## DCPI2239/2009

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 2239 OF 2009

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BETWEEN

AU WAI MUI（歐惠梅）,

THE PERSONAL REPRESENTATIVE OF

MAU CHI HO（繆志豪），DECEASED Plaintiff

and

FAN WU KEE（范基） 1st Defendant

WONG MOON TONG（黃滿棠） 2nd Defendant

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

Coram: Her Honour Judge H.C. Wong in Court

Date of Hearing: 21st October 2010

Date of Handing Down Assessment of Damages: 5th November 2010

ASSESSMENT OF DAMAGES

1. The Deceased was a 14 years old Form 3 student. On 18 December 2006, he was hit by a school bus after he alighted from a public light bus on Tai Po Service Road West. He sustained serious injuries from the accident and died 2 days later at the Prince of Wales Hospital.
2. The present claim under the Fatal Accident Ordinance Cap. 22 for loss of dependency and Law Amendment and Reform (Consolidation) Ordinance for loss of accumulation of wealth is brought by the Deceased’s mother, Madam Au, as the personal representative of the Deceased’s estate. The Deceased’s father has been incarcerated at Stanley Prison since 2002, his expected date of release is 8 October 2011.
3. Judgment on liability against the Defendant was entered by consent on 28 September 2010 on the basis that the 1st and 2nd Defendants be held 30% liable for the death of the Deceased and for damages to be assessed.
4. At the hearing of assessment of damages on 15 October 2010 and in the Answer to the Statement of Damages, the Defendants disagreed with the Plaintiff’s claim for loss of dependency of $648,000 under the FAO and the claim of $100,000 loss of accumulation of wealth. The Defendants, however, agreed to the statutory sum of $150,000 bereavement claim and the medical and funeral expenses claim of $54,370.

Background

1. Madam Au was 41 years old at the time of her son, Mau Chi Ho’s death, she is now 45 years old. The Deceased’s father Mau Chi Wah who was born on 3 November 1962, is 48 years old. Chi Ho’s younger sister Mau Tsz Ching was born on 20 February 1995, she is now 15 years old.
2. The Deceased’s father was unemployed before his incarceration in 2002. The Plaintiff, Madam Au, is and was a school bus driver earning $4,500 per month. Her income was $5,000 p.m. in 2006. She is and was the sole bread-winner of the family.

Loss of Dependency

1. Madam Au produced the Deceased’s past school reports from primary school to the last term of the second Form in the 2005-2006 school year. She further produced certificates showing Chi Ho’s awards in ‘mathematics’ and ‘reading’, his achievements in table tennis when he was in primary school and Tae Kwon Do black belt in July 2006. His awards in mathematics and scores in his school reports showed that Chi Ho was particularly gifted in mathematics. His secondary school reports also showed his interest in computer.
2. According to Madam Au, Chi Ho was an intelligent and responsible youth who had often looked after his younger sister when Madam Au was at work. He would also prepare the evening meal on occasions when Madam Au had to work late. Madam Au believed Chi Ho had coped with his father’s incarceration well though he had become more reserved.
3. She also believed that he would have taken care of the family and contributed towards the family’s living expenses had he survived. She further believed he would have received university education and became either an electronic engineer or a Tae Kwon Do instructor for he had told her his aspirations before his premature death.
4. The basis of Madam Au’s claim is the high score Chi Ho achieved in mathematics and computer literacy in school and his attaining black belt level at the tender age of 13 years and 10 months in July 2006. He was placed 6th in a class of 35 in Form I (71 in a form of 184) and 4th in a class of 36 in the 1st term of Form II (74 in a form of 187). In the 2nd term of Form II, he came 9th in a class of 36 (100th in a form of 188). He was a student at Carmel Holy Word Secondary School in Tai Po, a band 2 school.
5. Madam Au claimed her brother had promised her that he would support Chi Ho’s tertiary education, thus Chi Ho would very likely have received university education. On graduation, she believed he would be earning between $10,000 and $15,000 per month. She strongly believed he would have contributed to his parents’ expenses to the extent of $6,000 p.m. He had expressed his wish of becoming an electronic engineer and a Tae Kwon Do instructor.
6. Mr. Wong, Counsel for the Plaintiff, submitted that on the basis Chi Ho’s monthly earnings after graduation as an electronic engineer or Tae Kwon Do instructor earning an average of $12,000, he would have contributed $6,000 p.m. to his parents’ family. It is on this basis the Plaintiff claim a loss of dependency of $6,000 a month with a multiplier of 9 leading to $648,000.
7. Mr. Lai, Counsel for the Defendants, disagreed with the Plaintiff’s claim of $648,000 given Chi Ho’s young age at time of death, he submitted that there are too many imponderables on the prospects of Chi Ho’s future.
8. Mr. Wong relied on the case of *Wai Kang Kwan v. Tai V Wong Wing Hong* HCA 1803 of 1989, an assessment of Master Jones of 2 October 1989. Master Jones applied a multiplier of 8 on the 17 years old deceased for the parents’ dependency. The deceased in that case had worked for 1½ month after finishing her Form 5 education and school leaving examinations before her death.
9. In the case of *Kwan Lai Kuen v. National Insurance Co. Ltd.* PI No. 960 of 1995 (1998) Hong Kong Law Report and Digest 330, the 20 year old deceased was employed for 2 months before his death. Keith J. (as he then was) accepted the evidence of his pre-accident contribution of $4,000 to the monthly family pool from his $6,000 monthly income. After deduction of $1,500 for his own upkeep, Keith J. accepted the contribution of $2,500 per month to his parents which he found the deceased would have increased to $3,000 by the time he was 30. The multiplier of 12 was applied.
10. In the present case, the Deceased was 14 at the time of death, he was not earning an income. Based on his school report scores and the comments of his class teachers, he was a bright and intelligent student who would offer to help others and a person of good nature. He was said to be talkative and disrespectful at times. According to his mother, Madam Au, he was responsible and caring.
11. As Bokhary P.J. observed in the CFA case of HKC1 *Lam Pak Chiu v. Tsang Mei Ying* [2001] HKC 2 at p. 9E-G

