## DCPI 1909/2007

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1909 OF 2007

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BETWEEN

WONG YUN SAN Plaintiff

and

CHEUNG YUE YIU trading as

RADIO ENGINEERING CO. Defendant

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

Coram: Deputy District Judge Richard Khaw in Court

Date of Hearing: 15July 2008

Date of Handing Down Judgment: 21 July 2008

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ASSESSMENT OF DAMAGES

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**Background**

1. In this action, the Plaintiff claims damages arising from an accident which occurred on 18November 2004. As no intention to defend was given, interlocutory judgment (“the judgment”) was entered against the Defendant on 28February 2008 with damages to be assessed. The Defendant has neither taken any step nor appeared in the present proceedings.
2. The hearing of the assessment of damages took place before me on 15 July 2008. The Defendant was absent notwithstanding that notice of hearing dated 12 June 2008 was sent to both the Plaintiff and the Defendant. Further, I was informed by Ms Lam, solicitor acting for the Plaintiff, that the hearing bundle, amongst others, was served on the Defendant on 10 July 2008 and an affirmation of service was produced. I was therefore satisfied that I should proceed to determine the matter in the absence of the Defendant.
3. On 26 June 2008, leave was granted to the Plaintiff to the effect that the name of the Defendant be changed from “CHEUNG YUE YIU trading as RODIO ENGINEERING CO.” to “CHEUNG YUE YIU trading as RADIO ENGINEERING CO.” Obviously, the change was effected in order to rectify a genuine typographical error. The error should not give rise to any doubt as to the identity of the Defendant. Neither should it cause the Defendant any material prejudice. In the hearing, upon the Plaintiff’s application, I granted leave to the Plaintiff to also amend the judgment for the purpose of correcting the same mistake.
4. The Plaintiff was the only witness called to give evidence. The Plaintiff engaged Dr Johnson C K Lam (“Dr Lam”), a specialist in orthopaedics and traumatology, as his medical expert. The Plaintiff in the hearing sought leave to rely on Dr Lam’s report dated 22 September 2006 without calling him to give evidence. Such leave was granted.

**Injuries, treatment and prognosis**

1. According to the Plaintiff’s case, the accident happened on 18 November 2004 when he was working in the course of employment with the Defendant in a house in Palm Springs, Yuen Long, New Territories. The Plaintiff’s left index and middle fingers were injured when he was using a circular saw to do woodwork.
2. Immediately after the accident, the Plaintiff attended the Accident & Emergency Department of Tuen Mun Hospital where he was found to have sustained a crush injury to his left middle and index fingers. There was pulp loss in his left index finger and a deep laceration in the middle finger exposing extensor tendon over proximal interphalangeal joint (“the PIPJ”). X-ray showed communited intra-articular fracture of the condyle of the proximal phalanx of the left middle finger.
3. Surgery for open reduction, internal fixation and extensor repair was carried out on 19 November 2004. A few days afterwards, the Plaintiff underwent another operation to resurface the left index finger with a local flap advanced to cover the defect in the left index finger by way of skin graft taken from the wrist.
4. The Plaintiff was then followed up regularly in the Department of Orthopaedics and Traumatology of Tuen Mun Hospital and also received both physiotherapy and occupational therapy. Despite treatment, there was residual stiffness in the left middle finger, numbness in the pulp of the left index finger and nail deformity in the left index finger. Power grip of the left hand was weakened. There was also a skin nodule over the wound of his left middle finger, presumably a stitch granulome.
5. Sick leave from 18 November 2004 to 29 June 2005 was given to the Plaintiff by Tuen Mun Hospital.
6. On 18 September 2006, the Plaintiff was seen by Dr Lam who found the following upon physical examination of the Plaintiff’s condition:-
   * 1. In respect of the left index finger, there was “hooking” of the nail related to loss of bone support of the nail plate and nail bed and the padding over the distal phalanx was reduced. There was also a 5 cm scar over the ulnar side of that finger used for harvesting and advancing a kite-shaped local flap to cover the defect of skin loss of the pulp. There was mild tenderness along the scar and the sensation along the scar as well as over the skin flap was reduced.
     2. In respect of the left middle finger, there was a 5 cm scar over the dorsum of the PIPJ as a result of the operation for open reduction and internal fixation. There was a nodule over the scar (which was consistent with a stitch granuloma) with tenderness on palpation. There was also swelling over the condyle on the ulnar side of the PIPJ.
7. During his consultation with Dr Lam, the Plaintiff complained of, amongst others, pain over the PIPJ of the left middle finger with increased pain with exertion, pain and decrease in sensation over the left index finger, tremor of the left hand on exertion and movement of finger joints, and stiffness of left middle finger and weakness of the left hand grip. According to the evidence given by the Plaintiff in the hearing, these matters complained of still exist.
8. According to the report, the treatment received by the Plaintiff was appropriate and adequate save that a minor surgery of excision for the nodule on the left middle finger was recommended. However, in the course of giving evidence, the Plaintiff said that he was not prepared to undertake the recommended surgery due to fear of possible complications.
9. Dr Lam also expressed the following views:-
   * 1. The total impairment to the whole person was assessed to be 8% (5% arising from the injuries to the left index finger and 3% arising from the injuries to the left middle finger).
     2. The Plaintiff’s pre-accident job required him to perform a variety of duties including manual lifting of heavy objects, plumbing and work which needed strength and dexterity of the hands. In view of his injuries, he should be able to return to work as a general decoration worker but with limitation. Alternatively, he should be able to do work involving light to medium degree of physical demands of the hands such as that of a security guard, shopkeeper or a car park attendant.
     3. The period of sick leave given is appropriate.
10. Apart from the injuries and disabilities set out above, the Plaintiff also gave evidence that he felt embarrassed by the deformity of his left index finger.
11. In respect of the matters set out in paragraphs 5 to 14 above, I accept the evidenced adduced by the Plaintiff and also contained in the relevant medical reports. In any event, such evidence has never been challenged.
12. I will now deal with the items of loss and damage claimed in the Plaintiff’s Revised Statement of Damages and also Opening Submissions.

