## DCPI 2179/2015

[2019] HKDC 29

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 2179 OF 2015

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

BETWEEN

NG YUEK LANG SOPHIA Plaintiff

and

CHIU KING WA Defendant

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Before: His Honour Judge Edmond Lee in Court

Dates of Hearing: 20 September 2017 and 19 October 2017

Date of Handing Down Assessment of Damages: 11 January 2019

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ASSESSMENT OF DAMAGES

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*Background*

1. The plaintiff sustained personal injuries in a traffic accident on 16 May 2014 (“the Accident”). She was travelling on board a taxi which was involved in a collision with another taxi and a private vehicle.
2. The defendant, being the driver of the private vehicle and responsible for the Accident, was subsequently convicted of “Careless Driving” and “Driving a vehicle with alcohol concentration in breath exceeding the prescribed limit” on 17 June 2014.
3. The plaintiff, by a writ of summons filed on 6 October 2015, commenced the present proceedings against the defendant for damages with interests and costs. On 3 December 2015, by consent of the parties, judgment on liability was entered for the plaintiff against the defendant, with damages to be assessed.

1. The plaintiff was born on 14 August 1974 and was aged 39 at the time of the Accident. She is a single mother taking care of her son (DOB: 5 April 2012) who was 2 years old at the time of the Accident. She received Form 5 education and used to work as waitress/saleslady for about 5 years and receptionist/clerk for about 10 years. She quitted her job in February 2012 when she was pregnant and then spent her time taking care of her son. She was not employed and was dependent on Comprehensive Social Security Assistance at the time of the Accident.
2. As a result of the Accident, she applied for and was granted TAVAS allowance totallingHK$52,590.

*Plaintiff’s injuries and treatment received*

1. Shortly after the Accident, the plaintiff was taken by ambulance to the Accident and Emergency Department of the Queen Elizabeth Hospital. She complained of severe neck pain and back pain. She was found to have tenderness on the back of her neck and her lower back and abrasion wound on right knee. She was admitted to the hospital for treatment and discharged on the same day.
2. After discharge from the Queen Elizabeth Hospital on 16 May 2014, the plaintiff went to the Hong Kong Sanatorium and Hospital on the same day. She was found to have mild occipital and neck tenderness and was given a soft neck collar, analgesics and a week of antibiotics. MRI of cervical spine was done on 19 May 2014 which revealed minimal posterior bulging of C3-4 disc without fracture or cord injury. She was advised to wear soft neck collar for 3 days and take oral and topical analgesics. Sick leave was granted from 16 May 2014 to 18 May 2014.
3. The plaintiff had a history of mental problem as early as in 2004. She was first seen at Western Psychiatric Center in December 2004 and was diagnosed to have panic disorder. She was treated with antidepressant and her mental state was stabilized. She was then followed up at the Department of Psychiatry of the Pamela Youde Nethersole Eastern Hospital in May 2009. She defaulted follow-up from January 2010 to June 2012, except that she attended once in June 2010. After the Accident, when attending a consultation on 29 May 2014, the plaintiff said that she was anxious, felt short of breath and had recurrent nightmare of the Accident.
4. The plaintiff was referred by the Psychiatry Department to the Department of Orthopaedic & Traumatology of the Pamela Youde Nethersole Eastern Hospital. She attended the out-patient clinic on 17 September 2014. She was diagnosed to have neck and back sprain injury with C3/4 disc bulging, L4/5, L5/S1 and S1/2 disc protrusion. Sick leave was granted from 17 September 2014 to 4 February 2015, and later up to 24 June 2015.
5. The plaintiff started physiotherapy treatment on 17 October 2014. She complained of neck and low back pain as well as decrease in range of movement of her neck and back. Neck care, mobilization and stretching exercises for her neck, back care, mobilization, stretching and stabilization exercises, passive mobilization and hot pack to back were included in the rehabilitation programme. She completed 5 sessions but defaulted 6 sessions. She was last seen on 16 December 2014 and defaulted thereafter. She started another programme on 12 May 2015. She complained of right side low back pain, decrease in range of movement of back. Back care, mobilization, stretching and stabilization exercise were provided. She attended 4 sessions but defaulted 3 sessions.
6. On 22 January 2015, the plaintiff first attended the Occupational Therapy Department of the Pamela Youde Nethersole Eastern Hospital for work rehabilitation service. She complained of tenderness over her neck, right shoulder and back at movement, as well as numbness over right upper and lower limbs. Vocational counselling was provided but it was noted that she was unemployed for the last 2 years. She was suggested to try a part-time home helper job which was referred by the Social Welfare Department. The work capacity demonstrated during the assessment did not match the demands of home helper due to her fair right hand endurance to cope with cleaning and lifting tasks. She was recommended to try a course of work hardening. Home exercise of neck and back was suggested.

