DCPI 1892/2019

[2021] HKDC 1157

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 1892 OF 2019

\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

YUEN NUI TONG (袁暖堂) Plaintiff

and

LEE KAM CHUEN (李錦全) 1st Defendant

DESIGN GROUP DECORATION 2nd Defendant

ENGINEERING LIMITED

(設計廔裝飾工程有限公司)

EMPLOYEES COMPENSATION 3rd Defendant

ASSISTANCE FUND BOARD

\_\_\_\_\_\_\_\_\_\_\_\_

Before: Master Matthew Leung in Court

Date of Hearing: 8 September 2021

Date of Assessment of Damages: 24 September 2021

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| --- |
| ASSESSMENT OF DAMAGES |

1. This is an assessment of damages for personal injuries suffered by the Plaintiff at work on 13 July 2016 (“**the Accident**”).
2. The Plaintiff pleaded in the Statement of Claim that he was an electrical worker employed by the 1st Defendant to carry out decoration work at the site in question while the work was contracted by the 2nd Defendant. On 13 July 2016, while the Plaintiff was using an electrical grinding machine supplied by the 1st Defendant to cut a metal bar, the knife of the machine broke and part of the knife hit and entered into the Plaintiff’s left eye resulting in total blindness of his left eye.
3. In absence of any notice of intention to defend, interlocutory judgments were entered against the 1st and 2nd Defendants on 25 November 2019 and 13 November 2019 respectively leaving damages to be assessed.
4. By an Order made by Master Matthew Leung dated 1 February 2021, leave was granted to the Employees’ Compensation Assistance Fund Board to join as the 3rd Defendant to contest the issue of quantum.
5. The Notice of Appointment for Assessment of damages filed on 31 May 2021 was served by the Plaintiff on the 1st and 2nd Defendants on 2 June 2021. Further, the Court sent a notice of hearing for assessment of damages to the Defendants on 8 June 2021.
6. The 1st Defendant attended the assessment hearing in person while the 2nd Defendant was absent. I was satisfied that notice of the assessment hearing had been duly given to the 2nd Defendant. It was the 2nd Defendant’s choice not to attend the assessment hearing. I proceeded with the assessment of damages in this case in the absence of the 2nd Defendant.
7. At the beginning of the assessment hearing, the Court explained to the 1st Defendant about the procedure of the hearing, including his right to cross examine the witness to be called by the Plaintiff and to make final submissions to the Court.

