#### DCPI1597/2007

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 1597 OF 2007

BETWEEN

WONG WAI KIT Plaintiff

and

SHEK TING FUNG Defendant

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

Date of Hearing: 24 April 2008

Date of Judgment: 24 April 2008

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## A S S E S S M E N T O F D A M A G E S

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1. On 30 November 2006, the Plaintiff, a 33-year-old storekeeper, earning $6,700 a month, was physically attacked by the Defendant at Japanese City Godown, LG2 Cavendish Centre, 23 Yip Kan Street, Aberdeen, Hong Kong. As a result, he suffered fractures of a few teeth. On 19 September 2007, interlocutory judgment was entered against the Defendant as no Notice of Intention to Defend had been filed by him, and this is the assessment of the damages of the Plaintiff’s claim.
2. Upon admission to hospital after the incident, it was found that the Plaintiff suffered the following injuries:
3. horizontal crown fracture at the level of gingival margin;
4. avulsion at upper right central incisor;
5. crown fracture involving enamel and dentine of the upper right and left lateral incisors; and
6. slight loosening of the upper left lateral incisor.
7. On the following day, the Plaintiff attended the Department of Oral Surgery at the Pamela Youde Nethersole Eastern Hospital where the Plaintiff’s upper right central incisor was extracted and the wound was closed with sutures.
8. Between 20 December 2006 and the end of April 2007, the Plaintiff sought treatment from the dentist Dr Edith Tsang. He had a total of 5 surgeries to repair the damaged and lost teeth, including having implants to replace the 2 central incisors. He had to attend the clinic of Dr Tsang a total of 24 times for the follow-up treatments.
9. According to the Plaintiff, he still has flashbacks of the attack by having nightmares about the incident. He has been advised by his dentist not to bite hard objects. Since the accident, he has not been able to talk coherently in the sense that he cannot pronounce certain words clearly.
10. The Plaintiff is the only witness in the assessment of damages. As there is no rebuttal evidence, I have no reservation in accepting all his evidence as the truth.
11. The Plaintiff is claiming a sum of $200,000 as damages for pain, suffering an loss of amenities (PSLA). In this regard, Mr Lee, Legal Aid counsel for the Plaintiff, refers me to my own decision in *So Sau Man v Leung Ming Kwong & Another*, unreported, DCPI No. 376 of 2005 (decision of HH Judge Lok on 18 October 2005), in which I awarded a sum of $100,000 as damages for PSLA for a victim who suffered right lip laceration and loss of 3 teeth. Mr Lee has also referred me to another decision, *Orla Gilroy v Easy Up Investments Ltd*, unreported, DCPI No. 1252 of 2004, decision of Deputy District Judge K. Lo on 1 February 2006). The victim in that case suffered multiple injuries, including one broken tooth and loss of sensation over right side of her teeth and gum. She also suffered from constant headaches and some symptoms of post-concussional syndrome. A sum of $170,000 was awarded as damages for PSLA in that case.
12. In my judgment, although the Plaintiff has nightmares about the incident of attack, he has suffered no other symptoms of post-concussional syndrome as a result of the incident. Nevertheless, the Plaintiff has constant pain in his teeth, and he is not able to pronounce certain words clearly. This would be a serious problem for a relatively young man such as the Plaintiff, as the same will affect his social life and lower his self esteem. Balancing all these factors, I award a sum of $150,000 as damages for PSLA in the present case.
13. The Plaintiff claims a sum of $43,190 as medical expenses, including the sum of $42,900 as the fees charged by the dentist in private practice and other related expenses. It was reasonable for the Plaintiff to seek treatment from a private dentist and I allow the claim in full. I also accept the Plaintiff’s evidence that future medical expenses of $7,000 will have to be incurred by him to repair his 2 damaged lateral incisors, and I also allow him to claim for such expenses.
14. The sum of $1,426.90 claimed as travelling expenses is reasonable and I allow the claim in full.
15. The Plaintiff claims for 7 days of loss of income and MPF benefits in the total sum of $1,641. Such claim is supported by sick leave certificates and I allow the claim in full.
16. In summary, the quantum of the Plaintiff’s claim can be summarised as follows:

(a) PSLA : $150,000.00

(b) pre-trial loss of earnings : $1,563.00

(c) loss of MPF benefits : $78.00

(d) medical expenses : $43,190.00

(e) future medical expenses : $7,000.00

(f) travelling expenses : $ 1,426.90

TOTAL: $203,179.90

1. The Plaintiff is entitled to the costs of the assessment of damages, and he is also entitled to interest on the damages for PSLA at 2% per annum from the date of writ to the date hereof and interest on other special damages, excluding the claim for future medical expenses, at 4.699% per annum, which is half the judgment rate, from the date of the incident to the date hereof. The Plaintiff is also entitled to the interest on the whole judgment sum at judgment rate until from the date hereof until payment.

# (David Lok)

# District Judge

Mr Nick Lee of the Legal Aid Department, for the Plaintiff

Defendant, in person, present