# DCPI 2442/2018

[2023] HKDC 582

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 2442 OF 2018

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BETWEEN

AMPOFO MOSEN ANTI Plaintiff

and

NG CHING MEI Defendant

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##### Before: His Honour Judge Andrew Li in Court

Date of Hearing: 10 October 2022

Date of Assessment of Damages: 5 May 2023

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ASSESSMENT OF DAMAGES

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*INTRODUCTION*

1. This is the assessment of the plaintiff’s claim against the defendant for damages in relation to a freak accident which happened to him while he was having a smoke at a rear lane behind Chungking Mansions in Tsim Sha Tsui.

*BACKGROUND*

1. At or about 9:45 pm on 10 November 2015, when the plaintiff was smoking in a rear lane between Block D of Chungking Mansions (36 to 44 Nathan Road, Tsim Sha Tsui, Kowloon) and Far East Mansion after having had dinner earlier in Chungking Mansions, he was hit by a heavy metal object which fell from height. It hit the plaintiff on his left shoulder. The falling object caused a deep cut and bleeding on his left shoulder. The object fallen was a rusty iron rod, which was approximately 4-foot long. It became loose and came off from the wall of a unit owned by the defendant (“the Accident”).
2. As a result, the plaintiff sustained serious personal injuries, ie a deep cut and bleeding on his left shoulder.
3. The defendant has never taken part in the present proceedings. Interlocutory judgment on liability was entered by the plaintiff against the defendant on 17 November 2020 as no notice of intention to defend has been filed by the defendant.
4. By an order of this court dated 22 October 2021, it has been directed that within 28 days from the service of the re-revised statement of damages (“RRSOD”) by the plaintiff, the defendant shall file and serve an answer thereto, to be accompanied by a statement of truth. No answer was filed by the defendant.
5. The claims of the plaintiff are set out in the RRSOD dated 10 March 2022. It advances a claim for damages in a total sum of $441,400.00, together with interest and costs thereon.

*DISCUSSION*

*Treatments received for the plaintiff*

1. The plaintiff was admitted to the Department of Accident & Emergency (“A&E”) of Queen Elizabeth Hospital (“QEH”) for examination and treatment on 10 November 2015 immediately after the Accident. He was diagnosed with diffused pain of left side of his neck and left shoulder. Meanwhile, there was a laceration on his left shoulder. No fracture was seen in his neck and left shoulder X-ray. The plaintiff was treated and discharged.
2. The plaintiff then visited the A&E of Ruttonjee & Tang Shiu Kin Hospitals (“RTSKH”) on 24 January 2016 and A&E of Queen Mary Hospital (“QMH”) on 19 December 2016 respectively.
3. The plaintiff attended Department of Orthopaedic & Traumatology (“O&T”) of QEH on 29 May 2017. He was presented with persistent left shoulder pain and apprehension. Physical examination revealed limited left shoulder active range of motion and weakness of left rotator cuffs. X-ray showed multiple loose bodies and degenerative changes in left glenohumeral joint. Diagnosis was left shoulder synovial chondromatosis. The physiotherapy and occupational therapy in addition to analgesics MRI on 19 December 2019 the plaintiff received showed mainly left shoulder synovial chondromatosis and osteoarthritis of left glenohumeral joint. Further follow-up was scheduled for 26 April 2021.