*Joint medical examination by orthopaedic experts*

1. The plaintiff was examined by two orthopaedic experts, Dr Lam Kwong Chin instructed by the plaintiff and Dr Kwok Hau Yan instructed by the defendant, on 23 May 2016 and a joint medical report dated 27 July 2016[[1]](#footnote-1) was prepared.
2. Physical examination on the date of joint medical examination revealed that the plaintiff could walk in a normal gait unaided, could squat fully without requiring support to rise, could sit without apparent distress for 45 minutes and rise smoothly. There was no external deformity, swelling or scar on the plaintiff’s neck. The neck movement was fair and the plaintiff complained of pain at end of range and worst at extension. Loss of cervical lordosis was noted. For the upper limbs, there was no external deformity, swelling or scars with no significant asymmetrical muscle wasting or spasm. For the back, there was no external deformity, swelling or scar and no loss of lumbar lordosis. The plaintiff complained of diffuse tenderness at midline and bilateral paraspinal muscles from upper thoracic to lower sacrum. Back movement was fair. The plaintiff complained of pain at end of range as well as increase in back pain on right shoulder elevation. For the lower limbs, there was no length discrepancy and no significant asymmetrical muscle wasting or spasticity.
3. X-rays of the cervical, thoracic and lumbar spine revealed lost in cervical lordosis with reversal at C4/5 level. There was lumbarization of L1. The L5/S1 disc was narrowed. There was no evidence of spondylolysis or recent fracture. X-ray of both legs revealed no bony deformity or residual sign of fracture and no abnormal soft tissue swelling or calcification with normal bony density and bony alignment.
4. Both experts, Dr Lam and Dr Kwok, agreed that:-
5. The plaintiff had head/occiput concussion, neck sprain/ contusion, back sprain/contusion, and abrasion of left elbow, right knee and both shins.
6. The injuries were at soft tissue level with no suggestion of gross bony damage or neurological deficit.
7. The cervical MRI showed that C4-5 disc space was slightly narrowed, with minimal posterior bulging and loss of lordotic curvature.
8. Lumbar MRI showed that facet hypertrophy at L3/4, L4/5 and L5/S1 level was pre-existing and degenerative in origin. MRI also showed relative mild disc protrusions at L4/5, L5/S1 and S1/2 levels and the annular tear at S1/2. Such changes in multiple discs were usually degenerative in origin, rather common in the population and could be asymptomatic.
9. The medications, physiotherapy and occupational therapy given to the plaintiff were standard and appropriate. Her physical condition was stable. Orthopaedically, she could be considered as having reached maximal medical improvement from the Accident.
10. Dr Lam and Dr Kwok, however, had differences in opinion on:-
11. For the C4/5 disc change, Dr Lam opined that it was compatible with the whiplash injury of the Accident and could account for the sever and persistent neck pain. Dr Kwok opined that it could happen as part of pre-existing changes because the trivial nature of the plaintiff’s injury was not compatible with a disruptive disc lesion or intervertebral disc change which could only happen in patient which significant neck injury together with changes of the signal of the disc or spinal cord which was not present in the plaintiff’s case.
12. In respect of working capacity and prognosis, Dr Lam commented that, as most workers with neck or back injury but no substantial structural damage or neurological deficit could still return to work, the plaintiff should be able to have lighter jobs such as waitress, saleslady, clerk or part-time domestic helper. However, she would be adversely affected by the residual neck or back symptoms upon prolonged working, exertion or weight bearing and her working efficiency and endurance and hence her employment opportunity would be seriously affected. Dr Kwok commented that the residual back and neck symptoms should be minimal and should not affect her physical function significantly.
13. Dr Lam’s assessment of the plaintiff’s impairment of whole person and loss of earning capacity were both 11% whereas Dr Kwok’s assessment of the impairment of whole person and loss of earning capacity were both 1 to 1.5%.

*Joint medical examination by psychiatrists*

1. The plaintiff was examined by two psychiatrists, Dr Benjamin Lai instructed by the plaintiff and Dr David Tsai instructed by the defendant, on 1 December 2016 and a joint psychiatric report dated 5 January 2017[[2]](#footnote-2) was prepared.
2. Dr Lai noted that the plaintiff was mentally stable prior to the Accident in May 2014 and diagnosed that she suffered increased psychiatric symptoms and Post Traumatic Stress Disorder symptoms in the form of nightmares of the Accident and she was likely suffering from minor residual psychiatric symptoms. Dr Tsai opined that whatever negative impact induced by the Accident was very short-lived, the plaintiff rapidly responded to treatment and there was no substantial enduring consequence.
3. On the question of further treatment, Dr Lai advised that the plaintiff could continue treatment in public psychiatric clinic once in 6 to 8 weeks and the cost per session was about $200. The likely cost of similar treatment with 4 weeks of medication in the private sector was about $2,000 per session. It was likely that she required another 6 months of psychiatric treatment. Dr Tsai advised that no further treatment as pharmacotherapy was required and she should continue to be under the care of public psychiatric service as there was no additional benefit in shifting to the private sector.

1. In respect of permanent impairment of whole person and loss of earning capacity based on the likely psychiatric condition as a result of the Accident, Dr Lai’s assessment was about 1 to 2%. Dr Tsai found no permanent impairment or loss of earning capacity on psychiatric ground.

*Quantum of damages*

1. The plaintiff revised the figures at the end of the hearing and now seeks total damages of HK$786,051.30. The defendant suggests HK$99,360 to HK$119,360. Their respective cases are as follows:-

|  |  |  |
| --- | --- | --- |
|  | Plaintiff (HK$) | Defendant (HK$) |
| PSLA | 450,000 | 80,000 - 100,000 |
| Loss of Earning Capacity | 150,000 | nil |
| Special Damages  (medical, travelling, etc.) | 128,611.30 | 19,360 |
| Future Expenses | 57,440 | nil |
| **Total:** | **786,051.30** | **99,360 - 119,360** |