**The Plaintiff’s injury**

1. After the Accident, the Plaintiff was sent to the Accident & Emergency Department (“**A&E Department**”) of Tuen Mun Hospital (“**the Hospital**”) for examination and treatment.
2. The Medical Report made by Dr Au Wing Kiu Catherine of the Hospital dated 28 October 2016 stated, *inter alia*, that on admission to the A&E Department, the Plaintiff was found to have laceration wound over his left upper eyelid, irregular pupil with iris protruded from its border, associated with hyphaema and decreased eyeball tension. The computed tomography of the orbits showed that the left eyeball was ruptured with lens displacement. The Plaintiff was transferred to the Department of Ophthalmology for treatment.
3. The Medical Report made by Dr Carol Tang of the Department of Ophthalmology of the Hospital dated 21 December 2016 stated, *inter alia*, that upon presentation, it was found that there was no light perception of the Plaintiff’s left eye visual acuity. Slit-lamp examination showed left eye full hyphaema with vitreous and bloody discharge. Emergency repair of the left ruptured eyeball was performed on 13 July 2016. It was further found intraoperatively that there was left extensive scleral-corneal laceration with corneal tissue loss and uveal prolapse, and there was no anterior chamber view due to full hyphaema. Upper eyelid laceration involving the lid margin was also discovered.
4. The Plaintiff was granted intermittent sick leave since the Accident up to 16 January 2017 for about 6 months in total.
5. By an Order of Master Peony Wong dated 18 November 2019, the Plaintiff was granted leave to adduce expert medical evidence in ophthalmology, and the Plaintiff shall rely upon the Expert Report made by Dr Kenneth Ng dated 21 February 2020.
6. Dr Ng examined the Plaintiff on 12 February 2020. Dr Ng stated in the Expert Report that the Plaintiff “allegedly sustained a severe penetrating injury to his left eye by a foreign object in the course of employment on 13 July 2016. The corneoscleral laceration and the damage to the internal ocular structure resulted in total blind of the left eye despite the emergency operation conducted on the same day. Phthisis bulbi was resulted. This end-stage ocular condition is due to loss of turgidity of the globe as a result of marked reduction in aqueous homour production from the severely damaged ciliary epithelium of the eye. The clinical findings and the subsequent progress of [the Plaintiff]’s left eye were consistent with the mode of the penetrating globe injury.”
7. Dr Ng further commented that the flaccid non-functioning left globe shrunk in volume with time resulted in sinking of the globe into the bony socket. The sunken left eye is a cosmetic blemish. There was no pre-existing ocular condition suffered by the Plaintiff and the injuries suffered by him were all caused by the alleged Accident.
8. According to Dr Ng, the treatment provided and the sick leave granted to the Plaintiff was considered appropriate.
9. Dr Ng opined that as a result of the complete loss of left eye vision, the Plaintiff has suffered 20% permanent impairment of the visual system. Another 2% impairment of the whole person was granted for the facial disfigurement due to sinking of the left globe as a result of phthisis bulbi. The combined impairment of the whole person would be 22%. The Plaintiff would be capable of taking up employment as janitor, porter, carpark attendant and waiter.
10. The Plaintiff, as advised by Dr Ng, should be able to carry out most of his usual activities of daily living. However, with the impaired depth and three-dimensional perception, the Plaintiff was advised to walk downstairs with extra caution.
11. Dr Ng suggested that enucleation of the phthisical left eye combined with placement of a Medpor implant in the bony orbit may be considered to increase the orbital volume, and an ocular prosthesis is to be fitted afterwards. The total charge would be around $120,000 to $150,000 in the private sector, while the cost would be $10,000 in the public sector.

**The Plaintiff’s background**

1. The Plaintiff was born on 24 April 1965 and was aged 51 at the time of the Accident.
2. The Plaintiff had been working with the 1st Defendant since 2015. The Plaintiff stated in the Supplemental Witness Statement dated 24 November 2020 that, at the time of the Accident, the Plaintiff received a daily wage of $650 plus $50 meal allowance. In the month prior to the Accident, the 1st Defendant told him that his daily wage would be increased by $50 to $700 starting from July 2016. Together with the meal allowance, the daily salary would be $750.
3. The Plaintiff further claimed that he intended to take courses and to sit for an examination in order to obtain the electrician licence. He said that but for the Accident, he would have obtained the Grade A licence and become an electrical works master within 1 to 2 years. The daily wage of an experienced electrical work master was about $1,000 to $1,200 at the time of the Accident.
4. As a result of the Accident, the Plaintiff was on sick leave until 16 January 2017. In respect of post-Accident work, the Plaintiff made attempts to find work and did manage to find odd jobs occasionally for a few days in a month as a casual renovation sundry worker and cleaner earning $300 to $400 a day. From 1 August 2017 to 31 March 2019, the Plaintiff worked as a cleaning worker for Lapco Service Limited earning about $11,071 per month on average. From 1 April 2019 to 31 March 2020, the Plaintiff was employed as a cleaning worker by Baguio Cleaning Services Company Limited earning about $13,500 per month. From 1 April 2020 up to the present time, he has been working as a cleaning worker for Johnson Cleaning Company earning about $14,500 per month.

***Factual findings***

1. The Plaintiff was the only person to be called to give oral evidence at the Assessment of Damages. He adopted the Witness Statement dated 10 February 2020 and the Supplemental Witness Statement dated 24 November 2020 as his evidence in chief. He was cross examined by the 1st Defendant in person and counsel for the 3rd Defendant at the assessment hearing.
2. The Plaintiff gave testimony in a straightforward manner. I consider the Plaintiff to be an honest witness. Whether his evidence is entirely reliable will be discussed below. I also accept with the expert evidence of Dr Ng.
3. With the helpful assistance rendered by Ms Phillis Loh, counsel for the Plaintiff, and Mr Timmy Yip, counsel for the 3rd Defendant, most items of damages are not disputed leaving 2 unresolved for the Court’s determination, namely the pre-trial and post-trial loss of earnings. The 1st Defendant acting in person was present at the Assessment of Damages. His submissions have been taken into account. The Court will have to exercise independent judgment over all the claimed items although some of which are not disputed by the 3rd Defendant.

