###### DCPI 2470/2009

### IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 2470 OF 2009

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##### BETWEEN

## HUSSAIN SHOUKAT Plaintiff

### and

#### MA CHI TAT trading under the name or style of

Kan Tat Engineering & Building Materials 1st Defendant

#### YEUNG WAI trading the name or style of

WAI PO ENGINEERING 2nd Defendant

GAIN PROFIT (HK) LIMITED 3rd Defendant

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Coram: Master S. Lo in Court

Date of hearing: 13 July 2010

Date of handing down Assessment of Damages: 27 July 2010

ASSESSMENT OF DAMAGES

A. Background of the case

1. On 22 July 2006 the Plaintiff suffered an accident when he was employed as a general labourer by the 1st Defendant working at 12 Dai Kwai Street, Tai Po Industrial Estate, New Territories, Hong Kong (“the Construction Site”). The 1st Defendant was the sub-contractor of the 2nd Defendant and the 2nd Defendant was the sub-contractor of the 3rd Defendant.
2. The accident happened on the Plaintiff’s second day of work for the 1st Defendant. On 22 July 2006 at about 9 a.m. the Plaintiff was instructed to dismantle sheds on the wall. He was standing on the roof of the shed and as he was lifting some materials from the roof of one side of the shed the roof fell down and the Plaintiff fell with it and landed on the ground from a height of about 8 – 12 feet.
3. The Writ was issued on 18 November 2008 at High Court. Judgment on liability was entered 10 December 2009 pursuant to the Order of Master Ng. The case was transferred to the District Court on 16 December 2009 pursuant to the Order of Master Ng dated 10 December 2009.

B. Service of Trial Bundle, Order and Date of Assessment

1. Pursuant to paragraph 7 of the Order made by Master B Mak dated 15 April 2010, the Plaintiff do serve the trial bundle, this order and the date of assessment to the Defendants by substituted service by advertising a notice of these proceedings once in Sing Tao Daily News on or before 20 May 2010.
2. On 29 April 2010, the 3rd Defendant which is a limited company was served with a sealed copy of the said Order dated 15 April 2010 by ordinary post addressed to the 3rd Defendant at B25, G/F, Hoi Fai Building, 2-20 Kwong Shing Street, Cheung Sha Wan, Kowloon being its registered office.
3. On 12 May 2010 and 23 June 2010 respectively, a legal notice in Chinese was advertised once in Sing Tao Daily News.
4. In the circumstances, I am satisfied that notice of the assessment of damages proceedings has been duly served on all the Defendants.

C. Background of the Plaintiff

1. The Plaintiff was born on 18 March 1974. He was aged 32 years at the time of the accident and is now 36 years. He is married with 3 children, who are still at school in Pakistan. He was educated to primary level so he is unable to read even in his on language.
2. The Plaintiff was doing casual work at construction sites and loading and unloading earning about HK$8,000 - $9,000 per month. He was paid about HK$400 – 500 per day for construction site work and about HK$400 per day for the loading and unloading work. The payment were made in cash.
3. The Plaintiff started to work for the 1st Defendant from 21 July 2006 as a general labourer. The Plaintiff was told he would be paid HK$500 per day by the 1st Defendant and he said that the 1st Defendant promised to give him full time work of 24 – 25 days per month. However, he never received any amount because he suffered an accident on the second day of work.
4. In the original From 2 provided to the Plaintiff by the 1st Defendant, the earnings are stated at HK$13,000 per month. However, in the Form 2 sent to the Labour Department by the 1st Defendant, the earnings are shown a HK$400 per day only.
5. Ms. Courbet for the Plaintiff submitted that had he continued to work as a general labourer, he could have earned HK$550 per day or HK$400 – 450 per day for loading and unloading work for about 22 – 24 days per month. On average he could earn about HK$11,000 per month.
6. The Government statistics show that as at March 2010 a general labourer at Hong Kong could on average earn about HK$577.80 per day.
7. Following the accident the Plaintiff said that he was only able to start to earn HK$4,000 per month as a storeman from 1st September 2009.

