DCPI 1819 / 2010

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1819 OF 2010

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BETWEEN

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|  | YU KA KI (余家旗) | Plaintiff |
|  | and |  |
|  | CHAN WING SUM (陳榮森) | Defendant |

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Coram: Before Master I. Wong in Court

Date of Hearing: 12 October, 2011

Date of Handing Down Judgment: 4 November, 2011

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**ASSESSMENT OF DAMAGES**

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1. In the small hours of 28th June, 2008, while the Plaintiff was entertaining with his friends in a lounge bar at Causeway Bay, he was attacked by the Defendant. The Defendant threw a cushion chair onto his forehead, causing him injuries.
2. The Defendant was charged and convicted of the offence of Wounding contrary to Section 19 of the **Offences Against the Person Ordinance**, Cap. 212 on 25th June, 2009 and was sentenced to 6 months imprisonment.
3. By the present proceedings, the Plaintiff claims against the Defendant for his loss and damages arising from this incident.
4. The Defendant defaulted in giving notice of intention to defend, hence, interlocutory judgment was entered against him on 30th December, 2010 with costs on liability and damages to be assessed.
5. By the order of Master J. Chow dated 31st March, 2011, the reports of the Government hospitals as to treatment and care of the Plaintiff are to be adduced as agreed evidence without calling the makers thereof.
6. The Plaintiff elects not to adduce medical expert evidence.
7. The assessment hearing is ex-parte as the Defendant is absent throughout.

Injuries and Permanent Disabilities

1. The Plaintiff, aged 26 at the time of the assault and now aged 30, was and is an executive director of an estate agency. After the assault, he was immediately taken to the Accident and Emergency Department of Ruttonjee and Tang Shiu Kin Hospitals where, according to the medical report, he was found to have suffered a 4.5 cm laceration over his forehead and dried blood staining opening of nostrils. However, no active nasal bleeding or septal haematoma was found. Suture of laceration was done. The Plaintiff says, in court, that he received 7 stitches. He was then discharged.
2. The Plaintiff says that after the injuries he found himself to have suffered from intermittent headache. He describes that the pain could be very severe for some time and then would go away. He gave himself a lot of “Panadol” to ease the pain. Also, for this reason, he received a MRI examination about a year ago but nothing adverse turned up. However, it seems to me that the Plaintiff’s situation has improved because he says that his main complaint now is that he finds his wound very itchy.
3. The laceration caused the Plaintiff to be scarred on his forehead. The scar runs backwards from the hairline in the middle of his forehead to the left, slightly in the shape of a crescent. He complains that the scar resulted in small patchy loss of hair and it made the scar noticeable especially when he was wearing short hair-style. Photographs taken on his forehead (at page 37 of the Bundle) show that the scar was rather noticeable. I accept what he says.
4. For this reason, the Plaintiff paid a special 4-day trip to Taiwan in May, 2011 to undergo a scar revision operation which was performed by one Dr. Chang, a plastic surgeon there. When being asked by the Court why he did not undergo the operation in Hong Kong, he explains that before this, he had consulted several local dermatologists and plastic surgeons, but he could not repose his confidence in them. The main reason is that all of them invariably advised skin grafting and/or hair plantation which required a donor site from the Plaintiff’s back of head. He says that he was not convinced that he needed to suffer another wound at the back of his head. As for Dr. Chang, he was able to make use of the Plaintiff’s hair from the scalp surrounding the scar and donor site as such was not required. The Plaintiff adds that he had also consulted one Dr. King of the Hong Kong Sanatorium & Hospital. The way in which the operation was to be done as advised by Dr. King was similar to that of Dr. Chang but the charges together with hair plantation were as much as $71,000 odd. The Plaintiff therefore preferred Dr. Chang.
5. I have seen the photographs taken one month after the operation. They show that the scar was not as apparent as before (page 39 of the Bundle). Indeed, as at the date of the hearing, I have caused a close examination on the Plaintiff’s forehead. According to my observation, the scar is barely visible now. Perhaps it is in part due to the fact that the Plaintiff is wearing longer hair now, but even so, I consider that the operation can be regarded as successful. In any event, the Plaintiff is not claiming for any future medical expenses.

