## DCPI 2755/2012

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 2755 OF 2012

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##### BETWEEN

CHUNG LAI HA Plaintiff

### and

CHING MEI YEE Defendant

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Before: Master R Lai in Court

Date of Hearing: 13 November 2013

Date of Judgment: 20 January 2014

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ASSESSMENT OF DAMAGES

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###### *Introduction*

1. This is a personal injury claim arising out of an incident occurred on 8 July 2009 when the defendant assaulted the plaintiff in the Sheung Wan Post Office (the “Incident”).
2. The plaintiff was at the material times a Superintendent of Posts working as the manager of the Sheung Wan Post Office whereas the defendant was a Postal Officer of the Sheung Wan Post Office.
3. The plaintiff’s case was that prior to the Incident, she found that the defendant had abused the over-time system of the Hongkong Post by recording more over-time work than she had actually performed. On the day of the Incident, the defendant again attempted to record more over-time work than she actually performed in the previous day. The plaintiff refused to let that happen. Dispute ensued and the plaintiff was assaulted by the defendant first at the corridor of the Sheung Wan Post Office and then in the plaintiff’s office, causing personal injuries to the plaintiff.
4. As a result of the Incident, the defendant was charged with the offence of assault occasioning actual bodily harm. On 9 September 2009, the Eastern Magistrate Court made a binding-over order against the defendant for 12 months.
5. The plaintiff commenced this claim on 29 December 2009.
6. The plaintiff filed her Statement of Claim on 29 December 2009. The defendant did not give any notice of intention to defend. Interlocutory Judgment was entered on 15 June 2010 for the plaintiff’s claim against the defendant with damages to be assessed.
7. The plaintiff filed her Statement of Damages on 1 February 2013. She revised her Statement of Damages on 14 June 2013 and amended her Revised Statement of Damages on 20 June 2013 (the “SOD”). In the SOD, the plaintiff claimed $2,140,837.86 but waived the part in excess of the District Court’s jurisdiction to bring her claim within the jurisdiction of this court.
8. The defendant did not file any answer to the SOD. The defendant also did not file any document nor take any step in this proceeding.
9. On 26 July 2013, the court set down this action for assessment of damages for 13 November 2013. On 29 July 2013, the plaintiff issued the Notice of Appointment of Assessment of Damages (the “Notice”) returnable on 13 November 2013. The Notice was served to the defendant on 29 July 2013 by inserting through the letter box at the defendant’s address stated on the writ. Affirmation of service was filed on 30 July 2013. The court had also on 18 September 2013 sent a notice of hearing for the assessment of damages to the defendant.
10. The defendant did not attend the assessment hearing. I was satisfied that notice of the assessment hearing had been duly given to the defendant. It was the defendant’s choice not to attend the assessment hearing. I proceeded with the assessment of damages in this case in the absence of the defendant.
11. On 3 May 2013, the court granted leave for the plaintiff to adduce medical expert evidence from one psychiatric expert. The plaintiff nominated Dr Peter WT Yu (“Dr Yu”) as her expert. Dr Yu had issued a report dated 18 January 2013. On 26 June 2013, the court ordered that the expert report of Dr Yu should be adduced as evidence at the trial without oral evidence from Dr Yu.
12. Only the plaintiff testified at the assessment hearing.

*The plaintiff’s claim*

1. In the SOD, the plaintiff claimed the following heads of damages against the defendant:-
2. general damages for pain, suffering and loss of amenities (“PSLA”) in the sum of $350,000.00;
3. loss of earnings in the sum of $1,184,171.82;
4. loss of pension in the sum of $616,271.04;
5. medical and miscellaneous special damages in the sum of $44,395.00;
6. future medical and miscellaneous expenses in the sum of $7,200.00;
7. aggravated damages and/or injury to feelings in the sum of $30,000.00;
8. loss of earning capacity in the sum of $40,000.00; and
9. loss of society in the sum of $20,000.00.
10. The plaintiff would give credit to the employees’ compensation payment in the sum of $151,200.00 already received by her in respect of the Incident.