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

1. In simple terms, what happened in this case, which was not in dispute, was that the plaintiff was the victim of a car accident. She was the back seat passenger of a taxi which was hit by the private car driven by the defendant who was drunk and driving carelessly. The taxi which the plaintiff was in was then pushed sideward and then collided with another taxi. As a result, the plaintiff suffered neck and back injuries. In specific terms, as agreed by the orthopaedic experts, they were neck and back sprain/contusion at soft tissue level with no suggestion of gross bony damage or neurological deficit. The plaintiff was treated by medications, physiotherapy and occupational therapy, which were considered to be standard and appropriate by the experts who opined that the plaintiff had reached maximum medical improvement at the time of the joint examination, which was about 2 years after the Accident.
2. The plaintiff complained, after the Accident, that she had neck and back pain and stiffness, headache, limitation of range of movement of back. She felt back pain when bending down or raising hands. She had difficulty in carrying heavy objects and having prolonged standing, walking and sitting. She also complained of anxiety, depression, insomnia, nightmares and flashback of the Accident.
3. Both orthopaedic experts agreed that the cervical MRI showed that the plaintiff’s C4-5 disc space was slightly narrowed, with minimal posterior bulging and loss of lordotic curvature. For the C4/5 disc change, Dr Lam for the plaintiff opined that it was compatible with the whiplash injury of the Accident and could account for the severe and persistent neck pain. Dr Kwok for the defendant opined that it could happen as part of pre-existing changes in view of the trivial nature of the plaintiff’s injury.
4. Though the plaintiff was not working at the material time, she was given intermittent sick leave for more than a year. As early as on 24 June 2015, the orthopaedic doctor at the Pamela Youde Nethersole Eastern Hospital certified that the plaintiff was then incapacitated to work and the disability was expected to last for a year[[3]](#footnote-3). Dr Lam, in view of the severity of the symptoms of the plaintiff, endorsed such sick leaves. Dr Kwok, on the other hand, opined that sick leave in the region of 3 to 4 months would be justified on the orthopaedic aspect[[4]](#footnote-4).
5. I am prepared to accept Dr Lam’s opinion that the plaintiff suffered a whiplash injury of the Accident and that could account for her severe and persistent neck pain. This is consistent with the fact that the plaintiff whilst inside the taxi had been first hit by the defendant’s vehicle and then collided with another vehicle[[5]](#footnote-5) as well as the plaintiff’s own version that she was hit on both sides inside the car compartment and had temporarily lost consciousness[[6]](#footnote-6). It is noted that, at the time of the joint examination, the forward flexion, backward extension and sideward flexion of the plaintiff’s neck and back were all less than the normal range[[7]](#footnote-7). It was 2 years after the Accident and the plaintiff was still complaining of residual neck and back pain. Even Dr Kwok for the defendant accepted that sick leave of 3 to 4 months would have been justified. The injuries of the plaintiff could hardly be described as “trivial” or “minor”, as Dr Kwok did in the joint medical report.
6. I have considered but do not accept the defendant’s criticism of the plaintiff’s complaints of neck and back pain being inconsistent with the medical or documentary evidence. It was argued by the defence that if the plaintiff indeed suffered pain as claimed, she should have attended medical or physiotherapy treatment more frequently and more regularly instead of defaulting some of the scheduled treatment. That criticism ignored the fact that the plaintiff was a single mother having sole care of her 2 or 3 years old son at the material times. It is noted that, as early as on the date of the Accident, the plaintiff requested discharge from hospital on the same day as she had to go home to take care of her child[[8]](#footnote-8).
7. On the psychiatric aspect, it is not in dispute that the plaintiff had history of mental illness and had been receiving psychiatric treatment since 2004. Dr Lai for the plaintiff diagnosed that she suffered increased psychiatric symptoms and Post Traumatic Stress Disorder symptoms in the form of nightmares of the Accident and she was likely suffering from minor residual psychiatric symptoms. Dr Tsai opined that, whatever negative impact induced by the Accident was very short-lived, the plaintiff rapidly responded to treatment and there was no substantial enduring consequence.
8. I am prepared to accept Dr Lai’s opinion to the extent that the plaintiff had suffered on the psychiatric aspect as a result of the Accident. This is consistent with the fact that the plaintiff voluntarily sought psychiatric help from her psychiatrist at the Pamela Youde Nethersole Eastern Hospital on 29 May 2014, i.e. 2 weeks after the Accident, and that was well before her next scheduled appointment with the psychiatrist on 19 June 2014[[9]](#footnote-9). She was prescribed with more psychiatric medication than usual. It is also noted that the plaintiff had experienced pregnancy and then spontaneous abortion/miscarriage for a time span of about 2 months. The plaintiff must have experienced additional stress as she specifically enquired with her psychiatrist about the effects of her painkillers and other medication on the fetus[[10]](#footnote-10).
9. The plaintiff seeks to rely on the following cases and argues that the damages for PSLA should be HK$450,000.
10. In*Lee Yu Hey v Yuen His Carl*[2012] HKEC 1483, the plaintiff was a 41-year-old driver who was injured in a traffic accident when his private vehicle was hit by the vehicle driven by the defendant.On examination, there was pain over lumbosacral spine with decreased motion range of the back. Straight leg raising test on the right side was limited and there was mild weakness of the right great toe motion. X-ray examination of the lumbar spine showed decreased intervertebral space of the L4/5 level, etc. There was persistent symptom after the physiotherapy. MRI of the lumbar spine showed protrusion of the intervertebral disc at the L5/S1 level. Since his activities of daily living was very much affected, he was admitted for a spinal operation of discectomy of the L5/S1 intervertebral disc and was hospitalized for 4 days. The Court awarded $450,000 for PSLA and discounted it by 20% due to pre-existing degenerative condition.
11. In *Tam Wai Tuen v Seiko Screw Manufactory Ltd.* HCPI 383 of 2008, the defendant was injured at work and hurt his back. He was 53 years old at the time of the accident. The court award $250,000 for PSLA.
