## DCPI 2222/2016

[2020] HKDC 443

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 2222 OF 2016

--------------------

##### BETWEEN

MAN SZE WAI Plaintiff

### and

CHUI WOON HO CECILIA 1st Defendant

AU YEUNG TING CHUNG 2nd Defendant

----------------------

Coram : His Honour Judge KC Chan in Court

Dates of Hearing : 8 to 10 June 2020

Date of Assessment of Damages: 23 June 2020

------------------------------------------

ASSESSMENT OF DAMAGES

------------------------------------------

1. At about 8:22 am on 11 November 2015, the plaintiff was attacked and bitten by 2 Tibetan Mastiffs outside Ground Floor, Block 7, No 96 Fung Kong Tsuen Road, Lau Fau Shan, New Territories and suffered injuries.
2. The plaintiff was then 22 years old. She has just graduated from university and has been working for 4 months as a Customer Service Specialist of Cathay Pacific.
3. The 2 Tibetan Mastiffs respectively weighed 42.2 kg and 42.4 kg. They were kept by the 1st defendant (“D1”) and owned by the 2nd defendant (“D2”), who are respectively mother and son.
4. Despite mandated by Rabies Ordinance Cap 421 and Dangerous Dogs Regulations Cap 167D, the 2 Tibetan Mastiffs at the time were not securely held on a leash or otherwise kept under control. They were also not muzzled. The animal owner information records show that each of the dogs has a prior record of biting incident, respectively occurred on 31 August 2013 and 5 September 2013. In relation to the present incident, D1 was convicted of a number of offences.
5. Upon the default of D1 and D2 in acknowledging service and in filing a Notice of Intention to Defend, interlocutory judgments were entered against them on respectively 13 December 2016 and 22 May 2017.
6. This is the assessment of damages.
7. The plaintiff is represented by Mr Fong of counsel. D1 appears in person. D2, I am told by D1, is now in Australia studying. He does not attend to contest. The plaintiff and D1 are the only witnesses giving evidence.

*Not pursuing the claim for loss of pre-trial earnings*

1. In his opening, Mr Fong confirms that the plaintiff is now no longer pursuing the claim for pre-trial loss of earnings (including MPF) in the total sum of HK$56,204. It is therefore no longer necessary for me to refer to matters specifically pertaining to that claim.

*Injuries and treatment*

1. Shortly after attack, the plaintiff was brought to the Accident and Emergency Department of Tuen Mun Hospital (“A&E”) for treatment. Reports from that department, Department of Surgery (“Surgery”) and Department of Orthopaedics and Traumatology (“O&T”) all of Tuen Mun Hospital (“TMH”) recorded that the plaintiff was fully conscious after the attack and sustained the following dog-bite and scratch wounds:-
2. right eyebrow laceration of about 3cm;
3. 5mm x 1cm wound over right lateral canthus with tissue loss;
4. two 5mm superficial wounds over forehead;
5. four laceration wounds over right wrist, 0.5 to 1.5cm;
6. laceration wound of 2cm over right palm;
7. multiple 0.5 cm bite marks over left elbow;
8. multiple scratch wounds over right breast; and
9. multiple bite marks over right anterior thigh.
10. The plaintiff was then admitted to TMH. Two days later on 13 November 2015, exploration and suturing of her facial wounds were performed by Surgery. The plaintiff gives evidence, which I accept, that this was the first of the 3 operations she has undergone during which she was under general anaesthesia; and there was also a fourth one which was performed under partial anaesthesia.
11. On 19 November 2015, debridement and suture of the wounds over right wrist, right palm, left arm and right thigh were performed by O&T.
12. The plaintiff was discharged from TMH on 24 November 2015. She was hospitalized for 14 days.
13. She was followed up in special outpatient clinic on 3 December 2015. The wounds were well and stitches were removed. However, she complained of numbness of right hand with decreased light touch over thumb, index and middle fingers. Nerve conduct test showed partial motor axonal degeneration and complete sensory axonal degeneration of right median nerve. Subacute neurogenic changes were seen with decreased recruitment and polyphasic motor units seen in right abductor pollicis brevis.
14. She was then referred to physiotherapy which began on 14 December 2015.
15. Since 6 January 2016 and upon referral, the plaintiff started attending TMH Psycho-behavioural Unit for about 20 sessions of therapy as she had depressed mood, reduced interests, frequent nightmares, heightened anxiety and feeling of helplessness in coping with all the negative changes after the attack.
16. On 28 January 2016, wound exploration of right wrist and hand wounds, and right carpal tunnel release was performed. Compression of the median nerve beneath transverse carpal ligament was found. As a result of this operation, there was a 13cm surgical scar over her right wrist. On this occasion, the plaintiff was hospitalized for 2 days.
17. The plaintiff received steroid injections for her scars and need to wear pressure garment for her right wrist and right thigh. In May 2017, she had revision of right thigh scar done. The plaintiff says in evidence that the operation was to reduce the 4 scars over right anterior thigh from being circular in shape to smaller elongated ones.
18. She continued to receive various therapies and treatments, a total of 59 sessions, until late 2016. She was followed up in orthopaedic clinic until 2018. She was given a total of 141 days of sick leave by the treating doctors.