*The plaintiff’s medical treatments*

1. After the Incident, the plaintiff was sent to the Accident & Emergency Department (the “A&E”) of the Queen Mary Hospital (the “QM Hospital”) for medical treatment. She was diagnosed to have suffered multiple contusions.
2. The plaintiff consulted Dr Danny PK Ma (“Dr Ma”) on 9 July 2009. Physical examination showed that she had multiple abrasion, bruise and soft tissue injury.
3. She was further examined at the Tseung Kwan O Hospital (the “TKO Hospital”) on 10 July 2009 which confirmed the findings of injury on her face and neck and contusion of chest wall.
4. The plaintiff soon developed psychiatric symptoms and illness. She was referred to the Casualty Department of the United Christian Hospital (the “UC Hospital”) on 13 July 2009. The plaintiff complained of emotional instability after the Incident. Since the Incident, she became insomniac and tense, developed startle response, had problems concentrating and kept ruminating on the Incident. She reported recurrent flashback of the Incident and avoidance of the assault venue.
5. On 20 July 2009, the plaintiff attended the A&E of the TKO Hospital and was diagnosed to have acute stress disorder. She went to the TKO Hospital on three further occasions for follow-ups. On her last follow-up on 31 July 2009, she was diagnosed to have suffered post traumatic stress disorder (“PTSD”).
6. In her follow-up visits on 12 August 2009 and 9 September 2009 at the UC Hospital, the plaintiff reported that she remained insomniac and kept ruminating on the Incident despite medications. Her level of anxiety remained static and she had nightmares about the Incident. Despite she had been deployed to another position in another post office, her condition did not improve and she remained very stressful. She was also diagnosed by Dr Liao Wei Ming (“Dr Liao) of the UC Hospital to have PTSD. She continued to attend the clinic of the UC Hospital’s Department of Psychiatry and received medications.
7. Intermittent sick leave was granted to the plaintiff from 8 July 2009 to 22 December 2010.

*Evidence of medical expert*

1. Dr Yu was the plaintiff’s treating doctor. The plaintiff also relied on Dr Yu’s report as expert evidence. The defendant had not submitted any expert report.
2. Dr Yu first examined the plaintiff on 30 September 2009 when the plaintiff consulted him for treatment. He prescribed an antidepressant to the plaintiff until November 2010 and continued to offer counseling to her. Dr Yu examined the plaintiff on 3 December 2012 for the purpose of preparing his report and issued his report on 18 January 2013.
3. According to Dr Yu, the plaintiff had suffered from PTSD which was wholly attributable to the Incident. Dr Yu opined that the plaintiff would continue to suffer mental symptoms with moderate intensity including *inter alia* re-experiencing the traumatic event, avoiding reminders of the trauma, and symptoms of hyperarousal or marked anxiety.
4. Dr Yu expected that the plaintiff would need to receive continuous psychiatric treatment and counseling for at least three more years. The prognosis was poor as the plaintiff continued to suffer intensive symptoms for more than three years despite receiving treatment. The plaintiff was not expected to improve significantly even if continued with the treatment.
5. Dr Yu was the treating doctor for the plaintiff’s psychiatric illness. The appropriateness for Dr Yu to act as expert in this case was raised at the hearing.
6. Mr Chan, counsel for the plaintiff, submitted that the code of conduct for expert witness had been provided to Dr Yu who had made the declaration in his report confirming that he understood that he had an overriding duty to the court impartially and independently and that his paramount duty was to the court. Dr Yu had declared that he had complied with his duty to the court and would continue to comply with it. Mr Chan further submitted that Dr Yu’s opinion was also supported by medical reports issued by other treating doctors. Mr Chan said that the plaintiff was concerned about costs for engaging another expert and that the defendant had not objected to Dr Yu being appointed as expert for this case. He urged the court to accept Dr Yu as expert for this case. He submitted that there were no legal requirements that a treating doctor could not act as expert. It was a matter of weight to be attached to the evidence of such expert.
7. Section 58(1) of the Evidence Ordinance (Cap 8) provides that:-

“(1) Subject to any rules, where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence.”

1. I accept that Dr Yu has the expertise to act as expert in the field of psychiatry. I do not doubt the integrity of Dr Yu. However, as he was the treating doctor of the plaintiff, it is inherently impossible for him to be totally impartial in rendering his opinion especially on the treatments received by the plaintiff. The learned editors of the *Hong Kong Civil Procedure 2014* stated in para J1/58/10 of vol 2 at pp 553 to 554 that:-

“It is highly desirable that the expert be independent. However, in all but extreme cases, the fact that the expert is not wholly independent does not affect the admissibility of the evidence. (*R v Oakley* [1979] RTR 417) It may affect the weight to be attached to it. (*R v Chung Chen-hsin* [1966] 1 HKC.L.R. 120, 2 H.K.C. 156)”

1. Although there are no legal requirements that a treating doctor may not act as expert for the party, it is undesirable for him to do so. I agree to admit Dr Yu’s evidence but as he was the treating doctor of the plaintiff, I shall treat his opinion with caution especially his opinion on treatment for the plaintiff.

