DCPI 3307/2019

[2022] HKDC 386

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 3307 OF 2019

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BETWEEN

CHAN CHUN LONG SUNNY Plaintiff

and

EGL TOURS COMPANY LIMITED Defendant

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

Before: Master Matthew Leung in Court

Date of Hearing: 22 February 2022

Dates of Plaintiff’s Written Closing Submissions: 8 March & 19 April 2022

Dates of Defendant’s Written Closing Submissions: 1 March & 25 April 2022

Date of Assessment of Damages: 13 May 2022

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| --- |
| ASSESSMENT OF DAMAGES |

**Background**

1. The Plaintiff was a former employee of the Defendant and worked as an Assistant Operations Supervisor in the office situated in Kwun Tong, Kowloon at the material time. On 23 August 2017, the Plaintiff was required to work in the Office when Super Typhoon “Hato” signal no. 9 was hoisted. The Plaintiff would return to Office by MTR. While the Plaintiff was on his way to the MTR station, he fell onto the ground as a result of the strong wind sustaining fracture of left proximal femur and abrasions on ulnar side of right hand and left knee (“**the Accident**”).
2. On 8 October 2019, the Plaintiff commenced the present proceedings against the Defendant for damages for personal injuries, loss and other damages suffered as a result of the Accident. He claimed that the Accident was caused by negligence, breach of common duty of care, breach of statutory duty and/or breach of employment contract on the part of the Defendant, their servants and/or agents.
3. By a Consent Order filed on 25 January 2021, which was signed by the respective solicitors for the Plaintiff and the Defendant, the parties agreed that interlocutory judgment on liability be entered in favour of the Plaintiff against the Defendant with damages to be assessed.
4. The Plaintiff was represented by Messrs Au-Yeung, Chan & Ho (“**the Plaintiff’s former solicitors**”) when the Writ of Summons was issued. His witness statement and the joint orthopaedic expert report were filed by the Plaintiff’s former solicitors. By a Consent Summons filed on 27 April 2021, the parties (represented by their respective solicitors) agreed that the case was ready for setting down for assessment of damages. It was then ordered on 7 May 2021 that the case be set down for assessment of damages before a bilingual judge in the Running List not to be warned before 1 September 2021 with 3 days reserved. Notice of Appointment for Assessment of Damages was filed by the Plaintiff’s former solicitors on 8 July 2021. Subsequently, at the request of the Plaintiff’s former solicitors, the Court directed on 5 July 2021 that the case would not be warned before 6 October 2021.
5. However, the Plaintiff filed a Notice to Act in Person on 18 August 2021, and as such, the case might no longer be suitable to be set down in the Running List. The Court then fixed a Case Management Conference to be held on 20 October 2021 to deal with the remaining procedural matters. At the CMC, it was ordered that the Assessment of Damages be heard before Master in *punti* on 22 February 2022 with 2 days reserved.
6. Two weeks before the Assessment of Damages, the Plaintiff, acting in person, wrote to the Court on 8 February 2022 to seek leave to adjourn the hearing. That application was refused on the ground that the dates for the assessment hearing, being milestone dates, should not be adjourned unless exceptional circumstances arose. The Plaintiff eventually filed his home-made Written Opening on 14 February 2022 and then proceeded with the hearing as scheduled.
7. On 17 February 2022, i.e. 5 days before the Assessment of Damages, Messrs Tai & Co., Solicitors acting for the Plaintiff wrote to the Court to ask for an adjournment of the Assessment of Damages for 4-6 weeks’ time. Again, the application was refused.
8. At the hearing for Assessment of Damages, the Plaintiff was represented by counsel, Mr Calvin Law, while the Defendant was represented by counsel, Mr Alfred Cheng. They agreed that the assessment hearing can be proceeded. Although the hearing was conducted in *punti*, the parties agreed that the closing submissions of the parties and this Judgment can be made in English language.
9. During the Opening of the Assessment of Damages, Mr Law made an oral application to amend the Revised Statement of Damages, in which, some of the figures therein were adjusted downward while there was an upward adjustment in relation to the loss of earning of the Plaintiff’s mother. Mr Cheng raised no objection to the proposed amendments save and except the one relating to the loss of earning of the Plaintiff’s mother.
10. Revised Statement of Damages is regarded as pleading in personal injuries litigation. The power to grant leave to amend pleadings is at the discretion of this Court. This is a case management power and shall be exercised judicially. In exercising the discretion, a factor to be taken into account is the importance of not to disturb a milestone date. Further, any proposed amendment to the Revised Statement of Damages has to be supported by evidence. In this action, it is noted that the Plaintiff is the only witness to give oral evidence from the Plaintiff’s side and the Plaintiff’s witness statement made no mention of the work, calculation of the salary or the alleged loss of earning of the Plaintiff’s mother. The Plaintiff was represented by the Plaintiff’s former solicitors when the witness statement was prepared and filed. He was also represented by the same firm when they confirmed that the case was ready to set down. The evidence relating to the Plaintiff’s mother’s loss of earning should have been available at the time when the witness statement was prepared. Mr Law was unable to offer any valid explanation as to why no witness statement was ever filed to cover the alleged loss of earning of the Plaintiff’s mother despite the fact that ample opportunity had been given to the Plaintiff before setting down. Eventually, Mr Law withdrew the application to amend the Revised Statement of Damages so far as the claim for loss of earning of the Plaintiff’s mother is concerned. Subject to the above, I allowed the Plaintiff’s application to file the Re-Revised Statement of Damages which was eventually filed on 25 February 2022.