4. In the past 2 years, the plaintiff attended regular follow-ups at QMH. During an orthopaedic follow-up on 19 October 2020, the plaintiff was referred to receive another course of physiotherapy at RTSKH. The appointment was scheduled for 16 March 2021.
5. The plaintiff attended the follow up at QMH on 25 July 2022.
6. Apart from reporting that there was minimal change to his left shoulder’s problems, the plaintiff reported that he had not been able to sleep well for years as he would be woken up by the pain from his left shoulder if he moved it or slept on his left side. He was only able to sleep for no more than five hours each night. In spite of this, he described his mental state was largely stable following the Accident and remained stable until around a year ago. He had several psychosocial stressors that were related to the Accident. These include the ongoing problems with his left shoulder even many years after the Accident.
7. The plaintiff felt his mental state has been gradually worsened in the last year. He complained about feeling distressed with increased anxieties about his future. He was preoccupied about the functioning of his left arm. His sleep remained problematic as described above. His appetite markedly decreased and he lost 16 kilograms in the last few months. He had fluctuating concentration with poor memory. In the last few months, his motivation significantly decreased with loss of his usual interests. He stopped his regular exercise routine and did not renew his gym membership after it expired on 30 September 2021. He felt tired with low energy and spent most of his time at home watching television. His sex drive was also decreased in the last three months. He said he developed a habit of talking to himself out loud about his various issues. He denied any suicide ideas.
8. His mental state deteriorated from around two years ago. Owing to the problem of his left shoulder, the plaintiff complained of being unable to sleep and wishing to leave Hong Kong. He felt distressed about his situation and did not know how he can change it. His mood was labile with crying spells for unknown reasons. He was irritated over trivia. His appetite fluctuated. He became socially withdrawn and only wanted to spend time at home. He muttered to himself in his own language often. There was no self-harm or violent behaviour observed.
9. Since the plaintiff told his treating orthopedic doctor about his mental health issues, he was referred for assessment at West Kowloon Psychiatric Centre (“WKPC”) in mid-October 2021. His first appointment was on 11 July 2022 while the next appointment had been fixed for 17 October 2022.
10. On 16 December 2021, a mental state examination on the plaintiff was conducted by a psychiatric expert.
11. To summarize, the plaintiff attended multiple medical appointments, including:-
12. A&E treatments on 24 January 2016 and 19 December 2016;
13. magnetic resonance imaging (“MRI”) on 31 January 2018, 26 November 2018, 19 December 2019 and 4 January 2021;
14. orthopaedic treatment on 4 June 2018 and 3 December 2018;
15. orthopaedic and traumatology treatment on 2 February 2018, 19 March 2018, 4 June 2018, 27 August 2018, 3 December 2018, 9 December 2019, 2 March 2020, 25 May 2020, 24 June 2020, 19 October 2020, 26 April 2021, 23 August 2021, 13 December 2021 and 25 July 2022;
16. physiotherapy treatment on 23 November 2017, 31 January 2018, 24 July 2019, 22 January 2021 and 16 March 2021; and
17. psychiatric treatment at WKPC on 11 July 2022 and 22 August 2022.