*Expert reports*

1. Three joint single expert reports were obtained and adduced by the plaintiff and D1 jointly without calling the experts to give oral evidence. The three reports are Orthopaedics expert report prepared by Dr Fu Wai Kee (“Dr Fu”) dated 19 December 2017, Psychiatry expert report by Dr Wong Yee Him (Dr Wong”) dated 27 December 2017 and Plastic Surgery Specialist report by Dr Au Yum To Otto (“Dr Au”) dated 2 January 2018.
2. As these are joint single expert reports, there is really no contention about the expert opinions expressed therein and I accept them without reservation despite D1’s complaints, which I will allude to in due course. I will first set out the gist of the reports.

*Orthopaedics expert report*

1. Dr Fu recorded that the plaintiff’s present complaints consisted of right thumb hypersensitivity and numbness, right radial wrist pain during right thumb movement, right hand weakness and tremor when lifting heavier objects with right hand (e.g. a teapot), right wrist and thigh scar pain.
2. Dr Fu opined:-
3. The plaintiff’s clinical picture was compatible with the diagnosis of multiple dog-bite wounds and that there is no evidence of pre-existing pathology.
4. For the plaintiff’s right hand numbness and weakness, nerve conduction test confirmed that there was partial motor axonal degeneration and complete sensory axonal degeneration of right median nerve; and that surgical exploration revealed the median nerve was intact and was compressed by scarring, which should be the result of the alleged accident.
5. For the right wrist, the plaintiff had already made a good functional recovery. Present examination revealed mild residual numbness and weakness.
6. Her condition should be quite static. Her current right wrist and hand symptoms would persist. She would continue to have residual numbness and weakness.
7. The plaintiff would be able to resume pre-accident work and her working efficiency would only be mildly affected.
8. The impairment of the whole person and loss of earning capacity as a result of the right wrist injury should be 2%.

*Psychiatry expert report*

1. Dr Wong interviewed and evaluated the plaintiff on 4 December 2017 gave a very detailed report. For the present purpose, I think it suffice to summarize its contents very succinctly, as follows.
2. On the plaintiff’s previous personality, Dr Wong recorded that the plaintiff told him that she had a close and supportive family, she was an extrovert who loved socializing, meeting friends, get-togethers, dining, karaoke singing and shopping. She used to be proud of her figure and her long legs. She often went cycling and swimming with friends. She was an avid pianist having attained Grade 8 in piano. She had no family history of mental illness nor any history of substance abuse.
3. Dr Wong recorded the account by the plaintiff of the attack which was quite detailed and vivid.
4. Dr Wong reported in detail on the psychiatric symptoms as narrated by the plaintiff. Briefly stated here, they included depressed mood, insomnia, nightmares, intrusive recollections of the attack, avoidance of reminders to the trauma, hypervigilance, exaggerated startle response, irritable mood, loss of interest, difficulty in concentrating, fatigue, suicidal thoughts and feeling of worthlessness as she felt ashamed about her appearance.
5. On her current state at the time of the evaluation, the plaintiff told Dr Wong that she still felt these mental symptoms, but they were less intense, and she no longer had suicidal thoughts.
6. In the evaluation, Dr Wong found the plaintiff to be polite, cooperative, soft spoken, alert and in good contact, sad but not overtly anxious or depressed. The plaintiff’s speech was coherent and relevant and her cognitive function was intact. She was visibly depressed when made to recount the accident or when the appearance of the scars was discussed. No psychotic symptom could be elicited.
7. After analyzing the plaintiff’s symptoms according to the criteria required, Dr Wong diagnosed that the plaintiff had been suffering from Post-Traumatic Stress Disorder (“PTSD”) which had developed almost immediately after the accident and that she was still suffering from active PTSD at the time of the evaluation, albeit the intensity of the symptoms has abated since April 2016.
8. Note-worthily, Dr Wong opined that the plaintiff suffered from the PTSD feature known as “numbing” or “markedly diminished interest or participation in significant activities”; meaning those have this feature have a tendency to avoid their emotions and have difficulties in experiencing positive emotions, since they are pre-occupied with their fear of the traumatic experience. Moreover, he opined that the plaintiff’s presentation fitted into this pattern in that she no longer had the motivation to engage in contact with other people in order to avoid any thoughts about the trauma.
9. Dr Wong further opined:-
10. Her prognosis for full recovery was guarded and he further opined that the plaintiff was likely to suffer from some residual PTSD symptoms for the next 5 to 10 years, though with right treatment many of the PTSD features could be reduced.
11. The PTSD features had restricted the plaintiff’s choice of work to jobs which have limited inter-personal interaction; but she could return to work when she gained full remission which might not be feasible in the short to medium term.
12. To gain full remission, the plaintiff would require extensive treatment by a psychiatrist and a clinical psychologist - monthly psychiatric follow-ups for medications and psychotherapy for 12 months and then every 2 months for an additional 24 months while also seeing a clinical psychologist for 20 sessions to consolidate the result of cognitive behavioral therapy. He estimated the total costs would be around HK$100,000.
13. Dr Wong opined that the permanent impairment of the whole person is estimated to be around 11% and the plaintiff’s loss of earning capacity 20-25%.
14. Dr Wong also considered and analyzed if the plaintiff’s account was reliable and credible. He noted that there was no contradiction in her account, that she had in fact under-reported her mental symptoms, the full picture of which was elicited by Dr Wong’s interaction and direct questions. Dr Wong also noted that she did not hide the fact that her physical symptoms had improved, that she had volunteered that her mental symptoms had improved as well, that she had talked frankly about being well enough to go back to work and did not give a picture of being disabled or sick. Dr Wong found that there was no evidence that the plaintiff gave unreliable history or was exaggerating her mental symptoms. He opined that the plaintiff’s account was reliable and credible.