“Assessing damages is seldom easy. And it tends to be especially difficult where future loss is involved. The judicial statements to that effect are legion. And they are readily explainable. Weighing evidence to decide what in all probability had actually happened is difficult enough. It is only natural that the difficulty is far greater where the determination to be made is of what would have happened but for the event giving rise to liability. For then the court is often heavily engaged in pondering the well-nigh imponderable. It is often driven close to crystal-gazing. All of these difficulties are in full attendance where the assessment of an award for loss of accumulation of wealth is concerned. But the mere fact that an assessment is extremely difficult does not relieve the court of its duty, or deprive it of its ability, to make that assessment. The court, in the time-honoured expression, does the best it can with what it has.”

1. Though the aforesaid dictum was expressed in relation to the claim of accumulation of wealth under the Law Amendment Reform (Consolidation) Ordinance, the same can be applied in the FAO’s loss of dependency. Even though the Plaintiff’s claim is based on the Deceased’s future possible income after finishing his education, I find there to be sufficient basis from his good academic scores and teachers’ comments together with his extra-curricula achievements that he would most likely receive tertiary education and would be engaged in the electronics industry. I accept he would be an achiever within his parents’ expectations and would contribute part of his income to his parents and would still have done so after his younger sister finishes her education. He was the eldest in a family, brought up in a single income family where his mother was the sole bread-winner. He had a close relationship with his mother and sister before his premature demise.
2. On the aforesaid basis, I accept that Chi Ho would likely have received an income of between $10,000 - $15,000 working in the IT industry or as a Tae Kwon Do instructor or maybe both to supplement his income. That he would have contributed $6,000 p.m. to his parents irrespective of his younger sister’s contribution a few years after his graduation. I further accept the multiplier of 9 to be appropriate for a young man with his background. The quantum of loss of dependency is therefore:

$(6,000 x 12 x 9) = $648,000

Loss of accumulation of wealth

1. To assess the Deceased’s future loss is a particularly difficult task. The difficulties involved are expressed in the CFA case of *Lam Pak Chiu*, Bokhary P.J. referring to the judgment of Lord Diplock in *Mallet v. McMonagle* [1970] AC 166 at p. 176 E-G:-

“The role of the court in making an assessment of damages which depends upon its view as to what will be and what would have been is to be contrasted with its ordinary function in civil actions of determining what was in determining what did happen in the past a court decides on the balance of probabilities. Anything that is more probable than not it treats as certain. But in assessing damages which depend upon its view as to what will happen in the future or would have happened in the future if something had not happened in the past, the court must make an estimate as to what are the chances that a particular thing will or would have happened and reflect those chances, whether they are more or less than even, in the amount of damages which it awards.”

1. Bokhary P.J. further held at p. 10 F-H:)-

“For the reasons given above, I reject the notion that a pattern of savings by the deceased during his lifetime is an absolute pre-condition to an award for loss of accumulation of wealth. Even in the absence of any savings during the deceased’s lifetime, there may in any given case be, on a balanced view, real prospects of an eventual accumulation of wealth such as to justify an award for loss of accumulation of wealth. The court then assesses the award in accordance with those prospects as it sees them.”

And at p. 11 A-C. he added:

“Having come on first principles to the conclusion that a pattern of savings is by no means an absolute pre-condition to an award for loss of accumulation of wealth, I should mention that there are in fact many cases in which judges and masters have made such awards even though the deceased had not made any savings during his or her lifetime. These cases include all of the cases which I list out later on in this judgment to show that both the global basis and the multiplier and multiplicand method have been resorted to by judges and masters making awards under this head.”

1. I have also considered Keith J.’s award in *Kwan Lai Kuen v. National Insurance Co. Ltd.* holding the sum of $100,000 for loss of accumulation of wealth as an appropriate award and the award of Nguyen J. in *Wang Chiu Ying, administrator of the estate of Cheng Yeuk Hang, deceased v. Lam Ping Fung* [1999] 3 HKLRD 190 and the award of a like sum by my brother Judge David Lok in the case of *Lo Kam Mui v. O Pui Yiu* DCPI 1813 of 2007 (date of judgment 18/12/07) ([2008] HKEC 298) and in *Yiu Wai Ching Apple v. Lai Lo Hing & Ors.* DCPI 140/2002. I adopt the sum of $100,000 to be an appropriate award in the present case.

Summary

1. Future loss of dependency $648,000

Bereavement 150,000

Medical and funeral expenses 54,370

Loss of accumulation of wealth 100,000

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$952,370

1. As the parties have agreed the Defendant’s liability to be 30%, the Plaintiff shall recover 30% of the total assessment:

$(952,370 x 30%) = $285,981

Interests

1. Interests on special damages, medical and funeral expenses from the date of death at 2% p.a. and interests on general damages at half judgment rate from date of claim to the date of judgment. Thereafter at judgment rate.

Costs

1. Costs to the Plaintiff to be taxed if not agreed with certificate for Counsel. The Plaintiff’s own costs to be taxed in accordance with Legal Aid Regulations.

( H.C. Wong )

District Court Judge

Parties:

Mr. Charles T.C. Wong instructed by Messrs. Kevin Li & Co. assigned by Director of Legal Aid for the Plaintiff.

Mr. Alex Lai instructed by Messrs. Philip K.H. Wong, Kennedy Y.H. Wong & Co. for the 1st and 2nd Defendants.