12. In *Lau Koon Loi v Wong Wai Sing and anor* HCPI 445 of 2007, the plaintiff claimed for damages after a traffic accident. He complained of neck stiffness, neck and shoulder movement restricted due to chest pain, right knee pain, pain when breathing and post-concussional headache and dizziness. From that MRI study, it was seen that there was disc protrusion at C5/6 level causing slight narrowing of the spinal canal and slight indentation on the anterior surface of the cervical cord. Degenerative changes were also identified at C5/6 junction endplates. The plaintiff was still suffering residual pain almost 7 years after the accident. He had also suffered adjustment disorder and erectile dysfunction. The court considered that the plaintiff’s case was just below the lower end of the serious injury category and awarded $400,000 for PSLA.
13. In *Chan Tak Chi v Wong Siu Tao***,** HCPI 1223/1996, a 29-year-old man was injured in a traffic accident and sustained fracture to C5 spine and the right side facet, 5 cm laceration to left parietal area of the head, and multiple abrasions. He was hospitalized first for 13 days for placing in a Halo ring with body jacket, then another 5 days for removal of the Halo ring and body jacket. He wore the Halo ring and body jacket for 2.5 months, and had physiotherapy for 1 to 2 months.  He complained of continuing pain in the neck and in the scapula region, and considerable stiffness of the neck.  There was some loss of normal curvature of the spine and a slight decrease in the disc height, being a sign of early degeneration.  He also suffered a frozen shoulder for about 2.5 years until the end of 1996 and was given more than 2 years' sick leave and follow up.  There was a head concussion with a period of loss of consciousness, with post-concussion syndrome such as headaches and dizziness requiring painkillers.  There was also a feeling of distress and difficulty in temper control.  Total disability was assessed at 9% with loss of earning capacity assessed at 12%.  PSLA was awarded at $360,000.00.
14. In *Luk* Yee *Lam v Orasa Livasiri*, HCPI 394/2002, the 40-year-old plaintiff was injured in a traffic accident and sustained a disc herniation at C5/6 level, with neck and back pain, and numbness and weakness in the upper limbs and hands and his right leg, and reduced sexual desire.  The impairment of whole body was 16%, and it was held to be close to the “serious injury” category, and $400,000 was awarded for PSLA.
15. In *Boivin v Wong King Yin & anor*, HCPI 195/2000, the plaintiff suffered injuries in a traffic accident when she was the back seat passenger of a private car being struck forcefully by a light goods vehicle driven by the defendant from behind. She sustained a severe whiplash injury followed by neck and back pain, limitation of neck movement and headaches, numbness in two fingers of her left hand and pain radiating down her left leg from the buttock region with a possible need for future surgery to fuse two cervical vertebrae.  Moreover, the plaintiff suffered post-traumatic stress disorder and depression which arose from the pain and it affected her work and personal social life. She was graded as being in the lower end of the serious injury category and was awarded damages of $475,000 for PSLA.
16. In *Chan So Kwan v Mak Siu Kwan and anor* HCPI 1487/2000, the plaintiff was a bus captain of KMB and had a collision with a private car driven by the 1st defendant. She suffered a whiplash injury which resulted in some persistent neck pain, limitation in neck movement and occasional spasm of the neck muscle and with anxiety disorder, all of which prevented the plaintiff from returning to her pre-accident work. Damages of $300,000 was awarded for PSLA
17. In Razaq*-Akhtar v Wang Hoi Transportation Ltd.* HCPI 303 of 2007, the plaintiff claimed against his employer after he had slipped and fallen down in the warehouse when carrying 35 kilos boxes. He suffered from L5/S1 disc protrusion. He was awarded PSLA of $280,000.
18. The defendant, on the other hand, seeks to rely on the following cases and argues that the damages under this head should be in the region of HK$80,000 – HK$100,000.
19. In *Ho Kin Lon v. Wong Tin Chi* DCPI 57/2010, the plaintiff complained of right hand, right knee and neck pain after a traffic accident. The experts concluded that there were soft tissue injuries to these areas. There was no neurological deficit. Damages of $100,000 was awarded for PSLA.
20. In *Au Suk Man v Chan Chi Wai* DCPI 1213/2013, the plaintiff suffered whiplash injury in her neck in a traffic accident. She was put on a neck collar for 2 to 3 months. The experts agreed that there was only soft tissue injury. The Court found that the accident caused the pre-existing degeneration in the plaintiff’s C5/6 intervertebral disc to become symptomatic, but most symptoms were resolved by the time of the trial. Damages for PSLA was granted at $80,000.
21. In *Wo Wang Fu v Wong Kwok Hung* HCPI 821/2014, the plaintiff suffered from mild soft tissue injury and adjustment disorder in a road traffic accident. The plaintiff was still experiencing mild degree of stiffness and pain at his neck, headache and dizziness at the time of trial. There was no residue neurological deficit. A total of 4-month sick leave was granted to the plaintiff for adjustment disorder. Damages of $90,000 for PSLA was granted.
22. In *Leung Hiu Yan Hilda v Lam Kam Hung* DCPI 220/2012, the plaintiff sustained soft tissue injury to her neck and back in a road traffic accident, injuries were at soft tissue level. The plaintiff has residual neck and back pain. The condition of the plaintiff’s neck and back had reached maximum medical improvement, conservative treatment consisted of drug and physiotherapy were considered appropriate and further institutional treatment not required. Damages of $80,000, with inflation having been taken into account, was awarded for PSLA.
23. *In Lo Yim Fong v Ho Po Yin & anor* DCPI 654/2010, the plaintiff sustained injuries to her neck, back, upper chest and lower leg following a road traffic accident. Injuries were at soft tissue level with no bony fracture or neurological deficit. The plaintiff complained of on and off neck soreness, lower back pain and bilateral patella soreness. The plaintiff’s conditions had reached maximum medical improvement. The plaintiff was considered to have suffered relatively minor injurie and had mild residual problems. She was able to return to work after 10 days. Damages of $80,000 was awarded for PSLA.
24. In *Lai Ka Yin v Chan Yiu Kei* DCPI 453/2008, the plaintiff sustained whiplash injuries to her neck and back as a result of a road traffic accident. He was hospitalised for 3 days and received physiotherapy afterwards. There was no fracture of the cervical spine. Both orthopaedic experts agreed that the plaintiff suffered from soft tissue injury of the neck and back with no evidence of any more serious injury. The plaintiff was considered as having reached maximum medical improvement. The Court considered that the plaintiff had only suffered a minor injury and had fully recovered. Damages of $50,000 was awarded for PSLA.
25. In *Wong Kin Hung v Chan Wai Ming* DCPI 1223/2006, the plaintiff sustained injuries to his head, neck and right leg following a road traffic accident and was hospitalised for 2 days. The injuries were found to be at soft tissue injury level. There was physiotherapy for 3 months but no complete recovery. The plaintiff suffered intermittent residual back pain. Damages of $70,000 was awarded for PSLA.