**PSLA**

1. The Plaintiff claims a sum of $650,000 for damages for PSLA. In support of the claim, Ms Loh relied upon the following cases.
2. In ***Ho Yam Pan v Tse Tak Ming t/a Ken’s Co.***, HCPI 91/1996 (unreported, 16 April 1997), when the plaintiff was operating a cutting machine, the cutting blades of the machine broke into pieces, some of which hit the plaintiff's right eye. His right eye bled severely. The expert found that there was no light perception of the right eye, and assessed the permanent disability of the right eye to be 100%. PSLA was assessed at $450,000.
3. In ***Hang Huu Duc v Hanbo Engineering Ltd***, HCPI 172/2004 (unreported, 14 November 2005), the plaintiff tried to hammer a steel cement nail through a wooden plank and into an iron or steel tube. The nail rebounded, and hit him in the left eye. He lost his sight in that eye. PSLA was assessed at $550,000.
4. In ***Nguyen Van Vinh v Cheung Ying Construction Engineering Ltd & Anor***, HCPI 1173/2004 (unreported, 27 May 2008), when the plaintiff was hammering at a screw, a concrete chip bounced up from the force of the hammering and entered his left eye resulting in total blindness thereof. PSLA was assessed at $500,000.
5. Ms Loh submitted that the injury of the Plaintiff in the present case should be placed in the middle range of “serious” injury category. She also referred me to paragraph 22 of the judgment in ***David John Slater v Commissioner of Police***, HCPI 646/2012 (unreported, 7 July 2017) in that, having considered inflation, “serious” Injury category should start at $530,000.
6. While Mr Timmy Yip, counsel for the 3rd Defendant, had no dispute on this item, he submitted the following cases to assist the court’s consideration herein.
7. In ***Kan Kwok Cheung v Cheung Chung***, HCPI 947/2008 (unreported, 21 June 2010), the plaintiff used an electric breaker to remove wall tiles and felt something penetrated his left eye. He suffered total loss of vision of the left eye together with loss of the left eyeball causing severe cosmetic problem. Psychiatrically, the plaintiff suffered from symptoms similar to those of post-traumatic stress disorder. PSLA was assessed at $680,000.
8. In ***Huang Xiao Chun v 蔡榮全***, HCPI 368/2010 (unreported, 11 September 2012), when the plaintiff was operating an electrical saw, the rotating blade hit his face resulting in facial laceration across his right forehead, eyelids, eyeball, nose and lips. Urgent operation to suture the eyelids, facial lacerations, and repair of right eyeball was performed. Eventually, his right eyeball was removed and an orbital implant was inserted. PSLA was assessed at $600,000.
9. In the present case, considering the injury suffered by the Plaintiff, impact of the blindness of the left eye and the disfiguring look as a result of his sunken left eye globe, I agree that the appropriate figure for PSLA should be $650,000.