*Present complaints of the plaintiff*

1. The plaintiff claims to be suffering from various impairments and disabilities as a result of the Accident. They include:-
2. persistent left shoulder pain affecting him even at rest, stiffness and weakness secondary to pain on exertion;
3. left shoulder movement would aggravate the pain;
4. very stiff left shoulder which makes him unable to elevate his left arm to overhead;
5. not being able to carry objects with more than 5 kg;
6. neck stiffness, difficulty to rotate head to right side;
7. the need of painkiller every day;
8. no improvement even more than 6 years has elapsed;
9. problem in taking showers as his left hand cannot reach his back;
10. poor sleep due to pain when sleeping on left side;
11. intense discomfort, including but not limited to low mood, because of the pain; and
12. not being able to play soccer after the Accident.

*Single Orthopaedic Expert Report*

1. On 26 February 2021, an examination was conducted on the plaintiff by Dr Tsoi Chi Wah Danny (“Dr Tsoi”), an orthopaedic expert appointed by the plaintiff’s solicitors. A single orthopaedic expert report dated 3 May 2021 was prepared by Dr Tsoi (“the SOER”).
2. Upon physical examination of left shoulder on the plaintiff at the examination, Dr Tsoi found that:-
3. full range of neck movement without paraspinal muscle tenderness but complained of pain when rotating head to right side;
4. prominent left acromioclavicular joint;
5. mild wasting of left shoulder girdle muscle as well as left arm muscle;
6. no soft tissue swelling;
7. 4 x 1.5 cm hypertrophic scar over the superior aspect of his left shoulder;
8. tender spot over left acromioclavicular joint over surgical scar and long head of biceps tendon;
9. stable on stress test;
10. apprehension sign negative;
11. impingement sign negative; and
12. limited active and passive left shoulder range of motion.
13. Radiological examination of both shoulders showed that:-
14. normal alignment of all bones;
15. gleno-humeraljoint intact;
16. acromio-clavicular joint intact but in advanced degeneration;
17. subacromial space not narrowed but degenerative changes noticed;
18. multiple loose bodies and calcifications around shoulder joint; and
19. no other bony lesion detected, right shoulder unremarkable.
20. X-Ray and MRI scan confirmed multiple loose bodies inside his left shoulder joint, which were consistent with the diagnosis of multiple synovial chondromatosis. There was also advanced degeneration of the acromioclavicular joint of left shoulder. Dr Tsoi opines that this could be caused by the injury with direct contusion by objects fallen from height.
21. Dr Tsoi agrees that all the treatments that the plaintiff has received so far were standard and appropriate for the plaintiff’s clinical condition.
22. Dr Tsoi reached the following conclusions and comments in the SOER:-
23. the plaintiff sustained direct contusion and laceration injury over his left shoulder when being hit by objects fallen from height at the material time during the accident;
24. the plaintiff developed persistent pain and progressive stiffness of left shoulder. Subsequent X-Ray and MRI done on 19 December 2019 confirmed that the plaintiff had synovial chondromatosis of left shoulder;
25. since the synovial chondromatosis only developed after the Accident, there is a causal relation between the Accident and the subsequent development of frank synovial chondromatosis of left shoulder;
26. left shoulder problems of the plaintiff are genuine and are mainly related to the synovial chondromatosis as well as left acromioclavicular joint degeneration. They are causally related to the Accident;
27. The prognosis of the plaintiff was at most be fair only. With numerous amounts of loose bodies inside the left shoulder joint, the plaintiff will not benefit from any form of conservative treatments including rest, physiotherapy and occupational therapy;
28. Dr Tsoi opines that the only hope to improve the range of motion and to relieve the pain is by arthroscopic removal of the loose bodies. The cost is estimated to be $120,000 if performed in private hospitals and rehabilitation of 6 months at an additional cost of about $40,000 is required; and
29. Dr Tsoi opines that even with successful removal of all loose bodies, residual stiffness, pain on exertion and weakness are expected. The prognosis is fair to guarded. If the plaintiff prefers conservative treatment, he will have permanent pain and stiffness. The prognosis is poor.
30. Further, Dr Tsoi opines that:-
31. from an orthopaedic perspective of the current left shoulder problems of the plaintiff, the Accident has resulted in 10% of whole person impairment, which can be reduced to 5-6% after successful removal of loose bodies;
32. given the current severe disabilities of the plaintiff, it would be difficult for the plaintiff to resume his pre-injury career as a professional soccer player. The plaintiff is unfit to take up jobs requiring left upper limb weight carrying, lifting or any overhead work. However, messenger (delivering light objects), carpark attendant, security guard and store assistant are suitable for him;
33. from orthopaedic perspective, the loss of earning capacity is estimated to be 10%, which can be reduced to 5-6% after successful arthroscopic removal of loose bodies;
34. in view of the severity of the injury and the strenuous nature of the pre-accident work, it is very difficult to evaluate the appropriateness of sick leave in this case;
35. for a contusion injury of left shoulder with laceration and abrasion but without fracture/dislocation of major structural injury, sick leave of up to 3 months should be adequate;
36. if the plaintiff refuses arthroscopic surgery, sick leaves up to the date of this assessment should be the maximum; and
37. further sick leave will not help to improve the function or relieve the symptom of his left upper limb.