*Evidence of the Plaintiff*

1. The plaintiff testified at the assessment hearing and called no other witnesses.
2. The plaintiff relied on her witness statements dated 25 April 2013 and 17 June 2013 which had been adopted at the hearing as her evidence-in-chief.
3. The plaintiff was 54 years old when the Incident occurred. She was 59 years old at the assessment of damages hearing.
4. The plaintiff joined the Hongkong Post in 1976 as a Postal Officer. She said that she loved her job and had always been very devoted to it. She had had several promotions during her career with the Hongkong Post. She was promoted to the position of Superintendent of Posts in 2004. She had been working with the Hongkong Post for more than 34 years before she opted for early retirement in December 2010.
5. The plaintiff’s case was that the defendant had often abused the over-time system of the Hongkong Post by recording more over-time work than she had actually done. On 7 July 2009, ie the day before the Incident, the defendant tried to record more over-time work than she had actually done but was stopped by the plaintiff. On 8 July 2009, the date of the Incident, the defendant again tried to record more over-time work than she had actually done and was confronted by the plaintiff. The defendant then left the plaintiff’s room. Later, when the plaintiff went out to the corridor, the defendant glared at her and walked towards her. The defendant pushed the plaintiff once by her shoulder. The plaintiff was scared and in shock as she did not expect such aggressive conduct from the defendant. The defendant had to be led away by other Postal Officers at the Post Office.
6. After the plaintiff returned to her office, the defendant entered the plaintiff’s office and locked the office door. The defendant then assaulted the plaintiff at her back, chest and face. The plaintiff struggled and finally got out of her office for help. Police was called and the defendant was subsequently charged as aforesaid.
7. The plaintiff said that the assault was intended to be a revenge for the plaintiff’s prohibition against the defendant’s abuse of the over-time system. It was actuated by malevolence or spite towards the plaintiff. The plaintiff said that the defendant intended to and did humiliate her in the presence of her colleagues and others in the Sheung Wan Post Office and subject the plaintiff to ridicule and contempt in public.
8. The Incident was quickly known to almost all branches of post office and had attracted coverage in media. Some reported the Incident in distorted and exaggerated manners. Some even made it subject of joke or IQ-question game. The plaintiff was embarrassed. She said that she was ashamed to show her face. She felt sorry for herself, angry and unfair as she considered that she did nothing wrong.
9. The plaintiff said that the Incident had significantly affected her work profile and the way in which her senior evaluated her as a staff member. It also affected her social life and her reputation. Since the Incident, she was referred to as “打交大寫” (“打交” means fighting and “大寫” was the informal expression used for staff member holding the plaintiff’s position) by others behind her back.
10. The plaintiff said that physical injuries suffered by her included abrasion and scratch mark in the face, small abrasion in upper lip, bruises in both arms and in chest. The plaintiff further said that she had developed psychiatric illness. She had emotional instability and symptoms such as insomniac, nightmares, panic, tense, anxiety, startle response, lack of self-esteem, flashback experience, problems concentrating and kept ruminating on the Incident.
11. The plaintiff received treatment for her physical injuries at the QM Hospital and the TKO Hospital. She also received treatment from Dr Ma.
12. The plaintiff received treatment for her psychiatric illness at the UC Hospital and the TKO Hospital. She also received treatment from Dr Yu.
13. The plaintiff said that due to her psychiatric illness, she was unable to continue with her work at the Hongkong Post and had no option but to have early retirement in December 2010. After taking her accrued vacation leave, she left the employment of the Hongkong Post on 7 May 2011. She had not sought other employment since then, as she was of the view that she could not undertake other employment due to her psychiatric illness.
14. The plaintiff said that as a result of the psychiatric impairment, she developed intense fear that the Incident would happen again, a strong sense of her life being in danger, suspicion of assailants who would ambush her outside home or at her workplace.
15. After the Incident, she could no longer work at the Sheung Wan Post Office. She was transferred to work at the sorting division of the Hung Hom branch for three months. Her mother aged 80 had become very worried about her and offered to go to work with her in the morning and pick her up from the office door after she got off from work. She felt ashamed for having to make her mother worrying. Even with the support and encouragement of her mother, the plaintiff still felt that she could no longer handle the work stress, her colleagues and the work environment and decided to have early retirement in December 2010.
16. The plaintiff said that before the Incident, she played squash and enjoyed travelling. After the Incident, because of the psychiatric symptoms suffered by her, she lost interest in travelling and participating in other activities which she used to enjoy. She also avoided interacting with friends and people in her social circle.
17. The plaintiff said that after the Incident, she also felt unsafe in her Tseung Kwan O home as the defendant knew her address. She sold her property at Tseung Kwan O and moved to Tsuen Wan. Her mother objected to her selling of the Tseung Kwan O property and had lived apart with the plaintiff since then.
18. The plaintiff’s monthly salary was $39,220.00 when she retired. The salary for her position had been increased to $41,495.00 with effect from 1 April 2012 and to $43,120.00 with effect from 1 April 2013. After her retirement, she received monthly pension in the sums of $12,019.72 in the financial year of 2011/2012, $12,704.84 in the financial year of 2012/2013 and $13,149.51 since April 2013.
19. The plaintiff had received a lump sum pension payment upon her retirement. The plaintiff said that if she retired at her normal retirement age of 60 in September 2014, she would have received a lump sum pension of $2,635,584.00 instead of $2,019,312.96 received by her upon her early retirement.
20. The plaintiff said that her necklace was broken during the Incident and she had incurred $1,000.00 to repair it. She had also incurred medical fees and travelling expenses for attending medical treatment and obtaining medical reports.
21. The plaintiff confirmed that she had received $151,200.00 for her employees’ compensation claim.

