#### DCPI2675/2007

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 2675 OF 2007

BETWEEN

CHUNG WAI HUNG Plaintiff

and

CHUNG WAI MING Defendant

##### Before: H H Judge Lok in Court

Date of Hearing: 18 July 2008

Date of Judgment: 18 July 2008

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## A S S E S S M E N T O F D A M A G E S

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1. On 30 November 2006, the Plaintiff, in the course of employment with the Defendant as a general worker, was assisting the Defendant in cutting a pipe with a handheld grinder at Ground Floor, Co-Tack Industrial Building, 17 Kin Fat Street, Tuen Mun, when the blade of the handheld grinder suddenly broke. As a result, the Plaintiff’s left knee was cut by the fragments from the broken blade, causing him to suffer tear of the patella tendon over his left anterior knee. At the time of the accident, the Plaintiff was 34 years old and his daily wages were $400. He was hospitalised for about 9 days and was granted 260 days of sick leave. The Plaintiff claims that the accident was caused by the negligence of the Defendant. As no acknowledgement of service was filed, interlocutory judgment was entered on 6 February 2008 and this is the assessment of the quantum of the Plaintiff’s claim.

1. Upon admission to the Tuen Mun Hospital after the accident, it was found that the Plaintiff had suffered the following injuries:

(a) deep 7-cm cut wound over the left anterior knee, deep to the proximal tibia with minor crack over the lateral cortex;

(b) contamination of the wound with multiple debris; and

(c) tear of the patella tendon over the left anterior knee.

1. The treatments received by the Plaintiff included the following:

(a) operative exploration of the left knee laceration;

(b) removal of the metal debris;

(c) wound debridgement;

(d) repair of the patella tendon; and

(e) application of the protective knee brace.

He was discharged on 9 December 2006.

1. The wound was healed after 2 weeks and the knee brace was taken off 6 weeks after the operation. The Plaintiff received about 14 sessions of physiotherapy treatment at the hospital after the accident.

1. The Plaintiff himself testifies at the hearing. As the Defendant does not appear in the hearing to rebut the Plaintiff’s evidence, I have no reservation in accepting his evidence as the truth.
2. According to the Plaintiff, he suffers from mild quadriceps muscle wasting. He still feels persistent pain in his left knee. He cannot straighten his left leg. He cannot walk fast and he is walking with a slight limp. Whenever he tries to walk fast, the pain in his left knee increases. He cannot run or squat down. He cannot ascend or descend stairs without pain. Further, there is a scar of about 6 cm near the left knee of the Plaintiff.

1. I am also given to understand that before the accident, the Plaintiff was fond of playing ping-pong, swimming and riding bicycle with his son. Since the accident, he has not been able to engage in any of such activities. He also cannot drive a car with manual gear because his left leg is weak.

Pain, Suffering and Loss of Amenities (PSLA)

1. In *Frances Christine Keeling v The Hebe Haven Yacht Club Limited*, unreported, DCPI579/2004 (decision of Her Honour Judge H C Wong on 25 October 2004), the plaintiff, who was a 65 years old lady, sustained the following injuries: (a) grade 3 medical lateral ligament laxity; (b) 80% tear of the anterior cruciate ligament; and (c) minor incomplete tear of the lateral meniscus. She undertook an arthroscopy of the right knee, open repair of the mild substance of the medical collateral ligament followed by immobilization of the right knee in a hinged knee brace. On discharge from hospital, she used a walking frame with the brace for 12 weeks. 3 months after the operation, the brace was unlocked. She was assessed to have suffered 5% total impairment of the whole person after treatment, and she was awarded $160,000 for PSLA.
2. I have also referred to the case of *Wong Ming Kwong v Wing Ming Electrical Company Limited and Anr*, unreported, HCPI760/2003 (decision of Suffiad J on 30 June 2005). However, I am of the view that that case is of limited assistance, as the injuries of the Plaintiff herein are much less serious than those of the plaintiff in that particular case.
3. In my judgment, the injuries in the present case are also less serious than those suffered by the plaintiff in the case of *Frances Christine Keeling*. The injuries of the victim in that particular case were more extensive. The period of hospitalisation was longer and the victim there had to wear the protective brace for a much longer period of time. However, taking into account: (i) the effect of inflation since that decision; (ii) the Plaintiff herein is a much younger man who will suffer the disability for a long period for the rest of his life; and (iii) the disability suffered by the Plaintiff in the present case is also very serious, I agree with the figure suggested by the Plaintiff’s legal aid counsel, and I award the sum of $180,000 as PSLA in the present case.

Loss of earnings

1. The Plaintiff was 34 years of age at the date of the accident. He sustained injuries on the first day of his employment with the Defendant. Prior to the accident, the Plaintiff had been unemployed. At the time of the accident, he was a casual decoration worker and his daily wages were $400. He was granted sick leave from 30 November 2006 to 16 August 2007, a total of 260 days. It would be reasonable to assume that, but for the accident, he would have been able to work for about 18 days a month. Hence, the loss of earnings suffered by the Plaintiff during his sick leave period can be assessed as follows: $400 x 18 x 260/30 months = $62,400. The loss of MPF benefit during such period can also be assessed as follows: $62,400 x 5% = $3,120.
2. It is his case that the Plaintiff, by reason of his disabilities, would only have been able to take up less strenuous work, such as working as a security guard or car-park attendant earning about $7,000 a month. As such, there would be a loss of income of $200 a month. However, there is no statistics produced by the Plaintiff to support the average earnings of security guard or car-park attendant. Further, the evidence reveals that the Plaintiff had tried to apply for a taxi-driver licence after the accident. This shows that the Plaintiff might have been able to take up employment with a higher income after the accident. In such case, I do not see it fit to award any loss of earnings after the sick leave period. Although the Plaintiff only claims a modest figure of $36,000 as future loss of earnings, I disallow such claim for the same reasons.

###### Loss of earning capacity

1. However, I am of the view that this is an appropriate case for an award of loss of earning capacity. The Plaintiff’s pain in his left knee and the mild limp are likely to cause the Plaintiff to suffer disadvantage in the labour market. It may take a longer time for him to find another job if he has to change his job in the future. I therefore award 6 months of his expected earnings at the time of the accident as the quantum for loss of earning capacity, which can be assessed as follows: $7,200 x 6 months = $43,200.

###### Other special damages

1. The sums claimed for medical expenses, travelling expenses and tonic food expenses are, in my judgment, reasonable, and I allow such claims in full.
2. In summary, the quantum of the Plaintiff’s claim is as follows:

General Damages

(a) loss of earning capacity : $ 43,200

(b) PSLA : $ 180,000

Special Damages

(c) medical expenses : $ 3,510

(d) travelling expenses : $ 326

(e) tonic food expenses : $ 3,000

(f) loss of pre-trial earnings : $ 62,400

(g) loss of MPF contribution : $ 3,120

TOTAL : $295,556

1. There is also interest on PSLA at 2% per annum from the date of the writ to the date hereof and interest on special damages at 4.1765% per annum, which is half the existing judgment rate, from the date of the accident to the date hereof. There will also be interest on the whole judgment sum from the date of the judgment until payment.

# (David Lok)

# District Judge

Mr Nick Lee of the Legal Aid Department, for the Plaintiff

Defendant, in person, absent