*Plastic surgery specialist report*

1. Dr Au examined the plaintiff on 24 November 2017. He found and reported on the scars, as follows. For the scar on the right breast, Dr Au has described it professionally and fully in the report (as with other scars), but for the purpose of this judgment which is accessible to the public, I will not quote its full description:-

“1. Right eyebrow – an oblique white scar at the medial position transecting vertically the eyebrow 1.2mm x 4mm, slightly elevated with loss of about 5 hair. A stellate scar at the lateral end of the right eyebrow 15mm x 20mm, flat whitish, a vertical scar at the right front hairline 2 x 15mm whitish and flat, 2 round scars at mid forehead above the right eyebrow, 3mm in diameter.

2. Right breast – [an oblique scar 10 x 40mm and at the medial superior side of the scar an area of flat brownish pigment of 20 x 30mm].

3. Right arm – at the volar surface of the arm distal to the elbow, a scar 20 x 25mm, slight depigmented.

4. Right wrist – 3 fine transverse hypertrophic scars with three to four stitch marks extending from distal to proximal position of the wrist at the radial side as follow: a. 5 x 20 mm, b. 3 x 25 mm, c. 3 x 10 mm respectively, they are whitish and soft.

5. Right palm – an oblique whitish scar at the distal position of the ulnar side 2 x 30 mm, there is an oblique zigzag scar at the wrist, 2 x 40 mm, soft and barely visible. Sensation of the ventral surface of the right palm and the distal portion adjacent to the thumb are as follow:-

* 1. Distal portion of the wrist and the adjacent distal portion of the palm show sensitive parathesia.
  2. The right thumb, half of the surface show sensitive parathesia at the radial side, small amount of at the tip [sic].
  3. All other fingers, sensation are normal.

6. …

7. Right thigh–

* 1. At the upper posterior surface, a round hypertrophic pigmented scar, 5 x 10 mm.
  2. At the anterior surface – 4 parallel oblique scars, deeply pigmented and hypertrophic, 4 x 28 mm, 4 x 40 mm and 4 x 28 mm from superior to inferior respectively.”

1. Dr Au opined that the plaintiff’s permanent impairment of the whole person as well as loss of earning capacity due to the cosmetic disability were both assessed at 10%.
2. Dr Au opined and recommended the following treatment:-
3. 6 sessions of laser treatment for all the scars at intervals of six weeks;
4. Surgical treatment for the scars at the right eyebrow;
5. 3 steroid injections for the scars on the right thigh at intervals of six weeks.
6. He opined that the above treatments would cost a total of HK$92,000 and would necessitate sick leave of a total of 9 days. He further opined that the chance of success with these treatments were 70%.

*D1’s complaints against the treating doctors’ reports and the expert reports*

1. Firstly, D1 said[[1]](#footnote-1) that there is a clear discrepancy in the report of A&E dated 17 December 2015 signed by Medical & Health Officer Chung Chi Wai and the report of Surgery dated 22 December 2015 signed by Medical & Health Officer Ho Hiu Ching. In the A&E report, the wound over right eyebrow was described as “Right eyebrow laceration of about 3cm”, while it was described in the Surgery report as “3cm deep wound over right eyebrow”. D1 questions why the experts relied on such contradictory information.
2. It is abundantly clear that there must have been a slip or a typographical error in the Surgery report. It is a matter of common sense that if the wound over the right eyebrow was literally “3cm deep”, it would have punctured into the supraorbital ridge of the skull which would then be a serious wound that probably need to be attended by Orthopaedics department, if not also others. There was no such mention by O&T. Moreover, the 3 experts clearly proceeded on the basis that it was a 3cm laceration wound. In any case, Dr Fu merely opined on the right wrist, and not concerning the eyebrow wound. As for Dr Wong’s report, so far as can be seen, the plaintiff never mentioned or complained to Dr Wong that the right eyebrow wound was a deep one. While Dr Au himself has examined the right eyebrow wound scar as it was on 24 November 2017. Therefore, there is no reason or basis at all to think that this slip or error in the Surgery report has in any way affected the expert opinions or caused any prejudice against D1 or D2.
3. Secondly, D1 complains that all the experts relied on a report dated 28 April 2016 by a Dr Mak Yan Wah Josephine[[2]](#footnote-2) (“Dr Mak’s Report”) from unknown origin (“來路不明”); that this report has directly influenced the 3 experts’ judgment, analysis and conclusion, causing these reports to err and is greatly unfair to her that she finds it hard to accept (“而這文件直接影響到三位專家的判定，分析及結論，令這三份報告存在非常大的誤差，對被告人極不公平，本人實難接受”)[[3]](#footnote-3).
4. Dr Mak’s Report dated 28 April 2016 in fact was a report from Surgery to update the said report signed by Ho Hiu Ching which was dated 22 December 2015. Mr Fong confirms at trial that while Dr Mak’s Report was provided to the 3 experts, the same has unfortunately not been made available to the defendants hitherto.
5. Comparing Dr Mak’s Report and the earlier one signed by Ho Hiu Ching, the following differences are found:-
6. Paragraph 1 of Dr Mak’s Report reads: “The above named patient was admitted to our unit for management of dogbite wounds on 11 Nov, 2015”; while paragraph 1 of the earlier report reads: “Ms. MAN SZE WAI admitted [sic] to our unit for dogbite wounds on 11 Nov 2015”.
7. In paragraph 2 of Dr Mak’s Report, “She” was used to denote “Ms Man” and the word “associated” was added to more accurately reflect “no associated neurovascular injury”. The other contents are essentially the same, if not identical with, paragraph 2 of the earlier report.
8. Paragraph 3 of Dr Mak’s Report is essentially different from that of the earlier report, as it reported on the updated situation. I quote the entire paragraph 3:-

