follow up at the psychiatric clinic at one to two monthly intervals. She is likely to require treatment for three years following the date of the Solo Psychiatric Report.
10. She is also recommended to commence treatment by a clinical psychologist at intervals of one to two months for two years.
11. In relation to sick leave, Dr Hung was of the opinion that:-
12. The Incidents occurred in July and August 2011. She did not seek medical treatment until August 2015. During this time, she did not receive sick leave from a registered medical practitioner.
13. Had the plaintiff taken any sick leave for treatment at the time, the period of sick leave for two years would be appropriate for her to receive psychiatric treatment, due to the seriousness of the traumatic events.
14. In relation to the plaintiff’s impairment and loss of earning capacity, Dr Hung was of the view that:-
15. The plaintiff had impairment in her ability to perform her work in a fast and efficient manner. She has been described as slow and employers commented that she was daydreaming. She also gets frequent flashbacks and intrusive memories of the Incident. She remains scared when she sees men resembling the defendant and avoids visiting certain areas in Kowloon. This level of impairment persisted although the Incidents happened over four years ago.
16. Dr Hung anticipated mild improvement in her psychiatric condition following psychiatric and psychological treatment. However she is expected to have residual psychiatric symptoms, resulting in permanent impairment and permanent disability even after receiving such treatment.
17. Permanent impairment is likely in the form of reduced efficiency at work, poor concentration and attention, lower ability to withstand stress and higher levels of anxiety when she is alone with males. This is likely to affect her ability to function effectively as a domestic helper.
18. Permanent impairment is assessed to be 10%.
19. The loss of earning capacity is assessed at 10% after receiving psychiatric and psychological treatment.

*(c) Pain, suffering and loss of amenities (“PSLA”)*

1. The plaintiff has been suffering from PTSD after the Incidents. The plaintiff claimed $250,000 under this head. Mr Ko made comparisons of the following cases:-
2. *Tangarorang Jessamie Mendrez v Chan Chau Wing*, DCPI 433/2010, 29 January 2013;
3. *Hung Chor Chuen v Pang Koon Wai & Ors*, HCPI  294/2003, 27 August 2004;
4. *Ng Ka Ho (an infant) v Yeung Kwok Leung*, DCPI  28/2004, 4 May 2005;
5. *Yip Kwan Cheung & Anor v Chim Hong Wing*, DCPI  475/2006, 26 February 2007;
6. *Francine Louise Collins v The Star Ferry Co Ltd*, HCPI  491/2000, 26 April 2001.
7. I consider that the plaintiff’s claim for PSLA award in the sum of HK$250,000 is reasonable and I allow this claim in full.

*(d) Aggravated damages*

1. The plaintiff claims $80,000 under this head.
2. The court can award aggravated damages. The primary purpose of awarding aggravated damages is to compensate the plaintiff for the injuries she has suffered, and the circumstances in which the injuries are suffered does affect the amount of injury the plaintiff is entitled to be compensated for: See *W v Meah* [1986] 1 All ER 935 at 942E per Woolf J.
3. In *Achacoso Warly Cabaneros v Liu Man Kuen*, HCPI  121/2001, 11 June 2004, at paragraph 26, the judgment of *Appleton v Garrett* [1996] PIQR P1 was cited:-

“In *Rookes v Barnard* Lord Devlin said that aggravated awards were appropriate where the manner in which the wrong was committed was such as to injure the plaintiff's proper feelings of pride and dignity or gave rise to humiliation, distress, insult or pain. Examples of the sort of conduct which would lead to these forms of intangible loss were conduct which was offensive or which was accompanied by malevolence, spite, malice, insolence or arrogance. In other words the type of conduct which had previously been regarded as capable of sustaining a punitive award. It would therefore seem that there are two elements relevant to the availability of an aggravated award, first, exceptional or contumelious conduct or motive on the part of the defendant in committing the wrong and second, intangible loss suffered as a result by the plaintiff, that is injury to personality." (emphasis added)