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

1. Ms Lam referred me to *Chan Ming Yat v Youh Eng Lai Michael trading as Prime Industrial Company (Hong Kong)*, unrep., DCPI 201/2003, 5 June 2004, and *Ho Shu Yau v Lo Siu Ling formerly trading as Chi Wo Civil Engineering Company and Anor.*, HCPI 1336/2000, unrep., 31 January 2002 and submitted that similar injuries were considered in those decisions which are relevant to the assessment of the PSLA award.
2. I have also considered *Yiu Pau Yau v Co-Ray Design & Construction Limited*, unrep., DCPI 864/2006, 3 May 2007, *Chow Kai Kit v International Paper Manufacturing & Distribution Limited & Others*, DCPI 1415/2006, unrep., 3 December 2007 and the cases involving injuries to fingers considered in those decisions.
3. Both *Chan Ming Yat* (above) (in which a sum of HK$180,000 was awarded for PSLA) and *Ho Shu Yau* (in which PSLA was assessed to be HK$120,000) concerned injuries to one finger as opposed to two in the present case. However, it was submitted by the Plaintiff that in *Chan Ming Yat*, besides open fracture of the proximal phalanx and dislocation of the PIP joint of the left finger, the plaintiff also suffered rupture of collateral ligament of the PIP joint and contused ulnar digital nerve and artery.
4. In view of the above, I accept that the sum of HK$150,000 claimed for PSLA by the Plaintiff is reasonable and I so award.