**Pre-trial loss of earnings**

1. The factual disputes between the Plaintiff and the 3rd Defendant are (1) whether in the month prior to the Accident, the 1st Defendant had agreed to increase the Plaintiff’s daily wage by $50 to $700 starting from July 2016, and (2) whether the Plaintiff would have obtained the electrician licence in 1 to 2 years but for the Accident.
2. For the first issue, the 3rd Defendant argued that the allegation was not supported by any evidence apart from the Plaintiff’s own allegation. Further, the Plaintiff made no mention of this piece of information in his 1st Witness Statement dated 10 February 2020. It was not until the Supplemental Witness Statement dated 24 November 2020 that he informed the Court and the other side of this the first time. That was put to the Plaintiff under cross examination, and the Plaintiff replied that he omitted to mention the same in the 1st Witness Statement.
3. In fact, in the 1st Witness Statement, the Plaintiff simply stated that before the Accident he was an electrical worker with an average monthly salary of $14,500. No breakdown or other details were provided. His omission was not only limited to the alleged agreement to increase the basic salary. He also omitted to mention how his monthly wage was quantified. It was not until the Supplemental Witness Statement that the Plaintiff stated specifically that the monthly salary comprised daily wage and meal allowance, and at the time of the Accident the daily wage was $650 plus meal allowance of $50. Adopting the average working day of 24 per month, the average monthly salary was $16,800.[[1]](#footnote-1) He also disclosed that the 1st Defendant agreed to increase his daily wage by $50 starting from July 2016. It is true that the evidence disclosed in the Supplemental Witness Statement was far more detailed than those in the 1st Witness Statement. The Plaintiff is now aged 56 and has not completed secondary two educations. Given the Plaintiff’s working experience and education level, I accept that it is possible for the Plaintiff’s omission when the 1st Witness Statement was prepared. I do not think much significance or criticism could be made to that omission.
4. In cross examination by the 1st Defendant in person at the assessment hearing, the 1st Defendant put to the Plaintiff that while the 1st Defendant did mention to the Plaintiff about the increase of daily salary by $50, the 1st Defendant did not specify the starting month. The Plaintiff disagreed. It was noted that the 1st Defendant failed to appear in any of the Checklist Review Hearings, nor did he file any witness statement in these proceedings. The 1st Defendant was debarred from calling any witnesses on quantum at the Assessment of Damages. As such, there is no contrary evidence from the 1st Defendant to challenge the Plaintiff’s case.
5. Having considered the totality of the evidence, I accept the Plaintiff’s case that his daily wage would be increased from $650 to $700 starting from July 2016. Together with the meal allowance of $50, the daily wage would be $750.
6. The next issue is whether the Plaintiff would have obtained the electrician licence in 1 to 2 years but for the Accident. As a starting point, there is no dispute that the Plaintiff cannot work as an electrical worker or electrician after the Accident. The question is whether, on balance of probabilities, the Plaintiff could have obtained the Grade A electrical work license but for the Accident, and if so, when.
7. The Plaintiff’s case is that he was asked by his friend to take course organised by the electrician association and to sit for the examination in order to obtain the Grade A electrician license. He was told that it would usually take 1 to 2 years to obtain the license.
8. Mr Yip criticised that the Plaintiff failed to mention about his intention to obtain the license in his 1st Witness Statement, failed to take any steps to enrol for the relevant course before the Accident, and failed to check the relevant requirements before he could apply for the license.
9. It is true that the Plaintiff had not enrolled for any electrical course, nor did he take steps to check whether he was eligible for registration as Grade A electrical worker prior to the Accident. But the absence of all these steps to be taken by the Plaintiff does not necessarily follow that the Plaintiff did not have a genuine intention to become a licensed electrician. When testified, the Plaintiff’s explanation was that he changed to work as an electrical work since 2014/2015 and joined the 1st Defendant in 2015. At first, he did not know whether this kind of work was suitable for him. After more than one year’s work in this field, he considered that he was interested in electrical work which also offered better paid. I accept the Plaintiff’s evidence. I consider that the Plaintiff is a simple and unsophisticated person. He is certainly hardworking and eager to equip himself for his work. He also indicated to the Court of his determination to go for the examination in order to obtain the Grade A license.
10. Mr Yip referred the Plaintiff to the qualification requirements for registration as Grade A electrical worker issued by the Electrical and Mechanical Services Department. The qualification requirements are as follows:

“A Grade A applicant must have the qualifications and experience listed in EITHER (a), (b) OR (c):

(a)

* + 1. completed a registered contract of apprenticeship under the Apprenticeship Ordinance (Cap. 47) in the trade of electrical fitter or electrician and
    2. holds a craft certificate in electrical engineering issued by the Hong Kong Institute of Vocational Education; and
    3. has at least one year of practical experience in electrical work.