**The Plaintiff’s injuries**

1. After the Accident, the Plaintiff was sent to the A&E Department of Tseung Kwan O Hospital (“**the Hospital**”) for treatment. The A&E Report dated 2 October 2018 showed that the provisional diagnosis was “left femoral fracture greater trochanter with displacement”. The Plaintiff was transferred to the Orthoapedic ward of the Hospital for further treatment on the same day.
2. At the Orthopaedic Department of the Hospital, the Plaintiff was found to have abrasions on ulnar side of right hand and left knee. Left hip was externally rotated and shortened. Left hip had tenderness on palpation, rocking and axial loading. Distal neurovascular status was intact. X-ray examination showed trochanteric fracture of left femur with subtrochanteric extension. There was no fracture in pelvis, rest of left femur or left knee.
3. The Plaintiff was then transferred to private hospital for further care. Internal fixation of the Plaintiff’s left proximal femur with nail and screws was performed by Dr Woo Siu Bon (“**Dr Woo**”) on 24 August 2017. He also received physiotherapy treatments thereafter.
4. The Plaintiff received another operation of removal of left hip implant on 9 March 2019. In the Medical Report of Dr Woo dated 22 July 2019, Dr Woo stated *inter alia* that “[h]e has his last assessment at our clinic on 3 July 2019. There was mild restriction of his left hip motion; there was mild residual pain over the left hip and thigh. There was wasting of his left leg. He was able to walk unaided but with subtle limping. At that point of assessment, he was not able to squat or perform leg-crossing. He still had limited walking tolerance and might not be able to cope with outdoor work. He also had reduced tolerance for prolonged sitting more than 2 hours.”
5. By an Order dated 14 April 2020, it was directed that expert medical evidence be limited to one orthopaedic expert for each party. The experts nominated by the Plaintiff and the Defendant were Dr Fong Chi Ming (“**Dr Fong**”) and Dr Ho Ching Lun, Henry (“**Dr Ho**”) respectively. It was further ordered that the Joint Orthopaedic Expert Report dated 24 December 2019 (“**the Joint Report**”) be adduced without oral evidence at the trial of this action.
6. Dr Fong commented in the Joint Report that the Plaintiff was suffering from residual and persistent pain after the two operations with limited walking and sitting endurance. He had on and off pain over left hip and proximal thigh region which was directly related to his injury and sequelae. The X-rays showed a fully healed fracture of the left proximal femur.
7. Dr Ho’s comments in the Joint Report was that the Plaintiff “has actually made a very good recovery. He sat normally and got up without difficulty. He walked unaided with a normal gait. He had excellent range of movement at the left hip despite his alleged pain on movement in all directions. There was also no muscle wasting in his left lower limb to suggest that his mobility was been affected by his injury. He has been bearing weight equally on both lower limbs. Therefore, his pain, if present, should only be mild. Indeed, he was not taking any painkillers.”
8. Concerning the Plaintiff’s ability to return to his pre-accident work, Dr Fong opined that the Plaintiff could return to his pre-injury duty as travel agent but his performance would be affected by reduced tolerance for prolonged sitting for more than 2 hours. He could not be able to cope with outdoor work as his left hip pain would be aggravated by prolonged standing and walking. Dr Ho took the view that the Plaintiff should have no difficulty of returning to normal duty as a travel agency worker and should be fit to travel overseas if required.
9. As to the length of the sick leave period, Dr Fong opined that the sick leave granted to the Plaintiff from 23 August 2017 to 3 January 2020 should be reasonable while Dr Ho took the view that the sick leave granted up to July 2019 should be adequate.
10. The impairment of the whole person of the Plaintiff was assessed by Dr Fong and Dr Ho as 4% and 3% respectively.