###### *Findings*

1. Physical examination of the plaintiff after the Incident showed multiple contusions and abrasion, bruise and soft tissue injury on her face, neck and chest wall. No other physical injuries were found.
2. The physical injuries suffered by the plaintiff in the Incident were minor injuries. The major complaint of the plaintiff in this case was the psychiatric injuries.
3. It is stated in paragraph 2-164 of *Clerk & Lindsell on Torts* (20th edition) at pp 160 to 161that:-

“It is not uncommon for a claimant to develop a major psychiatric condition following a relatively minor physical injury. Provided that a causal connection (medically) can be demonstrated between the physical injury and the psychiatric condition, the defendant is liable in full for the psychiatric consequences, no matter how unforeseeable.”

1. If a claimant sustained both physical and psychiatric injuries in an incident for which the defendant has been found liable, the defendant is liable not only for the physical injuries but also for the psychiatric injuries. No distinction needs to be made between the claimant’s initial physical injuries and his subsequent mental state so long as there is a causal connection between the psychiatric symptoms and the incident. A negligent defendant must take its victim as it finds him and must pay damages accordingly. (See *Simmons v British Steel plc* [2004] UKHL 20).
2. In his medical report dated 12 October 2007, Dr Liao reported that the plaintiff had sought psychiatric treatment from the Casualty Department of the UC Hospital on 13 July 2009, ie 5 days after the Incident, because of emotional instability. Dr Liao reported that the plaintiff’s condition was compatible with PTSD.
3. Dr Yu also diagnosed the plaintiff having PTSD. He was of the opinion that the development of PTSD subsequent to the Incident was entirely attributable to the Incident.
4. The plaintiff’s evidence was that prior to the Incident, she enjoyed good physical and psychological health. After the Incident, she frequently experienced intense fear and helplessness. She was constantly affected by insomnia, irritability, difficulty in concentrating, excess vigilance and exaggerated startled responses.
5. After the Incident, the plaintiff felt unsafe at her workplace and opted to retire early. She also felt so unsafe at home that she sold her own property at Tseung Kwan O and moved to another district.
6. Taking the medical evidence and the plaintiff’s evidence together, I am satisfied that the plaintiff had proved on balance of probabilities that her psychiatric conditions were caused by the Incident.