1. The cases relied upon by the plaintiff allowed damages for PSLA in the region of $250,000 to $475,000. Some cases involving circumstances very different from those of the present case, like *Tam Wai Tuen v Seiko Screw Manufactory Ltd*. and *Razaq-Akhtar v Wang Hoi Transportation Ltd.,* where the plaintiffs suffered injuries whilst at work. The other cases involved plaintiffs suffering from far more serious injuries, for instance, requiring surgery and/or substantial hospitalization. In most of those cases, the plaintiffs were considered to be in or close to the “serious injury” category.
2. In *Lee Ting-lam v. Leung Kam-ming an infant by his next friend Leung Shu-wing* [1980] HKLR 657, at 659, the Court of Appeal stated that the “serious injury” covered “*cases where the injury leaves a disability which mars general activities and enjoyment of life, but allows reasonable mobility to the victim, for example the loss of a limb replaced by satisfactory artificial device, or bad fractures leaving recurrent pain*”. The injuries suffered by the plaintiff in this case are obviously below, and not even close to, that category of “serious injury”.
3. On the other hand, the cases relied upon by the defendant, though more recent (decided in 2007 to 2017), disclosed circumstances less serious than those of the present case. Those cases approved damages for PSLA in the region of $50,000 to $100,000. Most of the plaintiffs in those case were described to have suffered only minor injuries. In particular, unlike the plaintiff in this case, they did not have any significant psychiatric problems.
4. Although it was pleaded in the defendant’s Answer to Revised Statement of Damages that the damages should be discounted for the pre-existing degeneration of multiple discs of the plaintiff[[11]](#footnote-11), no submissions were made in the defendant’s Opening and Closing Submissions. In any event, I am not prepared to give any discount in this aspect. There is no evidence that the plaintiff suffered from any neck or back pain prior to the Accident. In one of the earlier medical reports by Dr Fung of Hong Kong Sanatorium and Hospital, it was stated that there was minimal degenerative changes at mid cervical spine[[12]](#footnote-12). Both orthopaedic experts in the joint medical report did not say that the plaintiff would have the same symptoms due to natural progression of the pre-existing degeneration. Dr Kwok for the defendant did not state that the plaintiff would have developed the same symptoms even if the Accident did not happen due to the pre-existing degeneration. It was the agreed medical opinion of the experts that the plaintiff’s pre-existing degeneration was asymptomatic before the Accident.
5. Whilst each case is to be decided on its own facts, having considered all the circumstances, as well as all the cases submitted by the parties, I am of the view that this case falls within somewhere between the cases provided by the plaintiff and those provided by the defendant. I have also taken into account that some of those cases were decided in the 2000s. I find that the reasonable and therefore appropriate damages under this head of PSLA in this case should be HK$250,000 and I so award.