**The Plaintiff’s work after the Accident**

1. The Plaintiff resumed work as an Assistant Operations Supervisor for the Defendant on 2 April 2018 until 4 March 2019. On 9 March 2019, the Plaintiff had another operation to remove the implant in his left hip. He was granted sick leave from 5 March 2019 to 3 January 2020.
2. In the course of giving evidence at the assessment hearing, the Plaintiff emphasized that his productivity dropped significantly after the Accident, and he could not perform certain outdoor tasks which accounted for 20% of his job duties in his estimation.
3. The Plaintiff admitted that because of the pandemic situation in Hong Kong which adversely affected the travel industry, the Plaintiff was required to take no-pay leave from time to time in the year 2021. Eventually, the Plaintiff quitted the job with the Defendant on 31 January 2022. Thereafter, the Plaintiff has been working as a part time clerk. He would work 3-4 days a week, 7 hours per day at the hourly rate of $50. The present job has nothing to do with travel industry.

**Surveillance report**

1. The Defendant engaged a surveillance firm to put the Plaintiff under surveillance on several days.  The firm produced a video of its surveillance on the Plaintiff. The Plaintiff accepted that he was the person being recorded in the video.
2. Mr Cheng particularly asks the Court to consider the footages on 17 October 2019, 12 December 2019, and 27 February 2020. The video taken on 17 October 2019 showed that the Plaintiff was walking in the company of a lady in Central area and then returned home between 1515 hours and 1758 hours. The Plaintiff had no walking aid.   On 12 December 2019, the video showed that the Plaintiff was travelling to Tsim Sha Tsui area and visited Asia Pacific Centre from 1429 hours. The Plaintiff entered a hair salon at 1710 hours. Thereafter, the Plaintiff walked around in Tsim Sha Tsui area until he returned home at 1950 hours. On 27 February 2020, the video began to feature the Plaintiff walking out of the office for lunch at 1205 hours and returned to office at 1312 hours. He walked out of the office again at 1813 hours and returned home at 1844 hours.
3. I bear in mind that surveillance report and photos must not contain comments or opinions, merely a factual identification of place, time and persons viewed. Having considered the report and the video produced by the Defendant, I agree that the Plaintiff had been viewed walking in normal motion and his mobility seemed normal on those days.