1. Mr Ko submits that the aggravating features of this case are as follows:-
2. The plaintiff arrived in Hong Kong for the first time on 21 June 2011 and was unfamiliar with the local language and culture. She also had no social support. She started work for the defendant’s sister-in-law on 23 June 2011.
3. There was a breach of trust as the defendant abused his position as a person in authority.
4. The obscene manner in which the Incidents took place as illustrated in the statement of claim.
5. The sexual abuses were repeated several times and lasted for a month. This prolonged the humiliation and loss of dignity.
6. The plaintiff had difficulty facing her family and telling them what had happened.
7. The plaintiff’s husband blamed her after becoming aware of the Incidents and her marriage was broken because of the Incidents.
8. Mr Ko referred to the following comparable cases:-
9. *Tangarorang Jessamie Mendrez v Chan Chau Wing*, DCPI 433/2010, 29 January 2013: the plaintiff, a domestic helper, was being indecently assaulted on three occasions by the defendant as described in paragraph 21.a.i. above. The court awarded HK$30,000 as aggravated damages.
10. *Achacoso Warly Cabaneros v Liu Man Kuen*, HCPI  121/2001, 11 June 2004: the plaintiff was a domestic helper under the employ of the defendant who drew a hot electric iron across the back of the plaintiff’s hands. The scars on the plaintiff’s hands are permanent. Otherwise, the plaintiff did not suffer any permanent incapacity. The court awarded HK$50,000 as aggravated damages.
11. *Chan Kwok Wai v Secretary for Justice*, HCPI  134/1999, 30 June 2000: the plaintiff, suspected of taking part in a conspiracy to rob, was being assaulted by police officers inside the Upper Levels Police Station. The plaintiff did not suffer any permanent incapacity. The court awarded HK$100,000 as aggravated damages.
12. Given the nature of the acts committed by the defendant against the plaintiff and the aggravating features set out above, I allow the plaintiff’s claim for aggravated damages in the sum of $80,000 in full.

*(e) Pre-trial loss of earnings*

1. The plaintiff was 33 years old at time of the accident.

*(i) First employment*

1. The plaintiff was a domestic helper employed by the defendant’s sister-in-law for a period of 2 years from 26 April 2011 to 25 April 2013.
2. At the time of the Incidents:-
3. the plaintiff’s monthly income was HK$3,580;
4. the plaintiff was entitled to an allowance of HK$750 per month if there was no provision of food; and
5. the plaintiff was entitled to a free return ticket from Hong Kong to Indonesia upon termination or expiry of the employment contract.
6. Thus, the plaintiff was earning HK$4,330 per month at the time (ie HK$3,580 + HK$750).
7. The defendant’s repeated offensive conducts had an immense impact on the plaintiff. Her employer gave a one-month notice of termination to the plaintiff on 12 August 2011 and her last working day would fall on 12 September 2011.
8. The plaintiff fled from her employer’s residence after she was raped by the defendant on 31 August 2011.
9. The plaintiff had to provide information to the police for 21 months between September 2011 and May 2013 and had to give evidence in court in May 2013. As a result, the plaintiff could not and/or was not allowed to seek alternative employment in Hong Kong until after the criminal proceedings against the defendant.
10. I allow the plaintiff’s claim of her loss of income for such period in the sum of HK$90,930 (ie HK$4,330 per month x 21 months).

*(ii) Second employment*

1. On 14 May 2013, the plaintiff entered into a foreign domestic helper contract for a term of 2 years and commenced work in June 2013.
2. Under this contract the plaintiff was entitled to:-
3. a monthly wage of HK$3,920; and
4. a monthly allowance of HK$875 if there was no provision of food.
5. At the time, the plaintiff’s earning was HK$4,795 per month or approximately HK$160 per day.
6. The plaintiff’s contract was terminated on 4 June 2014 due to lack of concentration and inefficiency which were caused by her psychiatric disorders. But for the Incidents, the plaintiff would have remained in employment until expiry of her contract. The plaintiff was unemployed until she entered into her following foreign domestic helper contract on 30 June 2014.
7. I allow the plaintiff’s claim for her loss of income for the 26 days of unemployment in the sum of HK$4,160 (ie HK$160 per day x 26 days).

*(iii) Third employment*

1. Under the following foreign domestic helper contract dated 30 June 2014, the plaintiff was entitled to:-
2. a monthly wage of HK$4,010; and
3. a monthly allowance of HK$920 in lieu of provision of food.
4. Thus, the plaintiff’s earning was HK$4,930 per month or approximately HK$164 per day.
5. The plaintiff’s work efficiency and concentration was impaired by her psychiatric disorders and her employment was terminated on 7 December 2014 with 19 months remaining in her contract. As a direct cause of the Incidents, I accept that the plaintiff was unemployed for 66 days until she entered into her current contract on 12 February 2015.
6. I allow the plaintiff’s claim for her loss of income over such period in the sum of HK$10,824 (ie HK$164 per day x 66 days).
7. As such, the plaintiff’s claim for an award under this head is allowed in the total sum of HK$105,914 (ie HK$90,930 + HK$4,160 + HK$10,824).