*Loss of earning capacity*

1. An award for loss of earning capacity is to cover the risk that, at some future point of time during the claimant’s working life, he will lose his employment and will then suffer financial loss because of his disadvantage in the labour market, see *Yu Kok Wing v Lee Tim Loi* [2001] 2 HKLRD 306.
2. The plaintiff used to work as a waitress, saleslady, receptionist and clerk. She quitted working in February 2012 when she was pregnant. She has been living on Comprehensive Social Security Assistance since then. She claims that she plans to go back to work when her son goes to Primary one i.e. September 2018. It is her case that her residual pain on neck/pain and her inability to stand, walk or sit for prolonged period would put her in a disadvantaged position to compete with others in the labour market.
3. As early as on 24 June 2015, the orthopaedic doctor at the Pamela Youde Nethersole Eastern Hospital certified that the plaintiff was incapacitated to work and the disability was expected to last for a year[[13]](#footnote-13), that means up to June 2016. That was endorsed at least by Dr Lam in the joint medical report[[14]](#footnote-14). It is however noted that the plaintiff still submitted the review form for Comprehensive Social Security Assistance on 7 September 2016[[15]](#footnote-15).
4. On the orthopaedic aspect, both experts opined that the plaintiff should be able to return to employment as waitress, saleslady, clerk/receptionist or part-time domestic helper[[16]](#footnote-16).
5. On the psychiatric aspect, Dr Lai opined that the plaintiff’s ability in adaptation to a work environment was similar to her ability as before the accident and the plaintiff could be considered as mentally capable of returning to her previous employment or work appropriate to her working experience and physical abilities[[17]](#footnote-17). Dr Tsai opined that there was no psychiatric basis for the plaintiff not to resume her pre-accident employment or work appropriate to her experience[[18]](#footnote-18).
6. The plaintiff has voluntarily quitted work and been receiving Comprehensive Social Security Assistance since 2012. She still submitted the review form for Comprehensive Social Security Assistance on 7 September 2016 and was receiving assistance at the time of this hearing (i.e. close to 3 ½ years after the Accident), her intention or determination to return to the workforce is questionable. If she does intend to work again in the next few years, any difficulties she might encounter would be more likely to come from her prolonged voluntary unemployment and her age rather than any residual disabilities resulting from the Accident. In any event, as all experts agreed, the plaintiff should be fit enough, both physically and mentally, to return to her previous employment. In particular, I accept Dr Kwok’s opinion that the plaintiff’s residual back and neck pain symptoms should be minimal, they should not affect her physical function significantly and would not affect her capacity to perform moderate level of duty which is similar to those as waitress, saleslady, receptionist or clerk as she had pursued in the past[[19]](#footnote-19). There is no or insufficient evidence to suggest that the plaintiff would suffer a handicap or disadvantage in the labour market as a result of her injuries caused by the Accident. I am not satisfied on the evidence that the plaintiff has lost any earning capacity as a result of the Accident.
7. For the above reasons, I do not allow any award under this head.

*Special damages*

1. The plaintiff also seeks special damages for (a) medical expenses, (b) travelling expenses, (c) tonic food, (d) part-time domestic helper expenses, (e) laundry expenses and (f) drugs over the counter.
2. *Medical expenses*
3. The plaintiff produced receipts for medical expenses incurred for the total sum of HK$13,360, which is acceptable to the defendant. I accordingly make an award of HK$13,360 for medical expenses.
4. *Travelling expenses*
5. The plaintiff claims traveling expenses, namely taxi fares, for a total sum of $49,940.70 covering a period from 16 May 2014 to 30 November 2016. She accepts that parts of the taxi fares were for taking her son to school, going to market and running some other personal errands. The plaintiff, by relying on certain case authorities[[20]](#footnote-20), argues that all those expenses are reasonably incurred but would accept a deducted sum of HK$19,767.30[[21]](#footnote-21).
6. The defendant, on the other hand, argues that the travelling expenses claimed are excessive and/or disproportionate and/or unjustified. It is emphasized that a substantial part of the taxi fares was incurred after 8 pm (over HK$17,000) and/or on Sundays or public holidays (over HK$15,000)[[22]](#footnote-22). It is also submitted that the taxi fare receipts showed a pattern of the plaintiff hiring taxis at different and irregular hours which does not support her claim of taking her son to and from school. The defence prepared a table showing that all the travelling expenses incurred for medical treatments at different hospitals and clinics, according to the taxi fare receipts provided by the plaintiff, were in the total sum of HK$2,546 only. The defendant argues that only a reasonable sum of HK$3,000 for travelling expenses should be allowed.
7. It is important to note that the plaintiff, in the Revised Statement of Damages, claimed only “travelling expenses when attending medical treatment by taxi”[[23]](#footnote-23). In any event, I do not find the cases relied upon by the plaintiff as mentioned in paragraph 46 above relevant as they were dealing with travelling expenses of different nature or incurred under different circumstances. I agree with the defence that the reasonable sum under this head should be HK$3,000 and I so award.

*(c) Tonic food*

1. The plaintiff seeks to recover HK$25,000 for tonic food, but she could not produce any receipts except two issued by a Lam Kee Seafood Products Company Limited for a total sum of HK$19,400 for cordyceps (冬蟲夏草). She testified during the hearing that she was advised by a doctor in Chick’s TCM Health Centre to take cordyceps to assist her recovery.

