DCPI 2186/2019

[2021] HKDC 576

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 2186 OF 2019

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BETWEEN

NG YUN TING Plaintiff

and

CHAN MAN WAI RAYMOND Defendant

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

Before: Master Matthew Leung in Court

Date of Hearing: 11 May 2021

Date of Assessment of Damages: 26 May 2021

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| ASSESSMENT OF DAMAGES |

1. This is an assessment of damages in a personal injury case in which the Plaintiff sustained multiple injuries, including fracture of left femur and right tibia, in a traffic accident on 25 July 2017 (“**the Accident**”). It was the Plaintiff’s contention that the Accident was caused by the negligence of the Defendant. The Plaintiff also relied on the Defendant’s conviction of the offence of dangerous driving arising out of the same Accident.
2. Interlocutory judgment was entered against the Defendant on 5 August 2019 leaving damages to be assessed.
3. The Notice of Appointment for Assessment of Damages dated 23 February 2021 was served on the Defendant on 1 March 2021 by post at the address of the Defendant as stated in the Writ of Summons. Affirmation of service was filed on 6 May 2021. Further, the Court sent a notice of hearing for assessment of damages to the Defendant on 26 February 2021.
4. The Defendant did not attend the assessment hearing. I was satisfied that notice of the assessment hearing had been duly given to the Defendant. It was the Defendant’s choice not to attend the assessment hearing. I proceeded with the assessment of damages in this case in the absence of the Defendant.

**The Plaintiff’s case**

1. The Plaintiff himself was the only person who testified at the hearing. He adopted as evidence in chief his witness statement filed herein.[[1]](#footnote-1)
2. The Plaintiff was born in 1994 and was aged 23 at the time of the Accident. He started working as a driver cum deliveryman since 2014. The monthly salary was calculated by reference to the number of orders and the hourly rate. His hourly rates were increased annually from $48 to $53 between the year 2014 and 2017. At the time of the Accident, the Plaintiff’s average monthly earning was about $16,227.25.
3. On 25 July 2017, the Plaintiff was driving a motorcycle bearing registration number TG 2553 travelling along Pokfulam Road southbound towards Central. The Defendant was driving a private car bearing registration number SD 5781 travelling on the opposite lane of the same road. The Defendant suddenly turned right from Pokfulam Road into Pokfield Road in violation of the traffic light signal. The Plaintiff could not stop the motorcycle and hit the left body of the Defendant’s car.
4. After the Accident, the Plaintiff was sent to the Accident & Emergency Department of Queen Mary Hospital (“**the Hospital**”) for treatment. He sustained multiple injuries to his body including fracture of left femur and right tibia. Both of his thighs were deformed with upon wounds, compatible with open fractures of bilateral femoral shafts. Bruises were found in left periorbital region. Multiple lacerations were found on right arm, right knee, left thigh and scrotum. Pelvic x-ray showed diastasis of pubic symphysis and widened right sacroiliac joint, which was compatible with open book pelvic fracture. Trauma transfusion protocol and tranexamic acid protocol were initialled because of severe bleeding. Pelvic binder and bilateral lower limb splintage were performed.
5. The Plaintiff received more than 7 surgeries from 25 July 2017 to 25 October 2017, including external fixation to pelvis, left femur and right tibia fracture, right leg fasciotomy for compartment syndrome, surgical fixation for pelvis fracture, left femur fracture and right tibia fracture, wound debridement for 3 times, surgical fixation for right tibial tuberosity fracture, and bone graft to left femur and right tibia fracture.
6. The Plaintiff received treatment at the Department of Ophthalmology of Grantham Hospital for his left eye injury from 3 October 2017 to 12 March 2019. He was found to have suffered from post-traumatic commotio retinae and RPE mottling.
7. The Plaintiff attended MacLehose Medical Rehabilitation Centre from 6 October 2017 to 15 October 2018 for rehabilitation. On 10 May 2020, the Plaintiff received surgery to remove the abscess formation at the right knee implant. On 9 February 2021, surgery was performed to remove screws from the right knee.
8. The Plaintiff was granted sick leave from 25 July 2017 to 7 January 2019, and from 25 June 2019 to 16 September 2019, totalling 616 days. Regular follow up at the orthopaedic clinic is required.