*Single Psychiatric Expert Report*

1. On 16 December 2021, the plaintiff was examined by Dr Robyn Ho Mei Yee (“Dr Ho”), the psychiatric expert appointed by the plaintiff’s solicitors. The single psychiatric expert report dated 10 February 2022 was prepared by Dr Ho (“the SPER”).
2. Upon the mental state examination of the plaintiff at the psychiatric assessment and a telephone interview with the plaintiff’s wife for collateral information, Dr Ho found that:-
3. the plaintiff had not been able to sleep well for years as he would be woken up by the pain from his left shoulder if he moved it or slept on his left side;
4. his mental state gradually worsened in the last year;
5. his appetite markedly decreased and he lost 16 kilograms in the last few months;
6. he had fluctuating concentration with poor memory;
7. in the last few months, his motivation significantly decreased with loss of his usual interests;
8. he felt tired with low energy;
9. his sex drive was also decreased in the last three months;
10. he developed a habit of talking to himself out loud about his various issues. Removing face mask stops his self-muttering;
11. his mood was labile with crying spells for unknown reasons;
12. he was irritated over trivia;
13. he became socially withdrawn and only wanted to spend time at home; and
14. he appeared to be in physical discomfort from sitting in the same posture for a period of time and needed to move his arm and neck.
15. Dr Ho diagnosed that the plaintiff is currently suffering from Major Depressive Disorder, with a mild to moderate episode based upon the criteria in the Diagnostic and Statistical Manual of Mental Disorders Text Revision (5th Edition) by the American Psychiatric Association (“DSM-5”). As of the time of the psychiatric assessment, the plaintiff’s mental state started to deteriorate from around at least a year ago, and there appeared to be a gradual worsening of his mental state in the last few months.
16. Dr Ho reached the following conclusions and comments in the SPER:-
17. the plaintiff’s mental state started to deteriorate from around at least a year ago and there appeared to be a gradual worsening of his mental state in the last few month;
18. the plaintiff is currently diagnosed to be suffering from Major Depressive Disorder, with a mild to moderate episode;
19. the plaintiff’s complaints of several psychosocial stressors (including the ongoing problems with his left shoulder) that precipitated and also perpetuated the deterioration of his mental state were all related to the Accident including consequences from the complications of the injuries caused to his left shoulder;
20. the plaintiff was able to work as a professional football player after the accident until he became mentally unwell to the point that was causing significant distress, ie September 2021;
21. the plaintiff is unlikely to be able to work as his mental state is unsatisfactory;
22. sick leave would have been appropriate from around September 2021 until the present;
23. the plaintiff requires treatment and management of his Major Depressive Disorder. He is in need of out-patient psychiatric treatment. Complying with psychotropic medications as well as regular follow-ups by mental health professionals will help his mental disorder to remit as well as prevent future relapse; and
24. The cost of out-patient treatment by public psychiatrist is around HK$1,000 for 6 months. The cost in the private sector, including medication, is around HK$20,000 for 6 months. It is common for patients with Major Depression Disorder to remain on medications for at least 12 months.
25. Further, Dr Ho opines that:-
26. the impairment levels, at present, caused by the plaintiff’s mental problems are moderate and are compatible with all useful functioning including his activities of daily living, social functioning, concentration and adaptation;
27. if the plaintiff receives appropriate treatment and management of his mental disorder, the impairment level will lessen; and
28. it is very difficult to predict the percentage of permanent impairment of whole person and loss of earning capacity as the plaintiff has not received any treatment of management of his Major Depressive Disorder.
29. I accept both the opinions of Dr Tsoi and Dr Ho in full and find the contents of their reports comprehensive, objective and fair.