*PSLA*

1. In the SOD, the Plaintiff claimed $350,000.00 under this head.
2. Mr Chan cited the following cases to support the plaintiff’s claim amount:-
3. In *CMY v Tam Siu Wing* [2008] 4 HKLRD 604 the claimant suffered musculotendinous strain of the left paraspinal muscle of her lower back as a result of a traffic accident and developed psychiatric illness of adjustment disorder with anxiety and depression which deteriorated to become dysthymic disorder. The claimant was so depressed that she thought about jumping from height as a suicidal act. She lost her chance of promotion and of having the contract for her pre-accident job renewed. Her marital relationship with husband deteriorated. She lost interest in travelling for leisure, shopping and dressing up. She also reduced her social contacts. Her psychiatric injuries were expected to be cured without impairment in about five years. She was awarded $400,000.00 under this head.
4. In *Yan Kwok Yue v Dong Shu Kei Beau*HCPI 923/2000, unreported, 22 January 2002 (Deputy Judge Longley) the claimant was assaulted by the defendant. As a result, he suffered a two cm haematoma on the back of his head. He stayed in hospital for two days. He developed moderate to severe degree of post-traumatic disorder, post-concussional syndrome and depressive disorder. His psychiatric treatment would have to continue indefinitely. He had been prevented by the incident from embarking on a career as a safety supervisor to which he had devoted considerable energies. The incident had adversely affected his relationship with his mother and resulted in him losing his long-time girlfriend. Despite treatment, he was likely to suffer residual disabilities from the incident. The court awarded $500,000.00 to the claimant under this head.
5. In *Yu Heung Yuk v Ho Man and Ors* HCPI 57/1998, unreported, 12 August 1999 (Deputy Judge Longley) the claimant was assaulted resulting in swelling and redness over left side of her face. She was found to have sustained a traumatic rupture of the left eardrum. There was bruising over the back of her left neck, left hip anteriorly and left elbow anteriorly. An abrasion was noticed over her left hip region. She was admitted to hospital between 11th May and 2nd June 1995. She complained that she had had a transient loss of consciousness at home. She was diagnosed as suffering from post concussion syndrome and depressive disorder. She had changed from being a cheerful and very energetic person into someone who was depressed, anxious, impatient and demanding. She had made apparent attempts at suicide. Her ability to concentrate and deal with stress was impaired. The court was of the view that it was likely that this change in personality would be permanent and that it had and would have a significant effect on the quality of her life. The claimant was awarded $440,000.00 under this head.
6. I have also considered the following cases:-
7. In *Lam Hok Fai v Chan Sai Lit and Anor* HCPI No 377/2003, unreported, 29 October 2004 (Judge A Cheung [as he then was]) the court awarded $500,000.00 under this head to the claimant who suffered head injuries at work in April 2000 with laceration over vertex and developed post-concussion syndrome which was complicated by development of major depressive disorder. He was admitted to the psychiatric ward of Prince of Wales Hospital two years after the accident on 18 June 2002 due to deterioration of his psychiatric condition. He was then referred to Psychiatric Day Hospital of Shatin Hospital for further rehabilitation. He was re-admitted to the acute psychiatric ward of Shatin Hospital in October 2006 due to worsening depressive mood and suicidal ideation. He was granted sick leave for 54.5 months and would not be able to return to the labour market until three years after trial. He could not return to his pre-accident employment.
8. In *Chu Kwong Sang v Chuen Wo Transportation Ltd and Ors* HCPI No 296/2002, unreported, 22 December 2004 (Deputy Judge Fung [as he then was]) the court awarded $375,000.00 under this head to the claimant who suffered injuries at work with fractured left calcaneal with multiple fragments and displacement. He had to undergo open reduction, internal fixation and bone grafting operation. He was granted sick leave for more than 14 months. He developed depressive disorder precipitated by stress of injury and compensation. He was still suffering insomnia, depressed mood, poor appetite, persecutory ideas and increased irritability at the time of the trial. He also needed further surgical removal of implants to reduce irritation and discomfort. He was unable to resume his pre-accident job.
9. The physical injuries suffered by the claimants in the aforesaid cases were more serious than the plaintiff in this case or their psychiatric injuries were more serious than the plaintiff in this case.
10. Dr Yu recommended that the plaintiff should be given sick leave up to about 12 months. He was of the view that the prognosis was poor as the plaintiff continued to suffer intensive symptoms for more than three years despite receiving treatment and he did not expect the plaintiff to improve significantly even if she continued with her treatment.
11. As a result of the Incident, the plaintiff developed psychiatric symptoms of PTSD with moderate intensity. She was expected to suffer the symptoms indefinitely. She was prevented from continuing with or advancing further at her career to which she had devoted to for more than 30 years. Having regard to the aforesaid cases and the opinion of Dr Yu, I consider that an appropriate award under this head shall be $300,000.00.

*Loss of earnings*

1. The plaintiff would reach her normal retirement age on 25 September 2014 when she reached the age of 60. The plaintiff had to retire early on 7 May 2011 because of her psychiatric conditions after the Incident. After her retirement, the plaintiff only received a monthly pension which of course was less than the full salary of her post.
2. The plaintiff said that the salary of her post was equivalent to Master Pay Scale Point 27. When she retired in May 2011, her monthly salary was $39,220.00. The monthly salary of her post had been revised to $41,495.00 (ie about 5.8% increase) and $43,120.00 (ie about 3.9% further increase) with effect from April 2012 and April 2013 respectively.
3. When the plaintiff retired in May 2011, she received a monthly pension of $12,019.72 which had been revised to $12,704.84 and $13,149.51 with effect from April 2012 and April 2013 respectively.
4. The plaintiff had not sought alternative employment after her retirement. Dr Yu assessed the plaintiff’s loss of earning capacity in July 2011 at 25%. He re-assessed the plaintiff’s loss of earning capacity in January 2013 at 10%. The Employees’ Compensation (Ordinary Assessment) Board assessed the plaintiff’s loss of earning capacity at 10% in December 2011 on the basis that the plaintiff suffered multiple injuries resulting in psychiatric impairment. This assessment was concurred by the Medical Board of the UC Hospital in August 2012. In its report dated 13 July 2012 the Medical Board stated that the plaintiff reported improvement in mental condition and had learnt to think in a positive way. Her mood had been stabilized and she could sleep without hypnotics. It could be seen that the conditions of the plaintiff had improved from 2011 to 2013.
5. After considering the medical evidence placed before me, I accept that the plaintiff would not be able to continue to work with the Hongkong Post. However, with her administrative experience and her improved conditions, I am of the view that the plaintiff should be able to find an alternative employment in the area of general office administration. I note that the plaintiff was approaching her retirement age. It might not be easy for her to find another employment at a senior level at such age. Mr Chan submitted that at most the plaintiff might be able to find clerical employment with a monthly salary of about $10,000.00. He produced the 2010 Report on Annual Earnings and Hours Survey prepared by the Census and Statistics Department which showed that the median monthly wage of clerks in the 2nd quarter of 2010 was $10,200.00. I accept that if the plaintiff had tried to find alternative employment, it was likely that the type of employment which she could find would be general clerical work earning a monthly salary of about $10,000.00. Her earning would be increased at a rate similar to the rate of revision for civil servant, ie 5.8% in April 2012 and a further 3.9% in April 2013.