“She was followed up at our specialist out-patient clinic. She was last seen by us on 16 Feb, 2016. All wounds were healed. Her right eyebrow scar was slightly hyperpigmented. Her next appointment is scheduled for 17 May 2016.”

1. I have set out the above to clearly demonstrate, which is the case, that there is little information of materiality added by Dr Mak’s Report. There is thus no unfairness nor any reason to complain that the 3 expert reports have thereby erred.
2. Thirdly, D1 criticizes that as there was a third dog present (namely the Labrador Retriever owned and kept by the plaintiff’s family), there should be, but was no, study of the dog-bite wounds or DNA tests conducted by any of the 3 experts to show that the wounds were inflicted by her 2 Tibetan Mastiffs and not that third dog[[4]](#footnote-4).
3. The issue of whether all or some of the injury was caused by a third dog, in my view, is clearly an issue that concerns liability.
4. The Writ herein was endorsed with a claim thus:-

“Therefore, the Plaintiff’s claim is for damages, together with interest thereon and costs, for personal injury, loss and damage she suffered as a result of a dog-bite incident happened to her on 11th November 2015 at about 8:22 a.m. She was attacked by 2 dogs outside Ground Floor … while she was walking thereby. At the material time of the accident, the 1st and 2nd Defendants were the owner and/or keeper of those 2 dogs, …. They were vicariously liable for the negligence of the 1st and 2nd Defendants’ servant and/or employee” (emphasis added).

1. Therefore, if D1 wants to dispute wholly **or partly** the plaintiff’s claim so endorsed, she has to contest liability by filing her acknowledgment of service and Notice of Intention to Defend. She has not done so. As mentioned, default judgment has been entered against D1, according to the plaintiff’s claim, in late 2016. There was no application to set it aside.
2. It is therefore entirely right that D1 could not, at this later stage of assessment of damages, to seek to contest the issue as to whether the injury was caused by a third dog. In any event, there is no suggestion by anyone anywhere and in no material, including in the materials placed before the court concerning the prosecution and conviction of D1 of the offences relating to this incident, that the plaintiff in the incident was attacked by her own Labrador together with the 2 Tibetan Mastiffs. This third criticism of D1 has no merits at all.
3. In all, I find D1’s such complaints and criticisms much exaggerated, unjustified and without merits. I do not accept any of them.