*ASSESSMENT OF DAMAGES*

*Pain, Suffering and Loss of Amenities (“PSLA”)*

1. The plaintiff was born on 3 January 1985 and was 30 years old at the date of the Accident. The plaintiff was 37 years old at the time of assessment of damages.
2. In the RRSOD, the plaintiff claims a sum of HK$250,000 for PSLA.
3. Mr Alan Ho, counsel for the plaintiff, relies on the following cases for making the PSLA claim.
4. In *Wu Kin Leung v Incorporated Owners of Fu Tor Loy Sun Chuen Stage 1,* unreported, HCPI 684/2002 (Hon Sakhrani J; 4 April 2005), the plaintiff was on his way to work whilst walking along the pavement under the multi-storeyed building at the scene when he was struck on his head by an object and sustained personal injuries. Although the plaintiff did not sustain a serious injury as shown in medical reports, he did suffer from post-concussional syndrome and had epilepsy. The symptoms was mild in nature and it has not recurred since 2000. The court awarded HK$200,000.
5. In *B K Anil Humar v J V Fitmess Limited (Trading as California Fitness),* unreported, HCPI 311/2015 (Master Rita So; 31 March 2022), the plaintiff encountered an accident on 8 July 2014 when he was opening the door of the steam bathroom of the premises, with the ceiling structure got loosened and fell on the plaintiff. The plaintiff fell on the ground and landed his buttock to the ground. As a result, the plaintiff lost his consciousness and he suffered from multiple injuries. The plaintiff sustained head and left shoulder contusion injuries as a result of the accident, but he had no loss of consciousness. Also, the residual complaints about the injury of the shoulder were pre-existing conditions, which were not caused by the accident. Although the plaintiff resumed to work during the sick leave period, he still suffered from some discomfort at work. As such, the court awarded HK$150,000.
6. In *Yu Po Sin v Chan Kwai Fun trading as Fai Wong Decoration & Design Co,* unreported, DCPI 943/2010, (HH Judge I Wong; 22 September 2010), the plaintiff suffered personal injuries, loss and damages in a fallen object case whilst she was at work. Her head was hit by a fallen object, causing the plaintiff to suffer from right face swelling, neck tenderness, right-sided chest pain, vertigo, epilepsy, post-concussion syndrome, and depression. She was taking anti-neuropathic medication. Although the plaintiff suffered from depression prior to the accident, the court awarded HK$220,000.
7. Mr Ho submits that the plaintiff did not suffer from any pre-existing condition nor any post-concussion syndrome nor any pre-existing psychiatric conditions prior to the Accident. He further submits that part of the plaintiff’s conditions are similar to the plaintiffs in *Yu Po Sin* and *Wu Kin Leung*. However, the plaintiff did not suffer head injury as stated in *B K Anil Humar*. He therefore submits that a sum of HK$220,000.00 would be reasonable for the claim of PSLA.
8. With respect to Mr Ho, I think he has grossly underestimated the injuries of the plaintiff suffered in the Accident and the lasting impacts on his life – both physically and psychiatrically. In my judgment, the opinions of Dr Tsoi and Dr Ho clearly depict the plaintiff as suffering from genuine physical pain and psychiatric damage resulting from the Accident, even 7.5 years after its occurrence. They clearly mar his general daily activities and enjoyment of life. In my view, the combined effects of his physical and psychiatric condition as opined by Dr Tsoi and Dr Ho would place him at the bottom end of the “serious injury” category as defined in *Lee Ting Nam v Leung Kam Ming* [1980] HKLR 657. “Serious injury” category has been defined as “… a disability which mars general activities and enjoyment of life, but allows reasonable mobility to the victim, for example loss of a limb replaced by a satisfactory artificial device, or bad fractures leaving recurrent pain.”
9. Given the updated revision for PSLA awards in successive cases over the years and the allowance for inflation since the decision in *Ng Tat Kuen v Tam Che Fu* [2019] HKCFI 1191 (Bharwaney J; 3 May 2019), I would allow a sum of HK$585,000 for PSLA in this case: (see my calculations in *Cheung Ka Man v Wong Yu Huen*, unreported, DCPI 214 of 2021 (HH Judge Andrew Li; 17 March 2023) at §§116-117.

*Pre-trial Loss of Earnings*

1. The plaintiff is a non-refoulement claimant seeking asylum in Hong Kong since his arrival in 2006. He is not permitted to work legally here as long as he is having such a status. Hence, prior to the Accident, the plaintiff was unemployed and financially supported by a monthly allowance from the government and his family in Germany.
2. In the RRSOD, the plaintiff claims that he was a professional football player. He played football in the professional league in Ghana and Thailand. He plans to retire from playing football professionally at the age of 35. However, no documentary proof has been produced to verify such claim.
3. Very sensibly, the plaintiff’s assigned solicitors and counsel do not pursue the claim for pre-trial loss of earning at the assessment hearing.
4. I therefore will not make any award for pre-trial loss of earnings in this case.

*Future Loss of Earnings*

1. The plaintiff claims a sum of HK$60,000 under this head.
2. In the RRSOD, the plaintiff claims that the average monthly salaries for professional football player and football coach are allegedly at HK$20,000 and HK$18,000 respectively. However, no evidence has been produced to support such claims.
3. The plaintiff further alleges that he could only work as a security guard or other less labour-intensive work in the RRSOD, with his assumption that the monthly salary as a security guard be at HK$15,000.
4. However, as rightly submitted by Mr Ho, the plaintiff accepts the fact that since he is not allowed to work in Hong Kong as a non-refoulement claimant, there is therefore simply no basis for him to make a claim for loss of future earnings as long as his non-refoulement application is still in progress.
5. Dr Tsoi opines that given the current severe disabilities of the plaintiff, it would be difficult for the plaintiff to resume his pre-injury career as a professional soccer player. The plaintiff is unfit to take up jobs requiring left upper limb weight carrying, lifting or any overhead work. However, messenger (delivering light objects), carpark attendant, security guard and store assistant are suitable for him. However, Dr Tsoi’s opinion has to be viewed in the context of his status as an asylum seeker who is not allowed to work in Hong Kong.