**Expert evidence**

1. The Court directed on 15 October 2020 that the Expert Medical Report made by Dr Lau Sing Ki Kenric for the Plaintiff dated 15 June 2020[[2]](#footnote-2) be adduced as evidence without calling the maker at the assessment hearing.
2. Dr Lau interviewed the Plaintiff on 28 May 2020, i.e. 2 years and 10 months after the Accident. Upon physical examination, Dr Lau found that the Plaintiff suffered from thoracic aortic dissection, ascending colon serosal tear, lever/spleen contusion, bilateral hemopneumothorax, left eye contusion with zygomatic arch fracture, pelvic fracture, left femur open fracture, right tibia / fibula open fracture with right knee ligament injury, compartment syndrome with residual contracture of muscle and then stiffness of ankle, nerve damage leading to numbness of right sole, and left upper limb brachial plexus and radial nerve palsy. Dr Lau found that the Plaintiff still had small abscess of right knee and laxity of right knee. The prognosis of the Plaintiff’s injury was fair and his overall function would be satisfactory with adjustment.
3. Dr Lau opined that the Plaintiff had not reached maximal medical improvement and static condition. He required treatment of his small abscess over right knee, removal of implants and then PCL reconstruction surgery.
4. Dr Lau was of the view that the Plaintiff would require sick leave for about 3-6 months after his operation of right knee – removal of implants and PCL reconstruction. It would take 3-9 months of training after operation before he could drive safely and work with satisfactory endurance.
5. Dr Lau opined that the Plaintiff has to change his job to for example bus driver with less working hours and with intermittent rest. He could also attempt other jobs like private chauffeur with further reduced driving time or reduced weight carrying requirement. The overall impairment of the whole person was assessed at 20-21%.

**Factual findings**

1. The Plaintiff’s testimony is not subject to any challenge as the Defendant has not been present in these proceedings. The Plaintiff gave testimony in a straightforward manner and I accept his evidence. Separately, I also accept Dr Lau’s evidence in his Expert Medical Report.
2. Based on these factual findings, I now turn to each head of claim.

**PSLA**

1. The Plaintiff claimed a sum of $620,000 for damages for PSLA. Ms Deanna Law, Counsel for the Plaintiff, referred me to the following cases on PSLA.
2. In ***Ho Ah Look v Nam Kin Scaffolding Ltd & anor***, HCPI 156/1999 (unreported, 28 May 1999), the plaintiff slipped and fell from a scaffold resulting in head injuries, fractures of right femur and the superior pubic ramus of pelvis. Reduction and fixation of the right femoral fracture with intramedullary nail was performed. A second operation was performed to revise the screws used for the fixation of the fracture. Two further operations were performed due to wound infection. Movement of the right hip was restricted and his right lower limb was shortened by 3 cm. PSLA was assessed at $564,000.
3. In ***Leung Chun Tung v Siu Wai Cheong***, HCPI 883/1995 (unreported, 19 December 1997), the plaintiff sustained fracture of the left ilium and acetabulum with dislocation of his left hip as a result of a traffic accident. Open reduction of the fractured areas, arthroscopy of the left hip and removal of the left ilicar crest plate were performed. There was avascular necrosis of the femoral head resulting in collapse and flattening and advanced degenerative changes had occurred 7 years from the accident. There was 50% permanent disability and 40% loss of earning capacity, expected to increase in the next five years. The plaintiff there would have to undergo at least one primary and one revisional operation. For patients with good result after total hip replacement, permanent disability would be about 15-20%. But for poor result after surgery, the patient will have 30% of permanent disability. The court awarded a sum of $600,000 for PSLA.
4. In ***Lee Kim Fung v Lok Lun Keung & Anor***, HCPI 1063/2000 (unreported, 12 February 2003), the plaintiff sustained fracture of the 9th and 10th ribs, right acetabulum and left humerus, pelvic trauma, pelvic fracture resulting in urethral laceration and stricture and sexual dysfunction. He underwent a total of 7 operations, 254 physiotherapy treatments, 67 follow-up treatments, and 22 psychological sessions to help him accept his situation. The impairment from the orthopaedic and urological injuries was assessed at 21% and 22% respectively, resulting in a total impairment of the whole person of 43%. He was awarded HK$792,000 for PSLA.
5. In ***Li Yuet Yee & Ors v Ng Chi Hang***, HCPI 451/2006 (unreported, 31 October 2008) the 1st plaintiff was struck by a vehicle sustaining closed fracture of her right femur, dislocation of her left knee and fracture of her right acetabulum. There was also reduction of her hip joint space. The medical opinions said that she needed total hip and knee replacements. She also suffered from separation of her right sacro-iliac joint and fracture of the tip of the left transverse process of her 5th vertebra. She was also suffering from adjustment disorder. The Court further found that she was unable to resume work, even of a sedentary nature. The 1st plaintiff was awarded $800,000 for PSLA.
6. After due consideration of the authorities, and having considered, *inter alia*, that the nature of the Plaintiff's injuries, the number of surgeries performed, and the duration of his healing process, I agree that the extent of the Plaintiff’s injury was comparable to the victims in ***Ho Ah Lok*** and ***Leung Chun Tung***. I assess that PSLA should be $600,000.