*The parties’ evidence and D1’s challenges*

1. The plaintiff is tall at 175 cm and of fit slim build. She is right hand dominant.
2. In cross examination, the plaintiff adds that she attained piano Grade 8 at 16 years old and that she had since been practicing with a view to attain performance level, which she temporarily put on hold due to heavy demands while studying 2nd year in university. She says, and I accept, that the constraint and pain when twisting the right wrist, the pain of the scar and the numbness and weakness of the right thumb are prohibiting her from playing piano, though she frankly admits she has not really tried playing the piano after the accident.
3. The plaintiff also says with visible sadness and frustration that she is now ashamed to show her long legs instead of being quite proud of them, as she was before the accident, and that she does not go to the beach or swimming pool as she would not want to wear swimming suits because of her scars, and that she now cannot post on Instagram and other social media pictures showing off herself in swim suits, in shorts or skirts, as she used to, and as her peers have often been doing. I accept that her activities and enjoyment of life in the manner mentioned above are now being deprived.
4. Moreover, after some initial hesitation, she bursts out spontaneously with some emotion to explain that she avoids people and gatherings, which she liked to have before, because she does not want to have to explain to friends, colleagues, relatives or people around her why she has those scars and what has happened and thereby being reminded of her traumatic experience and present disabilities.
5. She also frankly admits that she resigned of her own choice from Cathay Pacific in October 2016 as she felt she could not handle the work demand, but that she was able to secure her present job, which involves much less interactions with other people, about 2 months later, and from which she had a promotion in 2 years’ time, earning now more than she did from her first job.
6. In all, I am positively impressed by the plaintiff as a witness. I find that she is calm, frank, polite and positive and has not tried to exaggerate or appear disabled. I have no difficulty in finding her a reliable and credible witness. I also accept and agree with Dr Wong’s assessment that the plaintiff has given a credible and reliable account to him during the evaluation.
7. Further, it is this court’s impression that she is still coping with the negative impacts the injury and its aftermath have on her life, as Dr Wong opined.
8. D1 insisted on proffering and showing more than 50 clips of video footage[[5]](#footnote-5), a set of which consisting of 26 clips taken on the same day of 24 November 2017 by an unnamed friend of hers who is not called as a witness to testify to them. There was thus no evidence testifying on the veracity of these 26 clips or on who the subject shown on those clips was. According to D1, most of the other video clips were taken by the use of her car camera when she drove by the car park of the estate. In the pre-trial review and for easier trial management, I directed D1 to provide screen captures of the clips she would like to show at this trial.
9. All but 3 clips (one of the clips taken on 24 November 2017, another depicting the plaintiff in a Shenzhen mall and one of unknown date showing the plaintiff’s face and hairstyle) depicted the face a young lady sufficiently clear to have her recognized. All others either showed the back or the side of the subject (and usually with her long hair covering the side of her face), or were such that the face shown was not of sufficient size or clarity for the subject to be recognized.
10. In evidence, the plaintiff frankly admits that it was her in the one clip taken on 24 November 2017 mentioned in the foregoing paragraph. In it she was shown wearing a pair of denim shorts and a long dark grey wool coat. D1 says that therefore the plaintiff’s claim that she was too embarrassed to show her legs is untrue.
11. In cross-examination, the plaintiff explains that 24 November 2017 was the day she went to Dr Au’s clinic in Central to be examined by him for the purpose of the Plastic Surgery expert report. This is verified by the date of examination stated in Dr Au’s report. She further says, which I accept, that Dr Au has asked her to wear shorts so as to facilitate ease of examination of her scars on her right thigh as she then did not need to take off her outer garment or trousers. She said that for the same reason she was also asked to wear shorts when attending clinics to receive steroid injection treatments to her right thigh. To enable the court to evaluate this explanation, the plaintiff stands up and points to show the location of the 4 parallel scars over her anterior right thigh. The lowest of the 4 scars is about 10 inches above the top of her right kneecap while the highest one is very close to the top edge of her leg. I accept her explanation.