C. Injuries

1. The Plaintiff was admitted into the Department of Orthopaedic & Traumatology at Price of Wales Hospital immediately after the accident where x-rays revealed fractures of both wrists and the left hip.
2. The Plaintiff also suffered loss of consciousness and post traumatic amnesia for about 9 hours. He also suffered multiple facial and skull vault fractures. On 24 July 2006 the Plaintiff was underwent an operation of open reduction and internal fixation of the left forearm and close reduction and internal fixation of the left hip. His right wrist was immobilized by Plaster-of-Paris.
3. The Plaintiff remained in hospital until 9 August 2006. He underwent physiotherapy for 4 – 5 months at Yan Chai Hospital and also a course of occupational therapy for 3 – 4 months at Princess Margaret Hospital. He needed to walk with crutches but because his left arm had wires inserted so he could only use 1 crutch.
4. The Plaintiff instructed Dr. Lee Po Chin as orthopaedic expert in this case. Dr. Lee examined the Plaintiff on 25 September 2008 and the comments under Dr. Lee’s report dated 21 October 2008 are that:-
   1. The Plaintiff suffered the following injures:
5. Intertrochanteric fracture of the left femur
   1. Comminuted fracture of the left distal radius and fracture of the ulna
   2. Fracture of the distal radius of the right wrist
   3. Multiple facial and skull vault fractures
   4. Examination of the left hip showed slight limitation of left hip movement but the range was satisfactory. Diffuse tenderness of the left hip and left lower limb with some unilateral muscle wasting of left thigh suggesting some degree of persistent pain and disuse of the left lower limb.
   5. Examination of the left wrist showed limitation of movements and muscle slightly weak and slight unilateral muscle atrophy of left forearm and arm suggest some disuse. The grip was weak and so was the muscle power of the left wrist.
   6. X-rays of the left wrist on examination showed some irregularity at the joint surface suggesting some articular surface damage. The chance of post traumatic arthritis remains high for the left wrist.
   7. The Plaintiff has impaired ability to exert heavily with his hand as well as prolonged walking when carrying weight. He should not be able to return to work as a construction site worker.
6. The Plaintiff instructed Dr. Brian Choa as neurology expert in this case. Dr. Choa examined the Plaintiff on 1 September 2008 and the comments under Dr. Choa’s report dated 3 September 2008 that:-
   1. The injury leads to a post-concussion syndrome suffered by the Plaintiff which caused headaches and dizziness.
   2. He is also suffered from post-traumatic adjustment disorder.
7. He was granted sick leave from the date of the accident i.e. 22 July 2006 until 24 December 2008.

D. Loss of Accrued Earnings

1. I accepted that as a result of the accident the Plaintiff is unable to return to his pre-accident employment as a general labourer. I also accept that on average he could earn about HK$11,000 per month as submitted by Ms. Courbet, the Plaintiff’s solicitor. Indeed, His Honour Judge Yung gave judgment in favour of the Plaintiff in DCEC 1491/2006 based on the Plaintiff’s monthly earning of $13,000 which is higher than that submitted by Ms. Courbet in this hearing.
2. As the Plaintiff earned about $9,000 before working for the 1st Defendant, I accept the correct median of his earning is $10,000 [i.e. ($9,000 + $11,000) ÷ 2].
3. After the sick leave finished on 24 December 2008 the Plaintiff was not able at first to find work due to his disabilities.
4. From 1September 2009 he commenced working as a storeman earning HK$4,000 per month which he is still doing today.

E. Pre-trial Loss of Earnings

1. I award the sum of $404,000 under this head, calculation of which is set out as follows:-
2. From 22.7.2006 to 24.12.2008

(i.e. sick leave for about 29 months)

HK$10,000 x 29 months HK$290,000

1. 25.12.2008 to 13.7.2010

(about 19 months)

(HK$10,000 – HK$4,000) x 19 months HK$114,000

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HK$404,000

1. I do not award the full loss of earning for the period after sick leave up to 31.8.2009 (ie the day before he worked as a storeman) as claimed because Dr. Lee commented in his report that the sick leave granted until the MAB is reasonable. Dr. Lee further opined that the Plaintiff probably could work in jobs such as shopkeeper or car park attendant. Hence, I am of the view that the Plaintiff is only entitled to the difference of $6,000 for this 19 months.

F. Future Loss of Earnings

1. The Plaintiff is currently aged 36 years. Ms. Courbet submitted the multiplier is 14. In *Siu Leong Ching v. Professional Scaffolding Engineering Co. Ltd. and Ors.* HCPI 70/2004, Suffiad J. ruled that taking account of all the circumstances in that case and especially the fact that the plaintiff was then 34 years old, the proper multiplier should be 13. Therefore I consider that in this case, the proper multiplier shall be 11. I award the sum of $924,000 under this head [i.e. (HK$11,000 – HK$4,000) x 12 x 11 years].