**The Defendant’s witnesses**

1. The Defendant called Madam Choi Pui Man (“**Choi**”) and Madam Chan Mei Yu Vera (“**Chan**”) to give oral evidence.
2. Choi adopted her witness statement dated 25 May 2020 as her evidence in chief. She was the Head of Human Resources Development Department of the Defendant at the material time. Choi said that after the accident, and after the surgery for removal of the implant, the Plaintiff returned to work in the same position on 6 January 2020. The Plaintiff worked as usual and undertook similar job duties as before. He was able to cope with the job duties and there has been no change in his capacity and efficiency.
3. According to the Defendant’s record, the Plaintiff worked with the Defendant since 2011 and was promoted to the post of Assistant Operation Supervisor since 2016. The Plaintiff’s monthly salary was increased to $12,870 from 1 April 2018, $13,370 from 1 October 2018 and then to $14,110 from 1 April 2019.
4. Since around the third quarter of 2019, the travel industry in Hong Kong has been adversely affected by the social events, and this impacts on the salary of the staff of the Defendant including the Plaintiff. Together with the pandemic situation, the travel business further went down in the year 2020. The salary increment of the Plaintiff was frozen for April 2020. The Plaintiff was arranged to take unpaid leave between 1 March and 30 June 2020. She further said that the change in the Plaintiff’s salary was unrelated to the accident and/or any residual impairment of the Plaintiff.
5. Choi also confirmed that the employees’ compensation paid to the Plaintiff was $214,704 and the Defendant also made special arrangement to reimburse the Plaintiff for his medical expenses subject to a cap of $300,000.
6. Chan was the Senior Operations Manager of the Operations (Asia) Department of the Defendant. The Plaintiff would report directly to his team head while Chan would be responsible to oversee the operation of the Department which required regular communication with various teams. Chan said that the Plaintiff resumed work with the Defendant on 2 April 2018 after the accident. He was able to cope with his job duties as before and there had been no change in his work capacity and efficiency. The Defendant exempted the Plaintiff from working on Saturdays or rest days.
7. At the hearing, Chan admitted in cross examination that the Plaintiff’s overall productivity was affected after the Accident but she did not agree that the Plaintiff’s outdoor duties accounted for as much as 20% as alleged by the Plaintiff.

**Credibility of witnesses**

1. The Plaintiff was testified at the assessment hearing. He adopted the witness statement as his evidence in chief and was cross-examined by Mr Cheng extensively. Mr Cheng criticized that the Plaintiff was neither credible nor reliable. He attacked the credibility of the Plaintiff as follows:
2. The Plaintiff claimed that there was internal bleeding under the wound which delayed his recovery. The Plaintiff insisted that he had informed Dr Woo of the internal bleeding. However, there was no mention of any internal bleeding in Dr Woo’s medical report. The Plaintiff himself admitted in cross examination that he made no mention of any internal bleeding in his witness statement.
3. The Plaintiff claimed that he would wake up by pain at night and was required to take painkillers 1-2 times a week after his second operation on 9 March 2019 till now. However, Mr Cheng pointed out to the Plaintiff in cross examination that it was mentioned by Dr Ho in the Joint Report that the Plaintiff “was not taking any painkiller”. The Plaintiff’s response was that he did not take painkillers around the time of the joint examination.
4. The Plaintiff claimed that he required to use 2 crutches from March to May 2019 and 1 crutch from May to August 2019. Mr Cheng submitted that the Plaintiff’s allegation was not consistent with Dr Woo’s observation on 3 July 2019 that the Plaintiff could walk unaided with subtle limp.
5. The Plaintiff claimed that he still walked with a slight limp at the time of the witness statement (i.e. 14 May 2020) and he needed to walk slowly after the accident. However, the surveillance video showed that the Plaintiff was walking normally in terms of speed and gait at the time of the records in October 2019, December 2019 and February 2020.
6. The Plaintiff claimed that his unsatisfactory attendance at work with the Defendant was caused by the residual leg pain. While he first suggested that he took no pay leave because he exhausted his paid sick leave and paid annual leave, he then retracted to suggest that he managed to just use up his paid annual leave, so he did not bother to go see a doctor to get a sick leave certificate. Mr Cheng suggested that the Plaintiff’s explanation was unreasonable and illogical.
7. Having carefully considered the Plaintiff’s evidence, I am unable to say that the Plaintiff is entirely unreliable and dishonest. First, the only occasion where the Plaintiff mentioned his internal bleeding was in his home-made Written Opening which was filed when he was still acting in person on 14 February 2022. I accept Mr Law’s submission that the Written Opening did not form part of the Plaintiff’s evidence.
8. Second, the Plaintiff readily admitted during cross examination that he was the person being recorded in the surveillance videos. He also accepted that he was seen walking normally in the surveillance video.
9. Third, during examination in chief, the Plaintiff disclosed that he no longer worked with the Defendant after 31 January 2022 and his present job has nothing to do with travel industry. The Plaintiff frankly admitted that that was the result of the pandemic and economic situation in Hong Kong.
10. Having said that, I consider that the Plaintiff was prone to exaggeration especially as to the extent and severity of his injuries. I have to deal with his evidence with great care. I would accept his evidence as to the alleged injuries so far as it would sit well with the medical records, medical reports and other objective evidence.
11. The credibility of the Defendant’s witnesses was not challenged, and I accept the evidence of Choi and Chan in full.

