DCPI 1607/2016

[2018] HKDC 1054

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 1607 OF 2016

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BETWEEN

YEUNG TSZ MAN (楊梓汶) Plaintiff

and

EVERBEST PORT SERVICES LIMITED

(永豐港口服務有限公司) (in Liquidation) Defendant

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Before: Master Eleanor Yeung in Court (Open to Public)

Date of Hearing: 27 August 2018

Date of Assessment of Damages: 30 August 2018

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ASSESSMENT OF DAMAGES

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1. This is an assessment of damages arising out of a personal injury action. Counsel Mr Wilson Lau represented the plaintiff at the assessment hearing. The defendant was wound up on 11 January 2017 and the court has dispensed with the attendance of the joint and several liquidators for the hearing.

*Background*

1. At all material times, the plaintiff was employed by the defendant as a stevedore and was responsible for carrying out container handling aboard container vessels. On 6 September 2013 at about 11 am, when the plaintiff was working aboard the container ship “Fortune Trader” at Kwai Chung Container Terminal No 4, a high lashing bar fell down from the height and hit his left hand (“Accident”). As a result, the plaintiff suffered injury to his left ring finger.
2. On 3 August 2016, the plaintiff commenced these proceedings against the defendant for damages for personal injury, loss and damages sustained and caused by and arising out of the Accident.
3. The defendant had failed to give notice of intention to defend. Interlocutory judgment was entered against the defendant on 11 August 2017. The defendant was adjudged to pay the plaintiff damages to be assessed and costs.
4. The plaintiff filed his statement of damages on 23 June 2017 (“SOD”) and revised statement of damages on 25 April 2018 (“Revised SOD”). The plaintiff claims HK$352,663.74 (HK$563,965 less employees compensation received at HK$211,301.26) plus interest. The defendant did not file any answer to the SOD or Revised SOD.
5. The defendant had failed to comply with the directions given by the court, and therefore was debarred from adducing documentary evidence, expert medical evidence or calling any witness to give evidence at the assessment hearing.
6. The plaintiff has produced 3 medical reports dated 11 January 2016, 29 February 2016 and 9 May 2017 respectively; a physiotherapy report dated 9 October 2015; and an occupational therapy report dated 11 March 2016. The aforesaid reports were ordered to be adduced as agreed evidence without the need to call the makers. The plaintiff has elected not to adduce any expert medical evidence.
7. The plaintiff has also filed his witness statement dated 24 October 2017 that was ordered to stand as evidence-in-chief at the assessment hearing.

*The plaintiff’s claim*

1. In the Revised SOD, the plaintiff claims the following heads of damages against the defendant:-
2. general damages for pain, suffering and loss of amenities (“PSLA”) in the sum of HK$250,000;
3. pre-trial loss of earnings in the sum of HK$260,775;
4. loss of earning capacity in the sum of HK$40,000;
5. special damages in the sum of HK$13,190.

*The plaintiff’s medical treatments*

1. Following the Accident, the plaintiff was admitted to the Accident & Emergency Department of Princess Margaret Hospital for treatment. Examination showed that a 1.5 cm laceration with active bleeding and swelling was noted over his left ring finger. X-ray examination revealed an angulated fracture of the middle phalanx on his left ring finger.
2. The plaintiff was then referred to the Department of Orthopaedics & Traumatology of Princess Margaret Hospital for further treatment. Physical examination revealed open wound over his left ring finger. X-ray showed fracture middle phalanx of left ring finger. Emergency operation was performed on the same day. Ulnar side neurovascular bundle was found contused, middle phalanx fracture was fixed with K-wire. An external splint was prescribed for protection of fracture. He was hospitalized for 2 days. On 7September 2013, the Plaintiff was discharged from hospital.
3. After being discharged from hospital, the plaintiff had been receiving regular orthopaedic follow-up at Princess Margaret Hospital from 17September 2013 to 16May 2014. In addition, he was referred to the Occupational Therapy Department of Princess Margaret Hospital for work rehabilitation program. He attended 4 sessions during the period from 13 September 2013 to 8 November 2013.
4. By geographical reason, the plaintiff was referred to the Physiotherapy Department of Tuen Mun Hospital for treatment from 3 December 2013 to 15May 2014. He had attended 21 sessions of out-patient physiotherapy there. He also attended 19 sessions of occupational therapy in Tuen Mun Hospital from 28 January 2014 to 15May 2014. He attended work hardening training. The final assessment result showed that he managed single arm lifting for 15 lb and bilateral lifting 12 kg metal bar for 10 minutes. The hand grip power was 25 kgf and 14 kgf at left and right sided respectively.
5. At the latest orthopedics follow-up on 16May 2014, the plaintiff still complained of residual pain, numbness and stiffness over his left ring finger.
6. On 16September 2014, the plaintiff was referred to the Employees’ Compensation (Ordinary Assessment) Board. On 30 September 2014, the board allowed sick leave period from 6 September 2013 to 29May 2014 (266 days in total) and assessed the plaintiff to have suffered 3% loss of earning capacity from the accident.