*(f) Loss of earning capacity*

1. This claim is to compensate the handicap in the labour market in that the plaintiff would be faced with real risk of not being able to secure or to maintain employment.
2. According to the psychiatric report of Dr Hung, the plaintiff is expected to have residual psychiatric symptoms or permanent disability even after receiving the recommended treatments. The plaintiff is assessed to be suffering from a 10% permanent impairment and also a 10% loss of earning capacity.
3. She is currently under employment but has previously been terminated prematurely on three occasions for lack of concentration and efficiency.
4. As a result of the plaintiff’s psychological vulnerability, there is a real risk that the plaintiff would be disadvantaged from competing with other able persons and would be out for work for longer periods between jobs than she would otherwise have been.
5. The plaintiff who is now 38 years old would likely be disadvantaged as employers given her condition. Without an employment contract, the plaintiff would have to return to Indonesia and apply again to the employment agency.
6. Accordingly, the plaintiff claims for an award under this head in the sum of HK$56,220 equivalent to 12 months of the plaintiff’s average monthly wages since the Incidents (ie HK$4,685 per month x 12 months).
7. I accept that given the plaintiff’s psychological vulnerability, there is a real risk that the plaintiff would be disadvantaged from competing with other able person and would be out for work for longer periods between jobs than she would otherwise have been. I allow the claim of $56,220 under this head.

*(g) Future medical expenses*

1. According to the psychiatric report of Dr Ng Kwok Chuen of Yung Fung Shee Psychiatric Centre dated 13 November 2015, the plaintiff was in the early stage of her treatment and would need to be followed up.
2. The psychiatric expert, Dr Hung, also recommended that the plaintiff should:-
3. continue her medications and follow up at the psychiatric clinic at one to two months intervals for a term of 3 years; and
4. commence treatment by a clinical psychologist at one to two months intervals for a term of 2 years.
5. The plaintiff will continue to seek medical treatment as recommended to reduce the effect of her injuries on her job performances. Whilst the plaintiff may continue her treatment in the public sector, however, it would be prudent to plan for such treatment at the non-local citizen rate or in the private sector to take into account of the risk of the plaintiff losing her current employment in Hong Kong and her eligibility for the local rate.
6. According to Dr Hung, the costs for non-local citizen at the Hospital Authority are HK$1,000 per follow-up consultation and HK$15 per day for medication.
7. As recommended by Dr Hung, the plaintiff will continue her follow-up consultations at the psychiatric clinic at two monthly intervals over the next 3 years (ie 18 follow-up consultations at the rate of HK$1,100 per consultation totaling HK$19,800). The plaintiff will also be expected to incur HK$15 per day for medication for the next 3 years (ie HK$16,425). The plaintiff will also commence treatment by a clinical psychologist at two monthly intervals for 2 years as suggested by Dr Hung (ie 12 consultations at the rate of HK$1,100 per consultation totalling HK$13,200).
8. As such, the plaintiff claims for an award under this head in the sum of HK$49,425 (ie HK$19,800 + HK$16,425 + HK$13,200). I allow these claims in full.

*(h) Miscellaneous special damages*

1. Visa Extensions: The plaintiff was required by the police and the Immigration Department to extend her visa 14 times at the cost of HK$160 each. The plaintiff claims HK$2,240.
2. Alternative Accommodation and Food: Between September 2011 and May 2013, the plaintiff stayed at a shelter operated by mission for migrant workers in Central at the cost of HK$25 per day for 21 months. The plaintiff thus claims HK$15,750.
3. Transportation: The plaintiff claims the sum of HK$2,500 for transportation expenses were incurred for the purpose of attending police station, the court and the lawyers’ offices.
4. Medical Expenses: Since 14 August 2015, the plaintiff has incurred a total of HK$780 for medical expenses (as opposed to HK$570 as pleaded in the revised statement of damages).
5. The plaintiff claims a total of HK$21,270 (as opposed to HK$21,060 as pleaded in the revised statement of damages) for special damages. I find the same reasonable and allow these claims in full.
6. Mr Ko proposed to take 31 August 2011 as the starting date for assessing interest on special damages. There was no objection from the defendant.

*(2) Summary of damages*

1. Given my assessment as above and that the defendant made no submission nor objection to the plaintiff’s case, the plaintiff’s claim of damages is allowed and awarded as follows:-

PSLA $250,000.00

Aggravated Damages $80,000.00

Pre-trial Loss of Earnings $105,914.00

Loss of Earning Capacity $56,220.00

Future Medical Expenses $49,425.00

Miscellaneous Special Damages $21,270.00

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Sub Total $562,829.00

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1. I award interest on general damages (HK$250,000) at the rate of 2% per annum from the date of service of the writ of summons on the defendant to the date of assessment of damages and thereafter at full judgment rate until payment. I award interest on pre-trial loss of earnings and special damages ($105,914 + $21,270) at the rate of 4% per annum from the date of 31 August 2011 to the date of assessment of damages and thereafter at full judgment rate until payment.

*COSTS*

1. I make an order nisi that the defendant do pay the costs of these proceedings with certificate for counsel to be taxed if not agreed. The above costs nisi shall become absolute in the absence of an application for variation within 14 days from the date of handing down of this assessment of damages. The plaintiff’s own costs shall be taxed in accordance with the Legal Aid Regulations.

( Eliza Chang )

Deputy District Judge

Mr Tony Ko, instructed by Boase Cohen & Collins, assigned by the Director of Legal Aid, for the plaintiff

The defendant was not represented and appeared