Pain, Suffering and Loss of Amenities (PSLA)

1. Mr. Lo, who appears for the Plaintiff, submits that the award under this head should be in the sum of HK$100,000. He refers me to the case of **So Sau Man v. Leung Ming Kwong & Anor**, DCPI no. 376/2002; date of judgment: 18 October, 2005. In that case, the plaintiff, a lady aged 62, suffered right lip laceration and lost 3 teeth as a result of a traffic accident. Suturing was performed on the laceration wound over the upper lip and she was discharged on the same day. The wound healed without much complication, and she suffered no permanent disability apart from (i) numbness in the wound area; and (ii) a small but quite unnoticeable scar near the upper right lip. The teeth were replaced by artificial ones. She was granted sick leave for a period of about 2.4 months. His Honour Judge Lok awarded PSLA in the sum of HK$100,000.
2. In another case **Lau Choi Chung v. Xie Renlan, the Administratrix of the estate of CHAN Wai Kin, deceased & Anor**, DCPI 468/2004; date of judgment: 29 January, 2007, the plaintiff was a young man aged 22 at the time of the traffic accident. Apart from suffering from “multiple frontal lacerations” to his forehead and face, he suffered no other injuries. He complained of intermittent headache and dizziness and these symptoms were considered compatible with post-concussion syndrome and he had headaches there and then for 2 to 3 years after the accident. He was described had been “3 times at Polyclinic”, “2 times at Yan Chai Hospital” and “5 times at Queen Elizabeth Hospital” for outpatient treatment. The accident left him with 5 sets of scars on the forehead. Though he suffered no functional disability, the scars caused him loss of a bit of self-esteem. His Honour Deputy Judge A.B. bin Wahab awarded a sum of $120,000. When giving the assessment, the learned judge made it clear that he had given some weight to the relative young age of the plaintiff and the fact that he never borne scars before.
3. In the present case, I find the Plaintiff to be a candid witness. When being asked why he found the scar troubling, he concedes that it was partly for “psychological” reason, i.e. it had something to do with how he looked upon his appearance. I think this is understandable given his relatively young age. I accept that as a young business executive, appearance is important to his self-esteem, and also to his professional career and private life. I have seen the photographs taken before the operation, though the scar was not conspicuous and ugly, it was somewhat noticeable.
4. On the other hand, it is clear that the Plaintiff has not suffered any other injuries or functional disability. There is no evidence before me as to whether he was given any sick leaves. I presume that even if there were, they should be of minimal or insignificant period. After being discharged from the hospital, he only needed to return once for follow-up outpatient treatment. On the evidence before me, I consider that the Plaintiff’s injuries are not as serious as the plaintiffs in both **So Sau Man v. Leung Ming Kwong & Anor,** *supra* and **Lau Choi Chung v. Xie Renlan, the Administratrix of the estate of CHAN Wai Kin, deceased & Anor,** *supra*. As referred to above, the plaintiff in **So Sau Man** has the additional injury of loss of 3 teeth and the plaintiff in **Lau Choi Chung** has “5 sets” of scars. As for the Plaintiff, as I said, the scar is barely visible now. Doing the best I can and considering all the evidence in a round and also the inflation over the years, I give an award of **$75,000**.