*The plaintiff’s evidence*

1. The plaintiff relied on his witness statement dated 24 October 2017 as his evidence-in-chief at the assessment hearing. The gist of the plaintiff’s evidence is that he was 34 years old at the time of the Accident. He had always enjoyed good health and had no remarkable illness and injury before the Accident.
2. The plaintiff currently experiences tension of the muscles of and pain over his left ring finger. As a result, he has reduced and limited mobility of the left ring finger, in particular to his left power grip and left power pinch grip when twisting the towel during washing, or when picking up objects over 12 lbs. etc.
3. He also experiences aggravated pain during rainy and/or cold weather. Occasionally, his sleep was disturbed throughout the night due to the pain and discomfort. As a result, his concentration and temper during the day has been adversely affected.
4. Before the Accident, the plaintiff would spend time with friends on outdoor activities such as playing basketball for at least 3 to 4 times a month. After the Accident, the time spent on such activities has been reduced to minimal. His social life has been adversely affected as well.

*Finding*

1. The plaintiff’s evidence was that prior to the Accident, he had always enjoyed good health and had no remarkable illness. After the Accident, he has reduced and limited mobility of the left ring finger. He also experiences aggravated pain during rainy and/or cold weather.
2. Considering the medical reports and the plaintiff’s evidence together, I am satisfied that the plaintiff had proved on balance of probabilities that his physical injury was caused by the Accident.

*PSLA*

1. In the Revised SOD, the plaintiff claims HK$250,000 under this head. Mr Lau submitted that the amount of HK$250,000 could be on the high side and the reasonable award would be in the region of HK$120,000 and HK$150,000.
2. Mr Lau cited the following cases in support of the plaintiff’s claim amount:-
3. In *Cheung Kit Ching v Mountains International Company Limited* [2018] HKDC 338, the plaintiff suffered injury to her left middle finger in an accident. She was found to have comminuted fracture involving tuft of distal phalanges of left middle phalanx, with mild bony displacement and soft tissue swelling. The plaintiff was awarded HK$100,000 for PSLA;
4. In *Shah Junaid Ali v Yau Lee Galvanizers (Hot-Dip) Company Limited*, DCPI 517/2008, 14 April 2009, the plaintiff injured his left middle finger when opening the sliding door during work. He was diagnosed with crush injury to the left middle finger. There was a 1.5 cm laceration over the distal pulp region of the finger. X-ray examination showed crack fracture of the distal phalanx. Suturing and irrigation were performed. He was discharged with antibiotics and followed up by the orthopaedic clinic. He attended 32 sessions of occupational therapy and was given 9 months’ sick leave. The plaintiff was awarded HK$120,000 for PSLA;
5. In *Chan Ming Yat v Youh Eng Lai Michael trading as Prime Industrial Company (Hong Kong)*,DCPI 201/2003, 5 June 2004, the plaintiff was injured in the course of his employment when operating machinery. He suffered an open fracture of the proximal phalanx of the left index finger, dislocation of the interphalangeal joint of the same finger, ruptured ulnar collateral ligament of the proximal interphalangeal joint and contused ulnar digital nerve and artery. He underwent emergency operation involving wound debridgment and fracture fixation. He was hospitalized for one week. After being discharged from hospital, the plaintiff had attended regular physiotherapy and follow-up treatments. The plaintiff was awarded HK$180,000 for PSLA;
6. In *Khan Irram v Wai Hing Engineering Company Limited*, DCPI 1465/2009, 4 November 2011, the plaintiff sustained injuries in an industrial accident. On examination, the distal phalange of his left ring finger was swollen with bruises. X-ray examination of the left ring finger showed a fracture at the distal phalange. He was discharged on the same day with analgesics and given 15 days’ sick leave. The pain and tender at the tip of the ring finger with hard contact was compatible with the residual of the healed fracture but was unlikely to be serious. The plaintiff was awarded HK$85,000 for PSLA;
7. In *Chan Hung Hang v Fat Kee Marine Repairing & Engineering Co Limited & Another*, DCPI 2328/2007, 3 September 2008, the plaintiff suffered crush injury to his right middle finger in an industrial accident. Physical examination showed bruise and tenderness over the tip of the right middle finger and subungual haematoma over nail. There was also fracture of the tuft of distal phalanx of the right middle finger. A finger/thimble splint was fitted. After being discharged, the plaintiff attended follow-up treatments at the orthopaedic clinic. In addition, he had undergone various sessions of physiotherapy and occupational therapy treatment. The plaintiff was awarded HK$100,000 for PSLA;
8. In *Wong Yun San**v Cheung Yue Yiu trading as Radio Engineering Co*, DCPI 1909/2007, 21 July 2008, the plaintiff injured his left index and middle fingers while using a circular saw to cut wood. He sustained crush injuries, pulp loss in his left index finger and a deep laceration in the middle finger exposing extensor tendon over proximal interphalangeal joint. Open reduction, internal fixation and extensor repair surgery was performed. Further operation to resurface the left index finger with a local flap advanced to cover the defect in the finger by way of skin graft taken from the wrist was carried out. The plaintiff was awarded HK$150,000 for PSLA.
9. In my judgment, given the nature of the plaintiff’s injury and the treatments underwent by him, a fair and reasonable award for PSLA should be at $150,000 after taking into account inflation. I award such sum as damages for PSLA accordingly.