**Loss of Earnings**

1. Having considered the bank statements produced by the Plaintiff,[[3]](#footnote-3) I accept that the pre-trial monthly earning of the Plaintiff as a driver cum deliveryman was $16,227.25 as submitted by the Plaintiff.
2. The Plaintiff was granted sick leave up to 16 September 2019.[[4]](#footnote-4) However, as a matter of fact, he could not resume work until 9 December 2019 when he started working as a coach driver earning a monthly sum of $16,527.21.[[5]](#footnote-5) He received a total sum of $76,656.65 from his employer as salary during the sick leave period. In view of the opinion given by Dr Lau that at the time of the examination (i.e. on 28 May 2020) the Plaintiff’s condition had not reached maximal medical improvement, I assess that the loss of earnings from the date of the accident (i.e. on 25 July 2017) to 9 December 2019 (about 28 months) be as follows:

($16,227.25 x 28 months - $76,656.65) x 1.05 = $396,592.

1. For post-trial loss of earnings, the Plaintiff pleaded in the Revised Statement of Damages that but for the Accident, he could have continued to work as a motorcycle driver cum deliveryman until the age of 65. Given that he is now aged 27 at the time of the assessment of damages, his future loss of earnings will continue for a period of about 38 years.
2. The Plaintiff assumed that he could work as a driver earning $11,000 per month when his orthopaedic condition becomes static, he would suffer a loss of income of $5,227.25 ($16,227.25 - $11,000). Ms Law submitted that the figure of $11,000 was obtained from the advertisements posted in the Labour Department for recruitment of drivers in September 2020.[[6]](#footnote-6)
3. Ms Law drew my attention to the case of ***Chan Pak Ting v Chan Chi Kwan & Others***, HCPI 235/2011 (unreported, 7 February 2013), in that the net rate of return net of inflation for plaintiffs with needs exceeding 10 years should be 2.5% per annum. Ms Law submitted that an appropriate multiplier should be 24.28. Hence, the loss would be $5,227.25 x 24.28 x 12 x 1.05 = $1,599,162.14.
4. I am of the view that there is no basis to assume that the Plaintiff could only earn $11,000 per month as a driver when his orthopaedic condition becomes static. This is a mere assumption without medical evidence in support. The advertisements posted in the Labour Department could not be regarded as good comparable. What were being recruited in the advertisements were “driver” for “pick up vehicle” and “school bus driver”. However, we have clear evidence in the present case that the Plaintiff has been working as a coach driver since 9 December 2019 earning a monthly sum of $16,527.21. There is no medical evidence to suggest that after the operation to remove the implant and the PCL reconstruction, he could not return to the existing job of a coach driver.
5. The Plaintiff’s evidence is that he started working as a driver cum deliveryman since 2014. His hourly rates were increased annually from $48 to $53 from the year 2014 to 2017. The evidence reveals that the annual increment of the Plaintiff’s income as a driver cum deliveryman would be about 3.4%.[[7]](#footnote-7)
6. At the time of the Accident, the Plaintiff’s average monthly earning was about $16,227.25. Therefore, but for the Accident, the Plaintiff’s monthly income could have been increased to $17,350 ($16,227.25 x 1.034 x 1.034) as at 9 December 2019. The Plaintiff’s monthly loss of income would be $823 ($17,350 - $16,527.21).
7. Based on the above evidence, I assess that the Plaintiff has suffered pre-trial loss of earning from December 2019 to the date of assessment of damages (i.e. 17 months) as follows:

$823 x 17 x 1.05 = $14,691.