**PSLA**

1. The Plaintiff claims a sum of $520,000 under this head in the Re-Revised Statement of Damages.
2. Mr Law relies on two cases in support of the Plaintiff’s claim. In ***Yu Kok Wing v Lee Tim Loi*** [2001] 2 HKLRD 306, the plaintiff slipped from a ladder and fell onto the ground sustaining fractures to the right shin bone, right ankle and left heel. He underwent an operation to insert a plate into his left heel and bone grafting. External plates and pins held his right ankle in place. About two months later, he was admitted to hospital for the removal of the external plates and pins. Total impairment was assessed at between 8% and 10%. PSLA was awarded at $350,000 [equivalent to about $549,758 as at 2022 as submitted by the Plaintiff].
3. In ***Wan Chuen Hoi v Wing Shun Engineering Transportation Limited***, HCPI 530/2008 (unreported, 14 June 2011), the Plaintiff’s left hand hit the guardrail of the truck before sliding down on the truck platform and landing on the left side of his body sustaining fractures of left wrist and left hip. Close reduction and external fixation of left wrist, and open reduction and internal fixation with metal implants of left femur under general anaesthesia were performed. The external fixator of the left wrist was kept for 6 weeks. PSLA was awarded at $370,000 [equivalent to about $486,223 as at 2022 as submitted by the Plaintiff].
4. The Defendant argues that a sum of $300,000 should be reasonable. Mr Cheng refers me to three cases. In ***Ho Man Wa v Wong Shui Fun***, DCPI 730/2009 (unreported, 11 March 2010), when the plaintiff and his colleague were moving a metal cart, on which 12 pieces of gypsum boards were loaded, out from a cargo lift, the metal cart suddenly toppled. The metal cart and the boards fell onto the Plaintiff causing fracture at shaft of the right femur. Closed reduction and internal fixation were performed. Impairment of the whole person was assessed to be 3%. PSLA was awarded at $250,000 [equivalent to about $340,432.43 as at 2022 as submitted by the Defendant].
5. In ***Cheung Yuet Har v Force Team Ltd***, DCPI 44/2009 (unreported, 24 February 2010), the 72-year-old plaintiff slipped and fell in a restaurant causing fracture over the neck of left femur. At the time of trial, the plaintiff still complained about residual left hip and thigh pain as well as lower limb weakness. Permanent impairment was assessed at between 6% and 8%. PSLA was assessed at $250,000 [equivalent to about $340,430 as at 2022 as submitted by the Defendant].
6. In ***Lau Tsz Wan v Caltex Oil Hong Kong Ltd***, DCPI 140/2001 (unreported, 8 December 2004), when the plaintiff walked by a petrol station, she slipped and fell sustaining fracture of the neck of her right femur. Closed reduction and hip screw fixation were performed. Removal of the fixation screw was carried out about 6 months later. The experts agreed that the plaintiff suffered from 5% impairment of the lower extremity. The plaintiff was assessed by the orthopaedic expert to have suffered from 5% impairment of the lower extremity equivalent to 2% impairment of the whole person. PSLA was assessed at $250,000 [equivalent to about $384,984.78 as at 2022 as submitted by the Defendant].
7. I agree with Mr Cheng’s submissions that the cases relied upon by Mr Law involved injuries of more serious in nature. In ***Yu Kok Wing***, there were fractures of the plaintiff’s right shin bone, right ankle and left heel. In ***Wan Chuen Hoi***, apart from the fractures of the plaintiff’s left hand and left hip, there was 1 cm shortening in his left leg and he was required to walk with a limp.
8. Mr Law draws my attention to the fact that there were two types of old fractures with the Plaintiff, namely subtrochanteric fracture and avulsion fracture which were both healed. There was residual track in head and neck region of left femur due to screw removal operation. There was also a small bone fragment closed to left greater trochanter. The lower limb power at the left side of the Plaintiff has been reduced. He cannot stand steadily on his left leg during the medical examination.
9. I note that in the Joint Report, Dr Fong commented that the Plaintiff’s prognosis was fair and he was still recovering from his comminuted subtrochanteric fracture of left femur. The two operations could result in scar tissue formation of his left hip muscles especially the abductor muscles and this may account for his persistent pain over abductor region and scars regions. His symptoms may be aggravated when walking fast or sit on low-lying chair. Dr Ho opined that the Plaintiff should have no difficulty with his daily activities and should be able to travel normally whether locally or abroad.
10. Having considered the Plaintiff’s injuries and disabilities, and the effect of his injuries on loss of amenities in his work and daily activities, I consider that the injuries suffered by the Plaintiff in the present case are slightly more serious than those suffered by the plaintiffs in the cases cited by Mr Cheng on behalf of the Defendant. I assess that the damages for PSLA should be $400,000.