12. D1 gives evidence that she met the plaintiff once after the accident in a shopping mall in Shenzhen with her peers, which is verified by a video clip[[6]](#footnote-6). D1 therefore asserts that it is proved that the plaintiff has not been suffering the psychological injury she claimed. In cross examination, the plaintiff again frankly admits that it was her in the screen capture, and says, which I accept, that “the peers” were her younger sister and her 2 cousins who lived in Shenzhen and who were closed to her and who occasionally stayed with her family. As the plaintiff has never claimed that she suffered such serious psychological trauma such that she confined herself completely at home, I do not find her visiting a mall with her younger sister and cousins inconsistent with her psychiatric condition as narrated to and opined by Dr Wong. It can be recalled that the plaintiff explains that she has not been socializing and going to gatherings as she loathes to have to explain the incident and the scars, thereby being reminded of the experience and her disabilities. Her younger sister and the 2 cousins evidently already knew about the whole incident and what the plaintiff has suffered. It is not surprising, and indeed a good thing, that they gave the plaintiff their support and company.
13. D1 also shows a number of clips depicting a young lady together with another person handling a Labrador in the carpark of the estate. The resolution, clarity, angle and the distance between the subject and the camera were such that, according to the observation of this court, the face of the subject could not be recognized. D1 gives evidence that the subjects in these clips was the plaintiff. I make no finding on it. Suffice to state my view that these clips are not of probative value, for these reasons.
14. D1 says that they showed the plaintiff was not afraid of handling the Labrador, which was a big dog. The plaintiff’s evidence is, which I accept, that the Labrador saved her and that their family has raised it since the time it was a small baby and it was family to her; therefore, after the accident, she could still handle it. She adds that this notwithstanding, after the accident she would still feel fear if the Labrador barks loudly.
15. Based on a clip showing the plaintiff’s mother (and not the plaintiff) handling 2 other Golden Retrievers with the Labrador, D1 asserts that the plaintiff’s family has been keeping 2 more big dogs after the accident; thus, showing the plaintiff’s claimed fear over big dogs is untrue. The plaintiff gives evidence that her mother on that occasion was merely helping a neighbour one Mr Chan to take care of his 2 Golden Retrievers when he was on a trip, and without the plaintiff’s involvement at all. I accept her such evidence.
16. D1 also says that the clips also showed that the plaintiff was often out in the carpark of the estate. Again, this would have been a meaningful contradicting evidence if the plaintiff’s case is that she has suffered such serious psychiatric injury that she was afraid to step outside of her home altogether. That is however not her case at all. On the contrary and as is common ground, she has been going to work full-time from mid-2016 to October 2016 and then since January 2017.
17. D1 says that the clips showed that the plaintiff handled the leash of the dog with her right hand. In those clips, the young lady was always accompanied by someone else. So far as this court can observe, she wrapped the leash around her **left** hand and occasionally touched the leash with her right hand. Such handling and use of her right arm are not inconsistent with her present complaints (see paragraph 21 above).
18. D1 also relies on another clip showing a young lady, wearing shorts and standing sideways, and opening the door of a 7-seater van with her right hand and she then got in. The plaintiff in evidence readily admits that the vehicle was their family’s and the woman next to the young lady was her mother. She says, which I accept, that her younger sister is as tall as she is and of similar figure and that the young lady there might be her. The clip simply did not show the face of the young lady who was standing sideways and her face was hidden under an umbrella since it was raining. Concerning this clip, I find against D1’s testimony that the person depicted was the plaintiff. D1 was inside the car driving by and the clip was taken by the car camera. I do not believe D1 had a sufficiently low angle or the view to be able to have a good look at the face covered by and under the umbrella.
19. D1 also seeks to show another clip showing the plaintiff’s hair style, which is the same one the plaintiff is wearing at trial. D1 says that she intends to ask the question that if the plaintiff was so ashamed of her facial scars, especially the one at the right eyebrow, then why was it that she did not change her hairstyle such that it would cover her eyebrow wound. This court disallows that question as it is a matter for comment and it would unwarrantedly provoke anguish. As a submission point, this court must reject it. This court cannot imagine what hairstyle D1 is suggesting that would just cover the right eyebrow scar and yet not cover the right eye so that the plaintiff can see. Such odd (if not also ugly) hairstyle would no doubt draws attention rather than diverts embarrassment. This court must say that it finds D1’s such suggestion distasteful at best.
20. In all, I accept that the plaintiff suffers from the various loss of amenities as mentioned above and from the physical complaints and psychological symptoms as opined in Dr Fu’s and Dr Wong’s reports.