1. In any event, as said, the plaintiff has failed to produce any documents to prove the average monthly income as a professional football player and football coach in his home country or from his former football teams as compared with those in Hong Kong, as well as those as a security guard, notwithstanding his status as a non-refoulement claimant in Hong Kong.
2. In *Kumara Debanama v Lui Pui Wai and Anor,* unreported, DCPI 1041/2013 (HH Judge Andrew Li, 29 July 2016), where the non-refoulement claimant plaintiff was bitten by a large dog and suffered from personal injuries. At the time of the incident, he was 38 years old and was 43 years old at the date of hearing. In the revised statement of damages, the plaintiff claims the alleged loss of future earnings at HK$2,000 for 15 years at HK$360,000 on the basis that his non-refoulement claim should be completed by the time when he is 43 and that he should be able to return to work lawfully. The court decided that the plaintiff simply does not know when he will be able to complete his non-refoulement claim. There is simply no evidence to suggest when he would likely be able to return to some lawful employment. In addition, there is absolutely no evidence to support his alleged income and the likely loss as a result of the injuries. There is simply no credible medical evidence proving that he will earn less in light of his alleged disabilities when he returns to work. There is also no evidence to support the claim that he will suffer loss at HK$2,000 per month in future. As the court accepted the defendant’s expert opinion that the plaintiff is able to resume to his previous occupation as a lorry driver, farmer or solider, and there will be no functional limitations, the court rejected the plaintiff’s claim under the head of future loss of earning.
3. Accordingly, based on the same reasoning as stated in *Kumara Debanama*, I find there is no basis to suggest when the plaintiff would likely be able to return to some “lawful” employment in future. There is also no documentary proof to support his assertion about the average monthly salary as a professional football player and football coach in his home country or his former football team in Thailand as compared with those in Hong Kong. There is also no evidence produced in regard to the income like those as a security guard. Thus, there is simply no evidential basis for the court to award a claim for loss of future earnings in this case.
4. I therefore will reject the claim for any future loss of earnings in this case.

*Loss of Earning Capacity*

1. In RRSOD, the plaintiff claims a sum of HK$90,000 under loss of earning capacity.
2. In *Chan Wai Tong v Li Ping Sum* [1985] 1 AC 446; [1985] HKLR 176 (PC), this head of damages is intended to reflect: “the risk that, at some future date 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. The court has to evaluate the present value of that future risk: see *Moeliker v A Reyrolle & Co Ltd* [1977] 1 WLR 132, 140 where Browne LJ dealt fully with this matter.”
3. According to the SOER, Dr Tsoi considers that the plaintiff suffered from 10% loss of earning capacity, which can be reduced to 5-6% after successful arthroscopic removal of loose bodies.
4. In *Kumara Debanama*, it was held that the problem with the plaintiff’s claim for loss of earning capacity is that he was *not* in employment at the time of the incident. In fact, he has not been lawfully employed since he arrived in Hong Kong and started seeking for refugee status in 2006. He could not be lawfully employed as long as he is having an asylum seeker or refugee status in Hong Kong. He will not be in any lawful employment until either he gives up his CAT claim and returns to his home country or until he is settled in a third country. As such, there is simply no evidence to support the claim that there is any substantial or real risk that he will lose his current employment and will suffer a disadvantage in the labour market as a result. Since the plaintiff can resume his previous job if he choose to return to his own country and will suffer no functional limitation at all, the claim for loss of earning capacity made by the plaintiff was rejected by the court in that case.
5. Accordingly, regardless of Dr Tsoi’s opinion, the plaintiff was not in any gainful employment at the time of the Accident. The plaintiff has not been in employment since he arrived in Hong Kong due to the lodging of his non-refoulement claim in 2006. He could not be lawfully employed as long as he is having a non-refoulement claimant status in Hong Kong. This will not change until either he gives up such claim and returns to his home country or until he is settled in a third country.
6. Therefore, the plaintiff will not be entitled to claim any damages under the head of loss of earning capacity based upon his refugee status and without the lawful employment capacity in Hong Kong.
7. I would refuse the claim for loss of earning capacity accordingly.