1. The defendant pointed out that the plaintiff’s version of taking Chinese doctor’s advice to take cordyceps was not mentioned at all in her witness statement. There is no evidence to suggest that tonic food was necessary and in any event, the amount claimed was grossly exaggerated. The defendant suggests that a global sum of HK$3,000 should be awarded.
2. It was held in *Chan Hung Hang v Fat Kee Marine Repairing and Engineering Co* DCPI 2328/2007 that where there is no evidence showing the advisability and suitability of tonic food purchased, only a nominal sum should be awarded.
3. There is no evidence as to why and how the cordyceps were necessary or required for the recovery of the plaintiff in this case. I therefore would award, as suggested by the defendant, a sum of HK$3,000 for tonic food.
4. *Laundry expenses*
5. The plaintiff, by producing receipts covering a period from 10 August 2014 to 19 November 2016, claims laundry expenses for the total sum of HK$4,061.
6. The defendant in the Answer to Revised Statement of Damages pleaded that laundry expenses were unnecessary as the plaintiff had already employed a domestic helper for household chores[[24]](#footnote-24). The plaintiff in her witness statement stated that, due to her neck and waist/back pain, she was unable to wash duvets, beddings and other large items at home and needed to take them to the laundry shop (note: only a sum of HK$2,575 was claimed in the witness statement)[[25]](#footnote-25). In her own version to the psychiatrists, she said she “do[es] household chores including packing up and machine laundry”[[26]](#footnote-26). The defence argues that the plaintiff seems to suggest that she did her daily laundry at home while taking the large items to the laundry shop. That version is inconsistent with the laundry receipts which showed that the plaintiff visited the laundry shop once every few days but only 11 receipts were marked with items of duvets. The defence argues that the laundry expenses were unnecessary, unrelated to the plaintiff’s injuries and should not be allowed.
7. No doubt the plaintiff had been injured in the Accident. As mentioned above, the doctors suggested sick leave for slightly more than a year and her disability would last for another year thereafter[[27]](#footnote-27). It is therefore reasonable for her to take part of her laundry, in particular the large items, to the laundry shop. I am prepared to allow half of the sum claimed, which in my view is a reasonable sum. I make an award of HK$2,000 for laundry expenses.
8. *Part-time domestic helper expenses*
9. It is the plaintiff’s case that, because of the injuries suffered as a result of the Accident, she was unable to do the household chores like cleaning the toilet and kitchen, wiping and mopping the floor, washing, ironing, grocery shopping, cooking, cleaning the furniture and the windows etc. and needed a part-time domestic helper to help her. The plaintiff produced a “Domestic Helper Work and Salary Record” which were in the form of tables setting out the date and time of working and the salary received by the part-time domestic helper, covering a period from 13 January 2015 to 29 November 2016[[28]](#footnote-28). A total sum of HK$67,023was claimed under this head in the Revised Statement of Damages[[29]](#footnote-29).
10. The defendant argues that the plaintiff only hired a part-time domestic helper since 13 January 2015, which was more than half a year following the Accident in May 2014. Her explanation in Court that she was assisted by relatives from May 2014 to January 2015 was never mentioned in her witness statement. There is no suggestion that the plaintiff was unable to carry out the work of a part-time home helper since January 2015 due to the injuries sustained in the Accident in May 2014. The defendant argues that hiring a part-time domestic helper from January 2015 onwards was unnecessary and any amount claimed under this head should not be allowed.
11. It is noted that, on 22 January 2015, the plaintiff was suggested by the Social Welfare Department to try the job of a part-time domestic helper but it was found out that “the work capacity (of the plaintiff) demonstrated during the assessment was not matched with the home helper job demands due to fair right hand endurance to cope with cleaning and lifting tasks”[[30]](#footnote-30). That lends support to the plaintiff’s claim that, after the Accident, she could not perform household chores herself and required the assistance of a part-time domestic helper.
12. As mentioned above, the doctors suggested sick leave for slightly more than a year from the date of Accident and, her disability would last for another year thereafter[[31]](#footnote-31), i.e. up to June 2016. As such, the expenses for part-time domestic helper for the period from July to November 2016, i.e. HK$17,550 (HK$3,510 x 5 months)[[32]](#footnote-32), should not be allowed.
13. Also, I am of the view that the hiring a part-time domestic helper to come for 3 hours every other day (i.e. thrice a week), in the plaintiff’s case (she is living with her son in a public housing estate unit), is excessive and unnecessary. It would have been reasonable to engage the service of a part-time domestic helper twice a week in the circumstances of the plaintiff.
14. I would therefore deduct HK$17,550 from the amount claimed and then discount it by one-third. I would award HK$32,982 [(HK$67,023 – HK$17,550) x 2/3] for the part-time domestic helper expenses incurred by the plaintiff.

*(f) Drugs over the counter*

1. The plaintiff claims expenses of HK$5,000 for drugs like ointment etc. for pain relief from time to time[[33]](#footnote-33). The defendant objected.
2. There were no submissions made by the plaintiff during the hearing in this regard, nor was there any medical or documentary evidence ever submitted. I make no award under this head.
3. The special damages which I would allow for the plaintiff include, (a) medical expenses of HK$13,360, (b) travelling expenses of HK$3,000, (c) tonic food of HK$3,000, (d) laundry expenses of HK$2,000 and (e) part-time domestic helper expenses of HK$32,982, and the total amount is HK$54,342.

*Future expenses*

1. The plaintiff also seeks damages to cover (a) future medical expenses in the sum of HK$20,000 or HK$2,000 and (b) future expenses for part-time domestic helper in the sum of HK$37,440, both objected by the defendant.

*(a) Future medical expenses*

1. The plaintiff asks for medical expenses for consulting private psychiatrist in the future for the total sum of $20,000 ($2,000 per session x 10)[[34]](#footnote-34), or alternatively, for a psychiatrist in public hospital for the total sum of HK$2,000 ($200 per session x 10)[[35]](#footnote-35).
2. The plaintiff has been receiving psychiatric treatment from public hospitals since 2004. Even Dr Lai, instructed by the plaintiff, opined that she could continue her further treatment in the public psychiatric clinic[[36]](#footnote-36). The claim for medical expenses for private psychiatrist must fail. In the summary of the joint psychiatric report dated 5 January 2017, Dr Lai opined that the plaintiff at that time had mild residual psychiatric symptoms whereas Dr Tsai (instructed by the defendant) found her to have recovered[[37]](#footnote-37). If the plaintiff is requiring any further psychiatric treatment from any public hospital in the future, as she did in the last 10 odd years, it has nothing or little to do with the Accident. I make no award under this head.

*(b) Future expenses for part-time domestic helper*

1. The plaintiff claims that she still needs assistance from a part-time domestic helper to help her with the housework for another 12 months and will therefore incur a further sum of HK$37,440 (HK$3,120 x 12)[[38]](#footnote-38).
2. As I have found that the plaintiff should not be entitled to recover any expenses for part-time domestic helper after July 2016[[39]](#footnote-39), I would not allow any claim for future expenses for part-time domestic helper.