*PSLA*

1. Mr Fong refers the court to the following cases:-
2. In *潘冬琼 v 黃勝發* (HCPI 486/2013, To J, 28 August 2015), the plaintiff there, a 56-year old female at the time of the incident, married, was bitten on both legs also by a Tibetan Mastiff leaving a 10 cm scar on left calf and three 1 x 2 cm scars on right calf. She had to undergo a number of operations and was hospitalized for 18 days. There was residual and intermittent medium pain over her left calf and left heel with numbness and itch. She also suffered from Post-traumatic Stress Disorder. She was assessed as suffered from 2% loss of earning capacity and 2% whole person impairment due to orthopaedic reason and 5% of the same due to psychiatric reason. She was awarded HK$500,000 for PSLA in August 2015.
3. In *Fung Wing Yee (a minor) v Chen Jung Chien* (HCPI 657/2007, Suffiad J, 23 March 2010), the plaintiff, a 12-year old girl at the time, was knocked down by a taxi and sustained right temporal-parietal epidural haematoma and left temporal subarachnoid haemorrhage and was unconscious for 10 days. She had made a remarkable neurological recovery and has only mild symptoms akin to mild post concussional syndrome. She however also sustained compound fracture of right tibia and fibula complicated by non-union and post-traumatic flexion contracture of the right toes causing her right legs to become shorter by 1.2 cm. The long flexors of the right toes have to be excised and the nails removed. She now walked with a slight limp. She could not now play piano, having attained Grade 4 before the accident, as she could not now operate the right piano foot pedal effectively. There were scars on her occipital region of her scalp and two very noticeable scars – one on the side of her right knee and another at the rear of her right calf which is a depressed skin graft scar. She sustained no psychiatric injury. She was awarded PSLA in the sum of HK$750,000 in March 2010.
4. In *Tang Yuet Yi (a minor) v Leung Man Chow* (DCPI 1436/2016, HHJ MK Liu, 16 August 2018), the plaintiff, a 9-year old girl at the time, was bitten by an Atika dog and sustained head laceration at right parietal region, left face and upper chest wall, with resultant scars on left face (2 x 1 cm), left chest wall (6 x 2 cm down to muscle level), left posterior shoulder (4 x 2 cm down to deltoid muscle) and right occiput scalp (3 x 0.5 cm down to subcutaneous layer). She was granted 20 days of sick leave. She did not suffer any psychiatric injury. She was awarded PSLA in the sum of HK$300,000.
5. In *Susi Yanti and Another v Chu Shiu Chuen* (HCPI 1176/2000, Master de Souza, 2 November 2001), the 1st plaintiff, an Indonesian domestic helper, was attacked by a dog and sustained no fewer than 19 conspicuous scars on the back of her right leg, 4 similarly unsightly scar over her left calf and 2 noticeable scars over right upper arm. She was greatly embarrassed by her wounds and developed an inferiority complex that required psychiatric help. She was awarded PSLA in the sum of HK$380,000 in November 2001.
6. D1 refers me to a number of cases, including:-
7. *潘冬琼 v 黃勝發*, the same case cited by the plaintiff.
8. In *Tse Ngan Heung v Lo Sin Tak* (HCPI 565/1999, Master CB Chan, 10 January 2002), the plaintiff, a 29-year old young woman, was injured in a traffic accident sustaining fractures of her left superior and inferior pubic rami, ischial tuberosity and right fibula, which healed well. She suffered post-concussion vertigo and acute stress reaction that required psychiatric treatment. She suffered also 1cm laceration at left forehead, 1 cm laceration at left cheek, 2 cm laceration at right temporal region and 2 cm laceration at right face. The scars on her face have faded to such an extent that they were faint and not noticeable unless pointed out to the observer. She was awarded PSLA in the sum of HK$350,000 in January 2002.
9. In *Mujiati v Chong Wai Kwan* (DCPI 424/2003, HHJ Wong, 21 October 2004), the plaintiff, a 21-year old domestic helper was bitten by dogs and sustained (a) 20 x 4 mm scar at the ventral surface of the left forearm, (b) 8 pigmented dot-like scars over the ventral and dorsal surface of the left forearm, (c) 8 pigmented dot-like scars over the dorsal of ventral surface of the right forearm and one 15 x 20 mm scar there, (d) 3 scars of 10 x 5 mm, 10 x 60 mm and 10 x 10 mm at the left buttock, and (e) 2 round scars with diameter 5 x 10 mm at right buttock. She was awarded PSLA in the sum of HK$70,000 in October 2004.
10. In *Achacoso Warly Cabaneros v Liu Man Kuen* (HCPI 121/2001, Master KH Hui, 11 June 2004), the plaintiff, a domestic helper aged 28 and married, was injured by her employer who drew a hot iron across the back of her hands, which sustained secondary burns with resulting red and raised scars. She was awarded PSLA in the sum of HK$280,000.
11. In *孫有興 v 廖少冰* (DCPI 1292/2005, HHJ Leung, 25 June 2007), the plaintiff, a male postman aged 41 at the time and married, was bitten by a dog over his left leg while on duty, sustaining the following wounds (a) 3 x 4 cm, (b) 1 x 1 cm and (c) 2 x 3 cm. He was hospitalized for 18 days and received 2 operations including a skin grafting one. The range of movement of his left ankle diminished slightly and there was decrease in sensation over left foot and some of the toes. He was awarded PSLA in the sum of HK$200,000.
12. The cases cited by the parties (by the plaintiff : *Tang Yuet Yi;* by the defendant: all the cases except*潘冬琼)* in which the plaintiffs there suffered injury consisting mainly, if not exclusively wounds with resulting scars, are in my view not comparable as the present plaintiff has additionally suffered from significant psychiatric injury (and is still suffering from it to a certain extent) and from injury over her right hand. The cosmetic injuries in the cases referred to by D1 are generally and clearly much less serious than those suffered by the present plaintiff. However, this court takes note of the general range of award given in those cases regarding various pure cosmetic injuries.
13. I think the present case is comparable with*潘冬琼,* but is more serious. Both*潘* and the plaintiff suffered PTSD in additional to some orthopaedic injuries. However, *潘冬琼* was 56 years old and married at the time of the accident while the present plaintiff was only 22 years old and has just graduated from university. The present plaintiff is unmarried and her scars might affect the prospect of her finding her partner. Her scars are located over her face, her right breast and her upper right anterior thigh. She is of tall slim figure with a pair of long legs she has reason to, and was, proud of. Because she is so much younger than*潘,* the orthopaedic and cosmetic disabilities (hopefully not the psychiatric) will be affecting her for a much longer period of her life than*潘’s.* The many above-mentioned activities and enjoyments, including playing piano which had been and could be so much part of her life, that she could have enjoyed young and for quite a long while, are now mostly lost to her.
14. Moreover, I also consider the present plaintiff’s right hand residual and permanent weakness and pain more serious than the calf and heel injury suffered by*潘*. Being residuals affecting the dominant hand, the residuals would cause much more daily inconvenience to the plaintiff.
15. I take into account that with the treatments recommended by Dr Au, there is a 70% chance of success to alleviating the cosmetic injury; and that likewise, the psychiatric treatments the plaintiff would receive would hopefully help the plaintiff attaining full remission.
16. In the round and in the premises, I assess the appropriate and reasonable award for PSLA as HK$650,000.

*Loss of earning capacity*

1. All 3 experts opined that the plaintiff has suffered some loss of earning capacity (at 2%, 10% and 20-25% respectively).
2. While in her present job the plaintiff can make do with operating the computer and writing emails as far as her right hand is concerned, it is undeniable that her right hand would not be as agile and effective as it was before the accident and there is some mild loss of her work efficiency, as opined by Dr Fu.
3. As a female university graduate, an important attribute for her career development, one would think, would be her inter-personal skills and relationships. However, Dr Wong is guarded regarding the plaintiff’s prognosis. There is still some chance that the PTSD features might affect her ability to interact with others, such that it will not be as fully and effectively as she would have been but for the injury.
4. It is trite that this head of award is to compensate the disadvantage in the labour market a plaintiff may suffer. Considering the above, I would award the plaintiff a moderate sum of 4 months’ salary to reflect the disadvantage she is likely to suffer in her long working life. As there is no dispute that she now earns around HK$23,000 a month, the award is HK$92,000.