(b) has been employed as an electrical worker for at least five years, at least one year of which included practical experience in electrical work and

* + 1. holds a Certificate of the Electrician or Electrical Fitter Upgrading Course issued by the Electrical Industry Training Centre of the Vocational Training Council or an equivalent qualification; or
    2. passed an examination or trade test approved or set by the Director of Electrical & Mechanical Services.

(c) has qualifications and experience that are equivalent to those required under either (a), or (b).”

1. The Plaintiff accepted in cross examination that he had no idea about the qualification requirements. He simply relied on the information provided by his friend who had already obtained the license. Accordingly, his own estimate that it would only take 1 to 2 years to obtain the license may not be entirely reliable.
2. Under the qualification requirements, there is no evidence that the Plaintiff has completed a registered contract of apprenticeship or he did hold a craft certificate in electrical engineering. It appears that the possible route for the Plaintiff to obtain the license would be para (b) which requires him to work as an electrical worker for at least 5 years, and one of which should include practical experience in electrical work.
3. The Plaintiff’s evidence is that he changed to engage in electrical work in 2014/2015. In the year 2015, he started working with the 1st Defendant as a casual worker in which 30% of his work involved electrical works. The electrical work proportion had been increased to 40% at the time of the Accident. As such, the earliest possible time for the Plaintiff to be eligible for applying for registration as a Grade A electrical worker would be in the year 2019/2020.
4. Based on the above, I accept that the Plaintiff would have become a licensed electrical worker as from 1 January 2020.
5. For the period from 13 June 2016 to 31 December 2019 (42.6 months), the Plaintiff would have continued to work with the 1st Defendant at a monthly salary of $18,000 ($750 x 24), and the pre-trial loss would be:

$18,000 x 42.6 months = $766,800.

1. The Plaintiff produced a bundle of letters issued by the HK and Kowloon Electrical Engineering & Appliances Trade Workers Union showing the daily salaries of an electrical worker from 2016 to 2019. As from 1 November 2019, their daily salary would be $1,450.
2. Notwithstanding the figures provided by the Trade Workers Union, the Plaintiff assumed in his quantification that by August 2018, he would be able to earn $1,000 per day, and as at the date of the Assessment, $1,250 per day. Ms Loh adopted a median of $24,000 for the period between August 2018 and the date of Assessment. Given my ruling that the Plaintiff would be able to become a licensed electrical worker from 1 January 2020, the pre-trial loss for the period between 1 January 2020 and the date of Assessment (i.e. 20.3 months) will be:

$24,000 x 20.3 months = $487,200.

1. The Plaintiff accepted that credit should be given to his post-accident earnings in the total sum of $649,276. Hence, the total pre-trial loss will be:

[$766,800 + $487,200 - $649,276] x 1.05 = $634,960.

**Post-trial loss of earnings**

1. The Plaintiff is currently earning $14,500 per month. Given my ruling on the pre-trial loss, namely that the Plaintiff should be able to become a licensed electrician earning a monthly sum of $30,000 at the date of the Assessment, the appropriate multiplicand for the post-trial loss of earnings should be $30,000 - $14,500 = $15,500.
2. In respect of the appropriate multiplier, the Plaintiff argued that the retirement age as a licensed electrician should be at least 65. The 3rd Defendant nevertheless contended that the nature of work of an electrician would be inherently more dangerous and required high concentration and steadiness. The 3rd Defendant submitted that the retirement age should be somewhere between 60 to 65.
3. However, the 3rd Defendant admitted that there is no evidence of common retirement age of an electrician, and the work of an electrician may not be as labourious as a construction site worker. In fact, there was no evidence against the Plaintiff’s averment that he would continue to work until 65.
4. It was agreed between the Plaintiff and the 3rd Defendant that, if I am satisfied that the Plaintiff’s retirement age should be 65, the discount rate for working life not exceeding 10 years should be 1% and the appropriate multiplier should be 8.4.[[2]](#footnote-2)
5. In the circumstances, the post-trial loss of earning will be:

$15,500 x 12 x 8.4 x 1.05 = $1,640,520.