G. Accrued Loss of Provident Fund

1. I award the sum of $20,200 under this head (i.e. $404,000 x 5%).

H. Future Loss of Provident Fund

1. I award the sum of $46,200 under this head (i.e. HK$924,000 x 5%).

I. Loss of Earning Capacity

1. I am satisfied that the Plaintiff suffers and will continue to suffer disadvantage in the employment market by reason of his continuing disabilities. In *Siu Leong Ching*’s case (as cited above), Suffiad J. said that there were some authorities to suggest that loss of earnings capacity be calculated roughly to be 1 month for every year of the multiplier used for future loss of earning. His Lordship accepted these authorities. Hence, I use the similar approach and award the loss of earning capacity in the sum of $44,000 (i.e. $4,000 x 11).

J. Other Special Damages

1. I award the sum of $5,413 under this head, breakdown of which is set out as follows:-

a. Hospitalization and medical

expenses HK$2,413

b. Travelling expenses HK$1,000

c. Tonic food HK$2,000

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HK$5,413

K. PSLA

1. Ms. Courbet submitted that in view of the Plaintiff’s injuries and continuing disabilities, his injuries fall just below the serious injury category whereby a global award of HK$450,000 is appropriate under this head of damages.
2. Dr. Lee assessed the Plaintiff as suffering 5% impairment of the whole person for left wrist and 2% for right wrist and 4% for the left hip, total of 11% impairment.
3. Dr. Choa assessed the Plaintiff as suffering 5% impairment of whole person for his post concussion syndrome and psychological changes.
4. I have carefully considered the following authorities as submitted by Ms. Courbet:-
   1. *Tsang Hing Yuen v. Nishimatsu Kumagai Joint Venture & Anor*

HCPI 906 of 1998 (decided on 17 March 2000)

(b) *Lin Cho Chau v. YCY Design & Engineering Limited*

HCPI 245 of 2007 (decided on 2 June 2008)

(c) *Waan Chuen Ming v. Lo Kin Nam t/a Kar Kin Engineering & Supplier Co. & Anor*

HCPI 588 & 591 of 2003 (consolidated) (decided on 21 July 2008

1. *Ho Ah Luk v. Nam Kin Scaffolding Limited & Anor*

HCPI No. 156 of 1996 (decided on 28 May 1999)

1. *Lam King Tong v. Kam Hung Construction (Holdings) Ltd & Anor*

HCPI 1144 of 2003 (decided on 16 November 2004)

1. *Pang Ping Sum v. Enpack (Hong Kong) Limited and Ors.*

HCPI No. 290 of 2003 (decided on 20 October 2005)

1. *Phoon Ka Wai v. Wong ka Chung & Anor*

HCPI 768 of 2003 (decided on 15 September 2005)

1. *Lam Hung Yui v. Muck Yun Chung Formerly known as Chung Kee Electric Works*

HCPI 924 of 2004 (decided on 7 August 2007)

1. In the light of the above authorities, I consider that the injuries suffered in *Tsang Hing Yuen’s* case are very similar to but a bit more serious than that in this case. Therefore, I am of the view that theappropriate award for PSLA is in the sum of HK$420,000.

L. Summary

1. Pre-trial loss of earnings $404,000.00

Future loss of earnings $924,000.00

Accrued loss of PF $20,200.00

Future loss of PF $46,200.00

Loss of earning capacity $44,000.00

Other special damages $5,413.00

PSLA $420,000.00

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Sub-total $1,863,813.00

Less: Award under DCEC 1491/2006 $966,045.52

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$897,767.48

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1. Interest will be awarded at 2% p.a. for PSLA from date of the Writ (i.e. 18.11.2008) to the date of judgment.
2. Interest will be awarded on pre-trial loss of earnings, accrued loss of PF and other special damages at 4% p.a. from the date of accident (i.e. 22.7.2006) to the date of judgment.
3. Costs of this action including costs of this assessment of damages be to the Plaintiff, to be taxed if not agreed and the Plaintiff’s own costs be taxed in accordance with the Legal Aid Regulations.

(Simon Lo)

Master of District Court

Ms. M.S. Courbet of Messrs. Lo, Wong & Tsui, for the Plaintiff.

1st, 2nd and 3rd Defendants in person, absent.