Special Damages

Medical Expenses

1. The Statement of Damages states that the Plaintiff spent $350 for in-patient treatment at the Ruttonjee and Tang Shiu Kin Hospitals. However, there are no receipts or any other documentary evidence in support of the expenditure. Indeed, the Plaintiff is not able to recall this amount at all. All he says is that he has spent a sum of $695 for obtaining a medical report. In the premises, I do not think the Plaintiff has been able to prove this amount. However, I am satisfied that he was treated twice at the said public hospitals, once in the Emergency and Accident Department and another for follow-up treatment. I think I am entitled to take judicial notice that the charge for outpatient treatment at public hospitals is about $100 on each occasion and hence, I award **$200**.
2. The Plaintiff says that he has also incurred fees for consultation from dermatologists and plastic surgeons regarding his scar in the total sum of **$3,721**.
3. The expenditures are supported by receipts. These include $671 incurred at a hospital in Japan called the Chiba Hokusoh Hospital. The Plaintiff testifies that he had a relative in Japan. When he visited Japan, his relative recommended him to seek consultation from that hospital. For the reasons that I have said, I consider it is reasonable for the Plaintiff, as a young business executive, to try to rectify his flawed appearance. I also find the amount reasonable.
4. As for the operation in Taiwan, the expenses are as follows:

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| (a) | Airplane Ticket | $2,058.00 |
| (b) | Body check-up fees | $588.00 |
| (c) | Dr. Chang’s medical fees | $37,520.00 |
| (d) | Hotel expenses, food, etc | $2,000.00 |
|  | Total: | $42,166.00 |

1. I consider that the amount is reasonable. It is indeed lower than the amount of $71,000 odd that Dr. King of the Hong Kong Sanatorium & Hospital has quoted. However, I do not think the Defendant should be liable for the expenses for food because the Plaintiff has to incur the same anyway, whether in Hong Kong or in Taiwan. I will therefore deduct $500 and give $1,500 only. The total amount is therefore **$41,666**.
2. The medical expenses are therefore **$45,587.00** (i.e. $200+$3,721+$41,666).

Other Expenses

1. The Plaintiff also claims for (i) travelling expenses, (ii) value of clothing damaged and destroyed and (iii) tonic food in the sums of $500, $2,000 and 5,000 respectively. The Plaintiff says that his clothes were stained with blood and had been disposed of. In my judgment, the first 2 claims are reasonable and I allow the claims in full. As for the tonic food, the Plaintiff testifies that they were given by his mother and not prescribed by an expert or on medical advice. There is nothing to show why the Plaintiff had to consume so much tonic food. I give an award of $1,000 only.

Conclusion

1. To sum up, the Plaintiff’s damages are assessed at $124,087, the breakdown of which are as follows:

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| 1. | PSLA | $75,000.00 |
| 2. | Medical Expenses | $45,587.00 |
| 3. | Travelling Expenses | $500.00 |
| 4. | Value of Clothing Damaged and Destroyed | $2,000.00 |
| 5. | Tonic Food | $1,000.00 |
|  | Total: | **$124,087.00** |

1. The Plaintiff is also entitled to interest on the award of PSLA at the rate of 2% per annum from the date of the Writ to the date hereof and thereafter at judgment rate, and interest on other damages mentioned above at the rate of 4% per annum, which is half of the judgment rate, from the date of the incident to the date hereof and thereafter at judgment rate until payment.

Costs

1. The Plaintiff elects summary assessment of his costs. The Statement of Costs states a total sum of $133,800.00. This is a simple and straight forward case and the Defendant does not contest the proceedings. I am of the view that the amount is on the high side. The Plaintiff has filed one Statement of Claim and one Statement of Damages only and there are 2 Checklist Review Hearings only. The trial on the Plaintiff’s damages lasts for less than 3 hours, the trial bundle together with the bundle of medical records contain a total of 50 pages only and the only medical report is the one on the Plaintiff’s treatment issued by the Accident & Emergency Department of the Ruttonjee & Tang Shiu Kin Hospitals. Taking a broad-brush approach, I assess the costs at $75,000.00.
2. I give an order nisi that the Defendant do pay the Plaintiff the costs of this action in the sum of $75,000.00.

(I. Wong)

Master, District Court

Representation

Mr. Henry Lo of Henry Lo & Co., Solicitors for the Plaintiff

The Defendant, in person, absent