*Pre-trial loss of earnings and MPF*

1. As stated in the notice of accident, the employees’ compensation application and the plaintiff’s evidence at the hearing, the plaintiff’s monthly earning preceding the Accident was around HK$20,615 per month. The plaintiff claims that:-
2. from 6September 2013 to 29 May 2014 (sick leave period), the plaintiff was unable to work and claims: HK$20,615 x 12 months x 266/365 days = HK$180,282;
3. from June 2014 to August 2014 (3 months), the plaintiff was unable to find a job and claims: HK$20,615 x 3 months = HK$61,845;
4. from September 2014 to October 2014 (2 months), the plaintiff worked as mechanical operator working 25 days per month and earning HK$700 per day (ie HK$17,500 per month). He claims: (HK$20,615 – HK$17,500) x 2 months = HK$6,230.
5. Since November 2014, the plaintiff worked as an assistant technician working 26 days per month and earning HK$800 per day (ie HK$20,800 per month). The plaintiff has no claim in this period as his salary was higher than his pre-accident job.
6. In addition, the plaintiff claims pre-trial loss of mandatory provident fund (“MPF”) in the sum of HK$12,418[(HK$180,282 + HK$61,845 + HK$6,230) x 5%].
7. I accept that the total pre-trial loss of earnings and loss of MPF is in the sum of HK$260,775 (HK$180,282 + HK$61,845 + HK$6,230 + HK$12,418) and I award such sum accordingly.

*Loss of earning capacity*

1. The plaintiff received education up to Form 5. In the past, he worked as a delivery worker or a stevedore. It is the plaintiff’s case that the residual pain of his hand leads to decreased efficiency of work in such nature. The plaintiff is now aged 39 and will be able to work for further 26 years. He will lose his competitiveness in the labour market and substantially reduce his choice of employment.
2. According to the Certificate of Assessment dated 30September 2014 (Form 7), the Employees’ Compensation (Ordinary Assessment) Board assessed the plaintiff to have suffered 3% loss of earning capacity from the accident.
3. In view of the cases cited above, the injury and impairment suffered by the plaintiff, and the aforesaid assessment made by the board, a fair and reasonable award should be at HK$40,000. I award such sum as loss of earning capacity accordingly.

*Special damages*

1. In the Revised SOD, the plaintiff claims HK$3,190 for medical expenses, HK$5,000 for travelling expenses and HK$5,000 for tonic food expenses. Mr Lau in his submissions adjusted the amounts to HK$3,190 for medical expenses, HK$500 for travelling expenses and HK$1,000 for tonic food expenses.
2. The plaintiff has produced receipts for the medical expenses. As to the travelling and tonic food expenses, I accept that those were sums reasonably incurred and should be allowed in full. I therefore award his loss under this head at HK$4,690.

*Award of damages*

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

PSLA HK$150,000.00

Pre-trial loss of earnings and MPF HK$260,775.00

Loss of earning capacity HK$40,000.00

Special damages HK$4,690.00

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HK$455,465.00

Less employees compensation received HK$211,301.26

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HK$244,163.74

1. The plaintiff is entitled to interest at the following rates:-
2. at 2% per annum for general damages from date of writ to date of judgment and thereafter at judgment rate until payment in full;
3. at half of the judgment rate for special damages from date of accident to date of judgment and thereafter at judgment rate until payment in full.
4. I make a costs order that the plaintiff do have costs of the action and costs of the assessment, with a certificate for counsel, to be taxed if not agreed. The costs of the plaintiff be taxed in accordance with the Legal Aid Regulations.
5. I thank Mr Lau for his assistance.

[Signed]

( Eleanor Yeung )

Master, District Court

Mr Wilson Lau, instructed by Francis Kong & Co, assigned by the Director of Legal Aid, for the plaintiff

The attendance of the joint and several liquidators was excused