**Loss of earnings**

1. The Plaintiff was born on 28 September 1980. He received education up to the level of Form 5 in Hong Kong.
2. The Plaintiff started working as a decoration worker about 3 to 4 years prior to the accident.
3. The Plaintiff has not produced any document to show either his pre-accident or post-accident income. The Plaintiff’s evidence is that at the time of the accident, he, as a decoration worker, was earning a daily income of HK$300 and on average he worked about 26 days per month. Hence, the Plaintiff alleged that his average monthly income at that time was about HK$7,800. Such evidence has never been challenged and I accept the same.
4. However, after the accident, the Plaintiff was unable to resume any kind of gainful employment until November 2006 i.e. about 17 months after sick leave. According to the Plaintiff, shortly after the expiry of the sick leave period, the Plaintiff took steps to apply for jobs such as security guard in the airport and also warehouse assistant but such attempts were eventually not successful.
5. In November 2007, the Plaintiff managed to find work as a decoration worker on a temporary basis. The Plaintiff, however, said that due to the injuries and disabilities, he had from time to time been required to work under the supervision of a senior worker or master since he resumed work. Further, his work efficiency was reduced.
6. Insofar as the above information regarding loss of income is concerned, I wish to make the following observations:-
   * 1. Presumably, the Plaintiff should have been expected to return to some kind of gainful employment shortly after the expiry of the sick leave period (i.e. 29 June 2005), the length of which was considered appropriate by Dr Lam. Having taken about 17 months after sick leave before resuming work is, in my view, much longer than reasonable. On the other hand, I accept that the Plaintiff should have been allowed time to look for work after sick leave. I have decided to assess damages for the Plaintiff on the basis that he should have been able to find a suitable job in late September 2005, about 3 months after the sick leave period (see, for example, *Iau Kau Ih v Wan Kei Geotechnical Engineering Co Ltd & Ors* [2002] 4 HKC 76; and *Chong Yiu Tat v Fong Man Chi & Others*, HCPI 742/2001, unrep., 24 December 2003).
     2. The Plaintiff should at least have been able to produce some documentary evidence regarding the income he had earned prior to the accident. Whilst I find his failure to provide anything in this respect far from satisfactory, I accept his evidence that he has been earning less as a result of the accident. This is consistent with Dr Lam’s view that the Plaintiff can return to pre-accident work albeit with some limitation.
     3. I therefore adopt the sum of HK$6,000 (HK$300 x 20 working days) as the average monthly income that the Plaintiff would have been earning since late September 2005.
7. In the circumstances, the Plaintiff’s loss of earnings is assessed as follows:-
   * 1. Pre-assessment loss:-

HK$7,800 x 224 days (sick leave)/30 +

HK$7,800 x 3 months +

(HK$7,800 – HK$6,000) x 33.5 months = HK$141,940

(2) Post-assessment loss:-

(HK$7,800 – HK$6,000) x 12 months x 15 (multiplier)

= HK$324,000

**Special damages**

1. I allow the Plaintiff’s claim for special damages in the total sum of HK$4,160 (consisting of medical expenses of HK$1,660, maintenance fee for hospitalisation of HK$700, travelling expenses of HK$800 and tonic food of HK$1,000).

**Deductions**

1. The Plaintiff gives credit for periodic payment received in the sum of HK$13,000 and the employees’ compensation (“the EC Award”) in the sum of HK$101,632. During the course of the hearing, I asked Ms Lam to confirm if the EC Award had already included the periodic payment so as to avoid any risk of double deductions. I was then given to understand that periodic payment had already been deducted when the net EC Award was made. Hence, there will not be any double deduction if the Plaintiff now gives credit for the sums of HK$13,000 and HK$101,632. I therefore order that the two sums should be deducted from the amount of damages now assessed.

**Summary of quantum**

1. The items of the Plaintiff’s claim as assessed above can be summarised as follows:-
   * 1. PSLA HK$150,000
     2. Pre-assessment loss of earnings HK$141,940
     3. Post-assessment loss of earnings HK$324,000
     4. Special damages HK$4,160

SUBTOTAL: HK$620,100

Less

(1) Periodic payment HK$13,000

(2) EC Award HK$101,632

TOTAL: HK$505,468

**Interest**

1. I award interest as follows:-
   * 1. Interest on all pre-trial special damages is to run from the date of accident to the date of this assessment at half the judgment rate per annum.
     2. Interest on the award for general damages, namely, PSLA, is to run from the date of service of the writ until the date of this assessment at 2% per annum.
     3. Interest after the date of this assessment is to run at the judgment rate until payment.

**Costs**

1. I make an order *nisi* that costs of this action be paid by the Defendant to the Plaintiff, to be taxed if not agreed and that the Plaintiff’s own costs be taxed in accordance with Legal Aid Regulations.

(Richard Khaw)

Deputy District Judge

Ms Christine W.Y. Lam of Messrs Yip, Tse & Tang for the Plaintiff.

The Defendant, absent