*Future medical expenses*

1. I have already set out above:-
2. Dr Wong’s opinion on the psychiatric treatments the plaintiff would require at the total costs of HK$100,000; and
3. Dr Au’s recommendation on the treatments of the scars at the total costs of HK$92,000.
4. I accept the two experts’ opinion and recommendation and would award these two sums for future treatment totaling HK$192,000.

*Loss of future income*

1. Dr Au sets out in his report that in order to receive the treatments to the scars, the plaintiff would require altogether 9 days’ sick leave, for which the plaintiff would lose her income. I assess this loss broadly at HK$23,000 x 1/3 and round it to HK$7,700.

*Special damages*

1. At trial, the plaintiff claims past medical expenses at HK$5,355 which is less than what D1 has indicated she would accept. I so award.
2. The plaintiff claims reasonable travelling expenses totaling HK$5,000. I have mentioned above that by the end of 2016, the plaintiff has attended 59 sessions of different treatments, not yet counting the further orthopaedic follow-ups she attended since. She lived in Lau Fau Shan. I consider the sum claimed reasonable and so award.
3. For tonic food, D1 disputes the amount spent on buying the expensive fish maw and bird nests as tonic food. Though I accept the plaintiff’s evidence that she had consumed these which her mother recommended, I do not think it reasonable to award them. Instead, bearing particularly in mind that the plaintiff underwent 4 operations, the reasonable amount for tonic food, including the costs of Dermatix gels and other medications for treating the scars, is assessed at HK$9,000.
4. The total amount of special damages would therefore be HK$19,355.

*Disposal*

1. I assess and adjudge payable jointly and severally by D1 and D2 to the plaintiff the total sum of HK$961,055, as follows:-
   * 1. PSLA HK$650,000
     2. Loss of earning capacity HK$92,000
     3. Future medical expenses HK$192,000
     4. Loss of future income HK$7,700
     5. Special damages HK$19,355

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

Total HK$961,055

1. The plaintiff is entitled to interest (a) at 2% for general damages, namely PSLA award of HK$650,000, from the date of the issue of writ to the date of this judgment, and (b) at half judgment rate of 4% on special damages, namely HK$19,355, from the date of accident to the date of this judgment, (c) and then after, all the sums at judgment rate until their full payment. I so award.
2. On the question of costs :
3. As mentioned in paragraph 8 above, the plaintiff abandons the claim for pre-trial loss of earnings only at the beginning of this trial. Costs of preparation specifically related to that claim are now wasted. Presently, I am minded to disallow some of the plaintiff’s costs to reflect the waste. However, there are only 33 out of a total of about 600 pages of documents in the trial bundles that are directly related to this claim, while there is only one paragraph each in the plaintiff’s witness statement and in D1’s witness statement addressing this claim. I propose to disallow 5% of the plaintiff’s costs.
4. I have made reference at footnote 5 to paragraph 57 above to D1’s “7 applications” filed between 11 July to 26 September 2019 on the same subject of seeking the inclusion of the videos and other documents into the trial bundles. At trial, I have indicated that I may consider ordering costs to be assessed on an indemnity basis regarding costs relating to them. I have now examined the court file closely. There were directions given by 2 Masters respectively dated 14 and 28 June 2019 directing, among others, D1 to indicate in writing what further documents she wished to add to the draft trial bundle index. She did so by some of the earlier ones of those “7 applications” which she also copied to the court. Apparently, the plaintiff’s solicitors have not responded to them in the way as required by the same 2 sets of directions, necessitating a Master on 13 September 2019 directing the plaintiff to do so within 7 days. In the circumstances, D1 is not entirely to be faulted in making repeatedly the “7 applications”. While indemnity costs may not therefore be appropriate, the taxing master may appreciate that much preparation costs were occasioned by those video clips.
5. I will therefore make a costs order *nisi* that D1 and D2 do pay the plaintiff 95% of the costs of this assessment with a certificate for counsel on a party and party basis, to be taxed if not agreed; and the plaintiff’s own costs are to be taxed according to the Legal Aid Regulations. This costs order *nisi* will become absolute unless any party applies in writing to vary within the next 14 days.
6. The defendants may liaise with my clerk to have this judgment interpreted to them orally by a court interpreter if such need arises.

( KC Chan )

District Judge

Mr Stephen Fong, instructed by Damien Shea & Co, assigned by the Director of Legal Aid, for the plaintiff

The 1st defendant appeared in person

The 2nd defendant was not represented and did not appear

1. pp 1 and 2 of D1’s “修編正回應三份醫療專家報告” dated 18 February 2019 sent to the court and the plaintiff’s solicitors [↑](#footnote-ref-1)
2. p 109-1 of Trial Bundle C [↑](#footnote-ref-2)
3. pp 5-6 第一被告人之開案陳詞 [↑](#footnote-ref-3)
4. p 1 of D1’s “修編正回應三份醫療專家報告” dated 18 February 2019 and p 8 of 第一被告人之開案陳詞 [↑](#footnote-ref-4)
5. She has “filed” 7 “applications” from 11 July to 26 September 2019 to include these videos, together with many pages of other irrelevant documents, into the trial bundles. [↑](#footnote-ref-5)
6. See the screen capture of that clip is at Trial Bundle E p 584 [↑](#footnote-ref-6)