1. The total amount of damages for pre-trial loss of earnings is:

$396,592 + $14,691= $411,283.

1. According to Table 9 of the Personal Injury Tables Hong Kong 2019, the appropriate multiplier for a male aged 27 at the date of trial who could work until 65 would be 24.28.
2. The post-trial loss of the Plaintiff should be assessed as follows:

$823 x 12 x 24.28 x 1.05 = $251,779.

1. Moreover, based on Dr Lau’s evidence, I accept that the Plaintiff will require 12 months to recover from the future operation of right knee and for his training after operation before he could drive safely and work with satisfactory endurance. The loss of income for this period of time would be:

$16,527.21 x 12 x 1.05 = $208,243.

1. The total post-trial loss of earnings would be:

$251,779 + $208,243 = $460,022.

**Loss of earning capacity**

1. The Plaintiff claimed a sum of $194,727 ($16,227.25 x 12 months).
2. I consider that the Plaintiff would clearly suffer from a handicap in the labour market. The physical limitation suffered by the Plaintiff would adversely affect him in securing suitable employment as well as make him vulnerable to losing any such employment he managed to secure. The damages under this head should be assessed on the basis of the Plaintiff’s current earnings. The loss is assessed as follows:

$16,527.21 x 12 = $198,327.

**Special damages**

1. The Plaintiff claimed the following special damages:

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| (a) | Medical expenses | $23,004 |
| (b) | Travelling expenses | $5,000 |
| (c) | Tonic food | $10,000 |
|  | **Total:** | **$38,004** |

1. The medical expenses were supported by receipts.[[8]](#footnote-8) In view of the number of the hospital visits, and the seriousness of the Plaintiff’s injuries, I accept that the amounts claimed by the Plaintiff for travelling expenses and tonic food are reasonable.
2. The special damages as claimed should be allowed in full.

**Future Medical Expenses**

1. Relying on Dr Lau’s opinion that the Plaintiff will require further operation for the removal of implants and PCL reconstruction, the Plaintiff claims a sum of $50,000 for future medical expenses. The figure is not supported by any evidence. Whilst the figure is a rough estimation, I consider that the sum is within reasonable range and the claim should be allowed in full.

**Summary**

1. The Plaintiff’s damages should be assessed as follows:

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| (a) | PSLA | $600,000 |
| (b) | Pre-trial loss of earnings | $411,283 |
| (c) | Post-trial loss of earnings | $460,022 |
| (d) | Loss of earning capacity | $198,327 |
| (e) | Special damages | $38,004 |
| (f) | Future medical expenses | $50,000 |
|  | **Total:** | **$1,757,636** |

**Interest and costs**

1. Interest will be awarded at 2% per annum on damages for PSLA from the date of the writ. Interest on other pre-trial loss and special damages will be awarded at half the judgment rate from the date of the incident. 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 against the Defendant in favour of the Plaintiff for the assessment of damages proceedings including all costs previously reserved in relation to the assessment of damages.  The above order nisi shall become absolute after 14 days from the date hereof unless any party applies to vary them within this 14 days period.

(Matthew Leung)

Master of the District Court

Ms Deanna Law, instructed by Messrs Tong & Tsoi, for the Plaintiff

The Defendant is not represented and did not appear

1. See the Witness Statement [AB 38-45]. [↑](#footnote-ref-1)
2. See the Expert Medical Report dated 15 June 2020 [AB 65-85]. [↑](#footnote-ref-2)
3. See the bank statements [AB 115-261] and the calculation set out in the Opening Submissions of the Plaintiff at §45. [↑](#footnote-ref-3)
4. See the schedule of sick leave certificates [AB 265]. [↑](#footnote-ref-4)
5. See the Employment Contract [AB 96-100]. [↑](#footnote-ref-5)
6. See the advertisements apparently obtained from the website of the Labour Department [AB 113-114]. [↑](#footnote-ref-6)
7. $48 x 1.034 x 1.034 x 1.034 = $53 [↑](#footnote-ref-7)
8. See the schedule of medical expenses [AB 280-282]. [↑](#footnote-ref-8)