*Pre-trial loss of earning*

1. Based on my aforesaid findings, I assess the plaintiff’s loss of pre-trial earnings calculated up to the end of December 2013 as follows:-
2. 7 to 31 May 2011: ($39,220.00 - $12,019.72 - $10,000.00) ÷ 31 x 25 = $13,871.19
3. June 2011 to March 2012: ($39,220.00 - $12,019.72 - $10,000.00) x 10 = $172,002.80
4. April 2012 to March 2013: ($41,495.00 - $12,704.84 - $10,580.00\*) x 12 = $218,521.92

(\*Assuming a wage increase of 5.8% with effect from April 2012)

1. April 2013 to December 2013: ($43,120.00 - $13,149.51 - $10,992.62\*\*) x 9 = $170,800.83

(\*\*Assuming a further wage increase of 3.9% with effect from April 2013)

1. Total loss: $13,871.19 + $172,002.80 + $218,521.92 + $170,800.83 = $575,196.74
2. I assess the plaintiff’s pre-trial loss of earning at $575,196.74.

*Post-trial loss of earning*

1. But for the Incident, the plaintiff would retire on 25 September 2014. In such case, the plaintiff suffered the following post-trial loss of earning:-
2. January 2014 to August 2014: ($43,120.00 - $13,149.51 - $10,992.62) x 8 = $151,822.96
3. 1 to 24 September 2014: ($43,120.00 - $13,149.51 - $10,992.62) ÷ 30 x 24 = $15,182.29
4. I assess the plaintiff’s post-trial loss of earning at $167,005.25 (ie $151,822.96 + $15,182.29).

*Loss of pension*

1. The plaintiff said that but for the Incident she would have worked to her normal retirement age of 60 and accumulated 450 months of pensionable service. She would then be entitled to receive a lump sum pension of $2,635,584.00 upon her retirement. Because of her early retirement, she had received only $2,019,312.96 as lump sum pension and suffered loss in the sum of $616,271.04.
2. The plaintiff produced information on pension calculation downloaded from the Civil Service Bureau web site to support her calculation. I accept the plaintiff’s evidence and find that she has suffered loss of pension in the sum of $616,271.04 because of her early retirement caused by the Incident.

*Medical and special damages*

1. The plaintiff said that her necklace was broken during the Incident. She had incurred $1,000.00 to repair her necklace. She also claimed $1,000.00 as taxi fares for attending medical treatment. The plaintiff said that she had paid $43,595.00 for medical treatment and medical reports. Her total claim under this head at the trial was $45,595.00 which was $1,200.00 more than the amount claimed in the SOD as the plaintiff had received two further sessions of treatment from Dr Yu since the filing of the SOD.
2. The plaintiff had produced receipts for medical fees to support her claim. I accept the plaintiff’s evidence and assessed her loss under this head at $45,595.00.

*Future medical expenses*

1. Dr Yu in his report stated that he expected the plaintiff to continue with her current treatment for at least three years and he offered counseling to the plaintiff at 12 weeks interval at the charge of $600.00 each time.
2. The further treatment suggested by Dr Yu would cost the plaintiff $7,200.00 (ie $600 x 4 times x 3 years). The plaintiff had already received two sessions of treatment as at the trial and had claimed $1,200.00 as medical expenses incurred. The plaintiff claimed the remaining sum of $6,000.00 under this head.
3. I bear in mind that Dr Yu was the plaintiff’s treating doctor and that he was of the view that the plaintiff might not have significant improvement even if she continued with the treatment. In view of the amount which would have to be incurred for the treatment, I agree with Dr Yu that the plaintiff should continue with her current treatment to get whatever improvement (albeit not significant) which might be achieved through the treatment. I assess the plaintiff’s loss under this head at $6,000.00.

*Aggravated damages*

1. The plaintiff claimed $30,000.00 under this head in the SOD on the ground that the malicious and wilful conduct of the defendant in the Incident had caused injury to the plaintiff’s feelings and reputation including injury to her dignity and pride.
2. Mr Chan referred to *Achacoso v Liu Man Kuen* [2004] 2 HKLRD F17 in which an Indonesian domestic helper was assaulted by her employer and $50,000.00 was awarded to the claimant under this head.
3. In an action for assault, the award of damages may be increased by the aggravating behaviour of the defendant which has added insult to injury.
4. In *Rookes v Barnard* [1964] AC 1129 Lord Devlin stated at 1221 that:-

“Moreover, it is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the matter of committing the wrong may be such as to injure the plaintiff’s proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation.”

1. In *Wong Kwai Fun v Li Fung* HCA 5810/1986 unreported, 28 January 1994 (Woo J [as he then was]) said at paragraph 117:-

“Aggravated damages are to compensate the victim for his sufferings in his feelings, dignity and pride, for his mental discomfort and distress, and they must be justifiable on the basis of compensation.”