*Disposal*

1. In summary, I would award damages for the plaintiff as follows:-

PSLA HK$250,000

Loss of Earning Capacity Nil

Special Damages HK$54,342[[40]](#footnote-40)

Future Expenses Nil

**Total: HK$304,342**

1. I also allow interests as follows:-
2. 2% per annum for damages for PSLA from the date of service of the writ to the date of this assessment;

1. half judgment rate for special damages from the date of the Accident to the date of this assessment; and
2. judgment rate on the final award from the date of this assessment until full payment by the defendant.
3. Costs should follow the event. I make an order *nisi*, which shall become absolute in the absence of any parties’ objection in 14 days, that the costs be to the plaintiff, with a certificate for counsel, to be taxed if not agreed. The plaintiff’s own costs shall be taxed in accordance with the Legal Aid Regulations.
4. I thank both counsel for their useful assistance.

( Edmond Lee )

District Judge

Ms Lorinda Lau, instructed by Hon & Co., assigned by the Director of Legal Aid, for the plaintiff

Ms Phyllis Lee, instructed by Kenneth C. C. Man & Co, for the defendant

1. [144-170] of Bundle A [↑](#footnote-ref-1)
2. [171-220] of Bundle A [↑](#footnote-ref-2)
3. see para. 102 of the joint medical report at [167] of Bundle A [↑](#footnote-ref-3)
4. see para. 103 and 104 of the joint medical report at [167-168] of Bundle A [↑](#footnote-ref-4)
5. see para. 1 and 2 of the Statement of Claim at [4-5] of Bundle A [↑](#footnote-ref-5)
6. see para. 5 of the plaintiff’s witness statement at [124] of Bundle A [↑](#footnote-ref-6)
7. see para. 53 and 55 of the joint medical report at [155-156] of Bundle A [↑](#footnote-ref-7)
8. see para. 20 of the joint medical report at [148] of Bundle A [↑](#footnote-ref-8)
9. see consultation summary at [273] of Bundle B [↑](#footnote-ref-9)
10. see consultation summary at [275] of Bundle B [↑](#footnote-ref-10)
11. see para. 25 of the defendant’s Answer to Revised Statement of Damages at [39] of Bundle A [↑](#footnote-ref-11)
12. see medical report dated 19 May 2014 at [133] of Bundle A [↑](#footnote-ref-12)
13. see para. 102 of the joint medical report at [167] of Bundle A [↑](#footnote-ref-13)
14. See para. 103 of the joint medical report at [167] of Bundle A [↑](#footnote-ref-14)
15. [548] of Bundle B [↑](#footnote-ref-15)
16. see para. 99 and 100 of the joint medical report at [166-167] of Bundle A [↑](#footnote-ref-16)
17. see para. 102 and 104 of the joint psychiatric report at [209] of Bundle A [↑](#footnote-ref-17)
18. see para. 107 of the joint psychiatric report at [210] of Bundle A [↑](#footnote-ref-18)
19. see para. 100 of the joint medical report at [167] of Bundle A [↑](#footnote-ref-19)
20. Travelling expenses incurred by the victim’s wife to visit the victim in hospital were granted in *Tam Kwok Tung v Lam Wai Chun & ors* HCA 5913/1984; taxi fares incurred for taking the victim to school were allowed in *Nazir Begum Din & Fahimah Din (an infant) v Lee Kwei Ying Peggy & anor* HCA 3811/1980; costs of post-accident driving lessons incurred by the plaintiff were allowed in *Lai Po Wah v Chan Woon Sum & anor* HCA 4314/1982 [↑](#footnote-ref-20)
21. see para. 43 and 71 of the plaintiff’s closing submissions [↑](#footnote-ref-21)
22. see para. 28 of the Answer to Revised Statement of Damages at [40-43] of Bundle A [↑](#footnote-ref-22)
23. see para. 13(b) of the Revised Statement of Damages at [25] of Bundle A [↑](#footnote-ref-23)
24. see para. 30 of the Answer to Revised Statement of Damages at [44] of Bundle A [↑](#footnote-ref-24)
25. see para. 18(d) of the plaintiff’s witness statement at [129] of Bundle A [↑](#footnote-ref-25)
26. see para. 35 of the joint psychiatric report at [180] of Bundle A [↑](#footnote-ref-26)
27. see para. 25 above [↑](#footnote-ref-27)
28. see [467-487] of Bundle B [↑](#footnote-ref-28)
29. see para. 13(e) of the Revised Statement of Damages at [26] of Bundle A [↑](#footnote-ref-29)
30. see para. 2 of the occupational therapy report at [143] of Bundle A [↑](#footnote-ref-30)
31. see para. 25 above [↑](#footnote-ref-31)
32. See tables of the expenses of part-time domestic helper at [483-487] of Bundle B [↑](#footnote-ref-32)
33. see para. 13(f) of the Revised Statement of Damages at [26] of Bundle B [↑](#footnote-ref-33)
34. see para. 16 of the Revised Statement of Damages at [27] of Bundle B [↑](#footnote-ref-34)
35. see para. 43 and 80 of the plaintiff’s closing submissions [↑](#footnote-ref-35)
36. see para. 94-95 of the joint psychiatric report at [207] of Bundle A [↑](#footnote-ref-36)
37. see para. 111a of the joint psychiatric report at [211] of Bundle A [↑](#footnote-ref-37)
38. see para. 15 of the Revised Statement of Damages at [27] of Bundle B [↑](#footnote-ref-38)
39. see para. 59 above [↑](#footnote-ref-39)
40. for the breakdown, see para. 64 above [↑](#footnote-ref-40)