*Special Damages*

1. In the RRSOD, the plaintiff claims for a sum of HK$17,000 as gym expenses (for physiotherapy purpose).
2. As far as special damages are concerned, the court would usually allow reasonable reimbursements for out of pocket expenses like medical expenses, tonic food and travelling expenses, provided that they are reasonable and are resulted from the injuries sustained in the accident. However, the burden is on the claimant in each case to establish the linkage between the accident and the expenses incurred and whether the amount allegedly spent was reasonable in light of the injuries.
3. The plaintiff has not produced any medical opinion to show how the exercise at the gym may assist his recovery in this case. He also has not provided the related medical rationale or medical linkage of treatment between gym and physiotherapy, or any referral certificate(s) or documents by the relevant medical experts or doctors showing the linkage in order to meet the basic requirement for claiming an award under this head.
4. In the circumstances, I do not consider it is appropriate to allow a claim for the gym membership notwithstanding the production of relevant payment record or receipt by the plaintiff.

*Future Medical and Travelling Expenses*

1. In the RRSOD, the plaintiff claims HK$244,000 under this head.
2. As stated, after the plaintiff told his treating orthopaedic doctors at the public hospitals about his mental health issues, he was referred for assessment at WKPC in mid-October 2021. By the time of this decision, he has already attended at least 3 appointments with them on 11 July 2022, 22 August 2022 and 17 October 2022 respectively.
3. In relation to his psychiatric condition, Dr Ho opines that:-

“FUTURE TREATMENT

52. AMPOFO requires treatment and management of his Major Depressive Disorder. At present, he does not require in-patient psychiatric treatment but he is in need of out-patient psychiatric treatment. Using psychotropic medications for treatment and management for Major Depressive Disorder is well-researched and established. Complying with psychotropic medications as well as regular follow-up by mental health professionals will help his mental disorder to remit as well as prevent future relapse.

1. The cost of out-patient treatment by public psychiatrist is around $1,000 for 6 months. The cost in the private sector, including medication, is around $20,000 for six months. It is common for patients with Major Depressive Disorder to remain on medications for at least 12 months.”
2. For his shoulder condition, Dr Tsoi opines that:-

“IV. Plan of Treatment and Prognosis:

2. The only hope to improve the range of motion and to relieve the pain is by arthroscopic removal of the loose bodies. The cost is estimated to be $120,000 if performed in private hospitals and rehabilitation of 6 months at an additional cost of about $40,000 is required.”

1. Given both of his rather serious physical as well as psychiatric condition which would require immediate medical attention, I do not think it is neither fair nor just for him to join the long queue for such services in the public sector. I would allow his claim to receive such treatments in the private sector as recommended by Dr Tsoi and Dr Ho. I would therefore allow a total sum of HK$244,000 as the future medical expenses in this case. On top of that, I would allow another HK$2,000 as travelling expenses to attend such treatments, making a total of HK$246,000 allowed under this claim.

*Summary of Calculations*

1. Based on the above findings, I would allow the following awards in this case:-

|  |  |  |
| --- | --- | --- |
| PSLA |  | HK$ 585,000 |
| Pre-trial loss of earning |  | NIL |
| Post-trial loss of earning |  | NIL |
| Loss of Earning Capacity |  | NIL |
| Special Damages |  | NIL |
| Future medical (and travelling) expenses |  | HK$ 246,000 |
|  | Total: | HK$ 831,000 |

*Interest*

1. Interest will be allowed for general damages for PSLA at 2% per annum from the date of the writ to date of judgment and the interests on special damages at half of judgment rate from date of accident to date of judgment and thereafter at judgment rate.

*Costs*

1. I further order the defendant to pay the costs of this action, including the costs of the assessment, such costs to be taxed if not agreed with certificate for counsel. The plaintiff’s own costs to be taxed in accordance with the Legal Aid Regulations.

( Andrew SY Li )

District Judge

Mr Alan HT Ho, instructed by Daly & Associates, for the plaintiff, assigned by the Director of Legal Aid

The defendant was not represented, and did not participate in the proceedings