1. The learned author of the Butterworth’s Hong Kong Personal Injury Service commented at paragraph [205]-[250] (Issue 34) of Division II that:-

“Compensatory principles require that in assessing damages for personal injury, all injury – both physical and mental – should be compensated. Where such injuries have been exacerbated by stress and anxiety resulting from the defendant’s conduct, this will be considered as part of the compensation for pain and suffering. Where, however, the plaintiff’s feelings, dignity, and pride are injured by malicious or wilful conduct of the defendant, this injury can be compensated by an award of aggravated damages.”

1. The plaintiff’s evidence was that she was assaulted by the defendant at the corridor and in the plaintiff’s office in a post office. The plaintiff stated that the defendant intended to and did humiliate her in the presence of her colleagues and others in the post office and subjected her to ridicule and contempt in public. I accept that there was exceptional or contumelious conduct or motive on the part of the defendant in this case.
2. The Incident was subject of reports in media including newspapers and magazines for more than a month. From the articles produced, it could be seen that the assault was witnessed not just by the plaintiff’s colleagues but also by the public present in the Sheung Wan Post Office. The plaintiff’s personal particulars were given in details in the articles. The Incident had also become a subject of joke and IQ-question game in media.
3. I agree with Mr Chan that the assault was the defendant’s revenge for the plaintiff’s prohibiting the defendant’s wrongful conduct in abusing the over-time system of the Hongkong Post and that the plaintiff had been subjected to ridicule and contempt in public including her colleagues and friends. The plaintiff’s pride and dignity were battered.
4. I agree that this is an appropriate case to make an award for aggravated damages. There are no guidelines on how to assess aggravated damages or on what is the appropriate level of award for such damages. The award shall reflect what the court considers to be fair and reasonable compensation for the injury to the plaintiff’s feelings as a result of the defendant’s egregious behaviour.
5. Woolf J. stated in *W v Mesh and D v Mesh and another* [1986] 1 All ER 935 at 942 d to e that:-

“However, so far as aggravated damages are concerned, the award must be moderate, and the primary purpose of the damages must still remain to compensate the person concerned for the injuries they have suffered, although of course the circumstances in which the injuries are suffered does affect the amount of injury they are entitled to be compensated for.”

1. I agree that the amount claimed under this head in the sum of $30,000.00 is appropriate in the circumstances of this case. I allow the plaintiff’s claim in the sum of $30,000.00 under this head.

*Loss of earning capacity*

1. The Plaintiff claims $40,000.00 in the SOD under this head. As the plaintiff had claimed loss of earning until retirement, Mr Chan confirmed at the hearing that the plaintiff would not pursue her claim under this head. Accordingly, I need not assess the plaintiff’s loss under this head.

*Loss of society*

1. The plaintiff claimed $20,000.00 under this head relying on the fact that the plaintiff’s mother moved to live apart from the plaintiff after the plaintiff sold her Tseung Kwan O property and moved to live in Tsuen Wan. Mr Chan referred to *Li Yuet Yee and Ors v Ng Chi Hung* HCPI 451/2006, unreported, 31 October 2008 (Master J Wong) in which the claimant suffered PTSD from the accident. His marital relationship was affected by the accident. He had difficulty communicating with his wife due to his worries and mental problems. The family relationship was affected by the accident and his injury. The court awarded $50,000.00 to the claimant under this head.
2. Damages for loss of society was awarded in *Chan Yuk v Dragages et Travaux Publics (HK) Ltd & Ors* [2000] 2 HKLRD 795. In that case the claimant suffered organic brain damage from the severe head injury sustained in the accident. He had been left with a right hemiparesis, a change in his personality, incontinence of bladder and bowel to a significant degree, and a moderate degree of cerebral atrophy. He also suffered impaired sexual function and loss of libido, loss of sense of smell and taste, reduced buccal sensation, loss of sensation in his right cheek and some loss of hearing in the right ear. His cognitive deficits were well below average. His memory was significantly affected. He became irritable easily and was prone to outbursts of temper and aggression against his wife and children. His behavior was also somewhat disinhibited and this, with the other aspects of his altered personality, constituted a source of stress and alienation on the part of his family. Seagroatt J when making an award under this head explained the nature of this head of damages in 801 to 802 as follows:-

“Loss of society

The plaintiff claims damages under this head to represent the loss to his wife, by reason of the extensive and permanent disabilities, of his society. The loss is self-evident in the light of these disabilities and his change of personality.

It is based on s20C(1) of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23). The subsection states:-

Where injury is caused to any person by any wrongful act, neglect or default which entitles him to maintain an action and recover damages, and which causes any person referred to in sub-sub-paras (a) to (g) [*this includes his wife*] to be deprived of his society, the person who is liable to such an action shall, subject to sub-s(3) [*this relates to the Fatal Accidents Ordinance provision for damages for bereavement*] also be liable in damages for the loss of the injured person’s society suffered by such of the following persons as survive 30 days after the date on which the cause of action accrued. (Emphasis added.)