**Loss of earning capacity**

1. The purpose of an award under this head is to compensate a plaintiff for the disadvantage that he may suffer as a result of the injuries caused by the accident (***Chan Wai Tong v Li Ping Sum*** [1985] HKLR 176 at 183B-D).
2. In the cases of ***Ho Yam Pan*** and ***Hang Huu Duc***, the plaintiffs, aged 29 and 33 at the time of the accident respectively, was awarded a lump sum of $150,000 under this head. In ***Huang Xiao Chun’s*** case, this item was assessed by 36 months of the plaintiff’s income as a sedentary job. At the time of the hearing, the plaintiff was aged 42.
3. The Plaintiff and the 3rd Defendant agreed that the amount of damages should be $100,000. Taking into account the Plaintiff’s current monthly earning of $14,500, a lump sum of $100,000, representing a sum of slightly more than 6 months of his current salary, should be reasonable and appropriate.

**Special damages**

1. The Plaintiff claims the respective sums of $1,000, $800 and $2,500 as medical expenses, travelling expenses and tonic food respectively, totalling $4,300. The 3rd Defendant does not raise any objection. I consider that the amount claimed is reasonable, and should be allowed in full.

**Future expenses**

1. The Plaintiff claims a sum of $12,000 being the future medical expenses for the costs of the operation and fitting of ocular prosthesis in public sector together with follow up treatment and medication. That was supported by the expert evidence of Dr Ng. I consider that it is reasonable for the Plaintiff to claim the costs of the operation based on the figure in public sector.
2. The Plaintiff also claims for loss of earning as a result of the sick leave after the operation in the sum of $4,833 ($14,500 x 1/3 months). I consider that the claim is reasonable and should be allowed in full.
3. The total sum under this head would be $16,833.

**Summary**

1. The damages awarded to the Plaintiff are summarised below:

|  |  |  |
| --- | --- | --- |
| (a) | PSLA | $650,000 |
| (b) | Pre-trial loss of earnings | $634,960 |
| (c) | Post-trial loss of earnings | $1,640,520 |
| (d) | Loss of earning capacity | $100,000 |
| (e) | Special damages | $4,300 |
| (f) | Future medical care and loss of earnings | $16,833 |
|  | **Sub-total** | **$3,046,613** |
|  | Less: Employees’ compensation | ($677,876) |
|  | **Total** | **$2,368,737** |

**Interest and costs**

1. Interest will be awarded at 2% per annum on damages for PSLA from the date of the writ to the date of judgment. Interest on pre-trial loss and special damages will be awarded at half the judgment rate from the date of the incident to the date of judgment. The Plaintiff’s solicitors are directed to calculate the amount of interest to be included in the judgment.
2. I also make a costs order *nisi* that:
3. Costs of the Assessment of Damages shall be paid by the 1st and 2nd Defendants in favour of the Plaintiff, including all costs previously reserved, with certificate for counsel, to be taxed if not agreed.
4. There be no order as to costs as between the Plaintiff and the 3rd Defendants.
5. The Plaintiff’s own costs shall be taxed in accordance with the Legal Aid Regulations.
6. I have directed my Clerk to inform the 1st Defendant that, if he so requests, a Court Interpreter can be arranged to translate this Judgment to him in the *punti* dialect in the District Court at a mutually convenient date and time.
7. Lastly, I thank both counsel for their able assistance.

(Matthew Leung)

Master of the District Court

Ms Phillis Loh, instructed by Messrs Tang, Wong & Chow, assigned by the Director of Legal Aid, for the Plaintiff

The 1st Defendant appeared in person

The 2nd Defendant was not represented and did not appear

Mr Timmy CH Yip, instructed by Messrs Gallant, for the 3rd Defendant

1. In fact, it was decided by the Court in the related employees’ compensation claim of the Plaintiff that the average monthly income of the Plaintiff at the time of the Accident was $16,800. See ***Yuen Nui Tong v. Lee Kam Chuen and anor*** [2021] HKDC 509. [↑](#footnote-ref-1)
2. See Table 9, Personal Injury Tables Hong Kong 2019. [↑](#footnote-ref-2)