## DCPI 2135/2009

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

**PERSONAL INJURIES ACTION NO. 2135 OF 2009**

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

BETWEEN

FU CHUEN SING Plaintiff

and

RYAN (HK) LIMITED Defendant

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

Coram: Before Master S. Lo in Court

Date of hearing: 27 July 2010

Date of handing down Judgment : 5 August 2010

ASSESSMENT OF DAMAGES

INTRODUCTION

1. This is a hearing for the assessment of damages for personal injures arising out of an accident happened on 11 March 2008 as the Plaintiff had entered default judgment on liability on 21 January 2010.

PLAINTIFF’S INJURIES, TREATMENTS AND CONDITIONS

1. According to the Plaintiff’s description, he sprained his back (“chok”) when he was trying to stop the sudden falling of papers. He thought that it was not serious and did not go to seek treatment immediately after the injury. He thought that it was muscle pain at his back and it was not a big problem. He went back home and took a rest. However, the pain persisted. He went to see a doctor on 13 March 2008 (2 days later) and was referred to Tuen Mun Hospital (“TMH”). He went to TMH on 14 March 2008 (3 days later).
2. According to A&E of Pok Oi Hospital (“POH”), he attended A&E of TMH on 14 March 2008. X-ray of lumbosacral spine was done which showed no fracture. He had persistent lower back pain since then. He attended A&E of POH on 19 July 2008. On physical examination, he had no tenderness of spine and his range of movement of lumbosacral spine was full but mildly limited by pain. The diagnosis is lower back pain post injury.
3. According to Tuen Mun Clinic (“TMC”), the Plaintiff was found to have tenderness over lower lumbar spine when he attended follow-up sessions.
4. According to Madam Yung Fung Shee Health Centre (“YFSHC”), the Plaintiff had low back pain and tenderness at the paraspinal muscles on the left side of lumbar spine. His forward flexion of the back was to knee level. The extension of the back was limited.
5. Yuen Long Jockey Club Health Centre (“YLJCHC”) also noted that the Plaintiff had mild tenderness over lower back and mild limitation in movement of his back on physical examination.
6. The Plaintiff was given analgesics and sick leave. He was not hospitalized.
7. The Plaintiff was also given 28 sessions at Physiotherapy Department of TMH which included shortware diathermy, mobilization and strengthening exercises and condition training.
8. He was further given 1 work assessment session and 2 sessions for occupational therapy and then discharged with home program and stretching exercise taught.
9. He attended 5 sessions at YFSHC, 46 sessions at YLJCHC, 2 sessions at TMC, 1 session at TMH and 1 session at POH for out-patient follow-up.
10. According to the Physiotherapy Report, on final clinical assessment before discharge on 8 August 2008, Plaintiff had 70% improvement. His walking and sitting were not limited. The range of movement of back was full in all direction with pain over left side of lower back. He still complained of back pain.
11. YFSHC noted that Plaintiff still had low back pain but the pain had improved by 70% in August 2008. Examination showed minimal tenderness at the left paraspinal area with forward flexion to both shins.
12. Physiotherapy Department of TMH suggested that Plaintiff could resume modified duty but avoid lifting heavy objects.
13. Occupational Therapy Department of TMH noted that there was no specific limitation in his sitting and standing tolerance but his crouching tolerance was 10 minutes limited by stretching back pain. It concluded that Plaintiff had inadequate lifting capacity and work tolerance. He marginally matched with previous job with certain degree of limitation but ready for open employment with lower job demand.
14. Employees’ Compensation (Ordinary Assessment) Board assessed that the Plaintiff suffered “Back injury resulting in persistent back pain” and loss of earning capacity of 0.5%.
15. Plaintiff’s complaints are as follows:-

* back pain when walking up and down stairs
* right shoulder and neck pain, right arm cramp
* unable to bend his back below 90 degrees, unable to stand for more than 1-2 hours, unable to sit for more than 30 minutes
* sexual activity affected by back pain
* unable to participate in sports activities such as playing basketball, swimming and running

1. The Plaintiff produced sick leave certificates for 2 days (13-14 March 2008) given by private doctor Dr. Chan Ching Sou and for around 5 months given by public clinics (28 March – 10 September 2008). The sick leave period certified by Employees’ Compensation (Ordinary Assessment) Board was for a total of 218 days (intermittent during the period from 13 March 2008 to 4 November 2008).
2. At the time of the accident, the Plaintiff was as a “distributor on overnight shift”, which was in fact a delivery worker of newspapers and magazines.
3. The Plaintiff attempted to resume working for the Defendant for light duty office work on 5 April 2008, despite that he was still on sick leave. There was no such light duty work available and he was re-deployed to his previous job which he could not cope with on 15 May 2008. He was inured again on 18 June 2008.
4. According to the Plaintiff, he resumed working on 1 September 2008 when he changed his job to a salesman for a cable TV company. He earned an average monthly income of $20,245.43 for the period from 1 September 2008 to 31 March 2009. He changed to work for another cable TV company on 28 October 2009 and earned an average monthly income of $14,651.20 for the period from 28 October 2009 to 31 March 2010.