The sentences in brackets are mine. Another subsection limits the amount of damages to the sum specified in s4(3) of the Fatal Accidents Ordinance (Cap 22), currently $150,000 but at the time of this accident the limit was $40,000.

There is no doubt that the plaintiff comes within the ambit of the first limb of this provision. Secondly his wife, who has suffered the loss of his society to a significant extent, which I shall have to consider shortly, falls within the second limb – she is identified in sub-sub-para (a).

Her claim may be brought in his action. This is clear from the terminology of the section – “which entitles him (or her) to *maintain an action*” – “the person who is liable to *such an action* … shall also be liable, in damages for loss of the injured person’s society suffered by such of the following persons as survive … after the date on which the *cause of action* accrued.” There is no need for a separate action by the wife. This follows the same logic and practical good sense which allows a plaintiff husband to claim damages for the care and nursing services rendered by and incidental expenses incurred by his wife.

A limit of $40,000 (at that time) was imposed so as to indicate, rationally enough, that the award must bear some relationship to the bereavement award. I am bound by the limit then in force.

In cases of catastrophic injury – otherwise called the disaster category – the loss of society is in some respects as complete as it can be. Loss of physical contact even in the most limited form, loss of the ability of the injured husband to see, or to speak, almost equates to total bereavement. In that event there is, more often than not, a passive object of a wife’s devoted care and support, unable to respond save possibly by facial expression.

In this case we have a mentally damaged man, with physical problems which render him dependent on his wife. His change of personality is such that he is not a passive recipient of loving care. He abuses the one who is already deprived of his normal society and kindly companionship – her evidence, which I accept, was that before the accident he was a nice and caring man who took his family out.”

1. As could be seen from the above explanation of Seagroatt J, although this head of damages was claimed by the plaintiff, it represented the loss to her mother of the plaintiff’s society. It was a claim based on s20C(1) of the Law Amendment and Reform (Consolidation) Ordinance (“LARCO”). The plaintiff’s mother had to be a person identified in the sub-paragraphs of s20C(1) (a) to (g) of LARCO. Parents of a deceased claimant are covered by sub-sub-para (e). Parents of an injured claimant are not covered by sub-sub-para (e) nor any other sub-sub-paragraphs of s20C(1). Only spouse or children of an injured claimant may claim damages under this head pursuant to sub-sub-paragraphs (a) and (b). Other sub-sub-paragraphs only name people related to a deceased claimant and not an injured claimant. The claims made in the *Chan Yuk* case and the *Li Yuet Yee* case were claims made for spouses of the injured persons who were covered by sub-sub-para (a) of s20C(1) of LARCO.
2. As the plaintiff’s mother was not covered by s20C(1) of LARCO, the plaintiff had no claim under this head. Furthermore, the plaintiff’s mother had not given evidence at the hearing. According to the plaintiff’s evidence, the plaintiff’s mother moved to live apart from the plaintiff was not because of change of the plaintiff’s personality or loss of physical contact but because of the plaintiff’s moving to live in another property in another district. I am of the view that this is not the type of “loss of society” covered by this head. I disallow the plaintiff’s claim under this head.

*Summary of monetary award*

1. I assess that the damages payable by the defendant to the plaintiff in this action is $1,740,068.03. Particulars are as follows:-
2. PLSA $300,000.00
3. Pre-trial loss of earning $575,196.74
4. Post-trial loss of earning $167,005.25
5. Loss of pension $616,271.04
6. Medical and special damages $45,595.00
7. Future medical expenses $6,000.00
8. Aggravated damages $30,000.00

Total $1,740,068.03

Less

Employees’ Compensation payment $151,200.00

Balance $1,588,868.03

1. As the plaintiff has waived the part of her claim exceeding the jurisdiction of this court of $1,000,000.00. I order the defendant to pay $1,000,000.00 as damages to the plaintiff.

*Interest and costs*

1. I make an order nisi for the defendant to pay to the plaintiff interest at half judgment rate on pre-trial loss of earning and medical and special damages (ie $620,791.74) from the date of the Incident to judgment and interest at 2% per annum on the balance of damages awarded (ie $379,208.26) being general damages from the date of the writ herein until judgment. The awarded damages of $1,000,000.00 shall carry interest at judgment rate from the date of judgment until payment.

1. I also make a costs order nisi against the defendant in favour of the plaintiff for the assessment of damages proceeding including all costs previously reserved in relation to the assessment of damages.
2. The above orders nisi shall become absolute after 14 days from the date hereof unless any party applies to vary them within this 14 days period.

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| （ R Lai ） |  |
| Master |  |

Mr Chan Hei Ching, instructed by Hui & Lam, for the plaintiff

The defendant in person and absent