PSLA

1. Mr. Lai, Counsel for the Plaintiff, submitted the following 5 cases in relation to the back spraining injury for my consideration:-
2. *Sulakhan Singh v. Federal Securities Limited and Another* DCPI No. 231 of 2007 (HH Judge H.C. Wong / 6 June 2008);
3. *Ng Ting Chun v. Chung Man Chun Philip* DCPI No. 1070 of 2007 (DDJ J. Ko / 19 June 2008);
4. *Cheung Sik Kwan v. Lam Sau Mui* DCPI No. 126 of 2003 (HH Judge H.C. Wong / 30 June 2004);
5. *Chan Kwok Chu v. Morning Spring Limited trading as Edo Restaurant* DCPI No. 355 of 2007 (HH Judge Mimmie Chan / 20 December 2007);
6. *Ahmed Masood v. Chung Kau Engineering Company Limited* DCPI No. 517 of 2003 (HH Judge Marlene Ng / 28 January 2005).
7. Mr. Lai submitted that the Plaintiff’s injuries are more serious than Sulakhan Singh’s case and Ng Ting Chun’s case. I cannot agree with him. In Sulakhan Singh’s case, the Plaintiff suffered not only lower back pain but also soft tissue injures. On that basis, the learned judge awarded $60,000 under this head. In Ng Ting Chun’s case, the Plaintiff also suffered from soft tissue injury of his back although the learned judge considered mild sprain of the back suffered by the Plaintiff and $80,000 was awarded for PSLA.
8. I am of the view that the lower back pain suffered by the Plaintiff is extremely mild. It is worth noting that Mr. Lai only relied on the treatment reports prepared by the hospitals or the occupational therapy and that no medical expert such as orthopaedic expert was appointed to examine the Plaintiff. Having carefully considered all the relevant authorities cited by Mr. Lai, I consider that the appropriate sum awarded under this head shall be $50,000.

PRE-TRIAL LOSS OF EARNINGS

1. At the time of the accident, the Plaintiff was working as a “distributor on overnight shift”, which was in fact a delivery worker of newspapers and magazines. His income was $8,900 per month (including basic salary of $8,000 and housing allowance of $900).
2. The Plaintiff produced sick leave certificates for 2 days (13-14 March 2008) and for around 5 months up to 10 September 2008. According to wage receipts issued by the Defendant, the Plaintiff was on sick leave and received sick leave payment from Defendant from 13 March 2008 to 30 July 2008. Plaintiff resumed working on 1 September 2008 which was on a date earlier than the last day of sick leave.
3. After the expiry of sick leave, the Plaintiff in fact earned more and did not suffer loss of income after he resumed working and changed his job from the delivery, distribution and transportation sector to the sales and marketing sector.
4. The Plaintiff should be entitled to claim loss of earnings plus MPF (5% on top) for the period from 13 March 2008 up to the date before he resumed working (31 August 2008) (for a period of 5 months and 19 days) and hence his pre-trial loss of earnings should be in the sum of $49,954.84 ($8,900 x (5 + 19/31).
5. The Plaintiff agreed that he received a total sum of $38,079.38 as sickness pay from the Defendant for this period. Hence, the sum awarded under this head shall be $11,875.46 (i.e. $49,954.84 - $38,079.38).
6. Regarding loss of MPF, the Plaintiff agreed that the Defendant had paid a total sum of $889.05 for contribution of MPF during this period. Thus, the sum awarded for loss of MPF shall be $1,608.69 (i.e. $49,954.84 x 5% - $889.05).

SPECIAL DAMAGES / EXPENSES INCURRED

1. I award the medical expenses in the sum of $5,770 as claimed.
2. For the traveling expenses, I only award $870 instead of $1,000 claimed. I disallow $130 for taxi fare incurred since the lower back pain suffered by the Plaintiff is very minor and it is not justified the Plaintiff to take taxi to the hospital.
3. The Plaintiff stated in his witness statement that he spent $3,000 for tonic food without elaboration and no receipt is produced. Mr. Lai submitted that, despite no receipt is available or produced, the Court can award a nominal reasonable sum of $3,000. I disagree and no sum be awarded for tonic food.
4. Therefore, the Plaintiff is awarded the sum of $6,640 ($5,770 + $870) for special damages.
5. Summary

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| --- | --- |
| PSLA | $50,000.00 |
| Pre-trial loss of earnings | $11,875.46 |
| Loss of MPF | $1,608.69 |
| Special damages | $6,640 |
| Total | $70,124.15 |

1. Last but not least, Mr. Lai informed this Court that an interlocutory judgment against the same Defendant has been entered leaving the compensation to be assessed in the Employee’s Compensation Case No. 796 of 2009 and no date is fixed for the assessment of the compensation in the said EC Case. I consider that save in the very special circumstances, such assessment is totally necessary since the damages awarded in this case is usually much higher than the compensation awarded in the said EC Case. Furthermore, the Plaintiff is also legally aided in the said EC Case and the Director of Legal Aid has to consider very carefully as to the assignment of solicitor and/or Counsel to the Plaintiff in the said EC Case for assessment of compensation, if necessary.

INTEREST

1. I award the interest at 2% p.a. for general damages for PSLA from date of writ (23 October 2009) to date of assessment (27 July 2010) and 4% p.a. i.e. half current judgment rate for pre-trial loss of earnings and special damages from date of accident (11 March 2008) to date of assessment (27 July 2010).

COSTS

1. Mr. LAI asked for costs to the Plaintiff with certificate of Counsel. But I consider that the total sum awarded is only $70,124.15 and there is no complexity in this case. So, I reject to grant certificate of Counsel. I order that the Defendant do pay the Plaintiff’s costs of this action including the assessment of damages, to be taxed if not agreed and that the Plaintiff’s own costs be taxed in accordance with Legal Aid Regulations.

(Simon Lo)

Master of District Court

The Plaintiff: represented by Mr. Alex S.W. Lai instructed by Messrs. Kenneth Poon & Co.

The Defendant: acting in person, absent.