**Pre-trial loss of earnings and MPF**

1. For the purpose of quantifying the pre-trial loss of earnings, the Plaintiff reasonably adopted the opinion of Dr Ho, the expert nominated by the Defendant, that the sick leave up to 31 July 2019 should be sufficient in relation to the Accident. The Plaintiff’s claim is as follows:

[$13,330.75 x 7.3 + $14,545.83 x 0.9 + $15,285.83 x 4] x. 1.05 = $180,126.50.

1. It was not disputed by the Defendant that the average monthly salary of the Plaintiff from 23 August 2017 to 1 April 2018 (7.3 months), from 5 to 31 March 2019 (0.9 month), and from 1 April 2019 to 31 July 2019 (4 months) were $13,330.75, $14,545.83, and $15,285.83 respectively. The Plaintiff’s claim for pre-trial loss of earnings and MPF was also not disputed by the Defendant. Having considered all the evidence and circumstances, I am satisfied with the Plaintiff’s calculation and accept that the pre-trial loss of earnings and MPF should be $180,126.50.
2. The Plaintiff sensibly and reasonably withdraws his claim for future loss of earnings and loss of MPF notwithstanding that there was a claim for more than $1.7 million under this head in the Revised Statement of Damages.

**Loss of earning capacity**

1. The Plaintiff claims damages for loss of earning capacity in the sum of $159,600. In the Re-Revised Statement of Damages, the Plaintiff pleaded that as a result of the residual pain, the inflexibility of his physical movement, and insufficient sleep caused thereby, about 10-20% of his job duties were restricted. Also, his productivity dropped about 15% as well. Adopting the monthly salary of $14,110, it would expect, as pleaded by the Plaintiff, that the anticipated monthly earnings would be $9,171.50 [$14,110 x (1-0.2-0.15)]. The Plaintiff asks for damages equivalent to 17.4 months of the anticipated monthly earnings under this head.
2. In support of this head of claim, Mr Law submits that the Plaintiff’s current job is not related to travel industry and asks the Court to have a “lenient estimation of the period of time for loss of earning capacity” because of the significant difficulty of the Plaintiff to re-enter the travel industry. That said, Mr Law has not explained why 17.4 months should be adopted.
3. With respect to Mr Law, I do not think that that is the correct approach in assessing damages for loss of earning capacity. The guiding principle for making an award for loss of earning capacity was stated in ***Moeliker v A Reyrolle & Co Ltd*** [1977] 1 WLR 132 at 141:-

“Where a plaintiff is in work at the date of the trial, the first question on this head of damage is: what is the risk he will at some time before the end of his working life lose that job and be thrown on the labour market? I think the question is whether there is a “substantial” risk or is it a “speculative” or “fanciful” risk … If the court comes to the conclusion that there is no “substantial” or “real” risk of the plaintiff losing his present job during the rest of his working life, no damages will be recoverable under this head.”

1. In ***Chan Wai Tong v Li Ping Sum*** [1985] HKLR 176, at 183, Lord Fraser of Tullybelton stated the following:-

“… A claim for loss of future earning capacity usually arises where the claimant is in employment at the time when the claim falls to be evaluated. The claim is to cover 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. Limited* [1977] 1 WLR 132, 140 where Browne, L.J. dealt fully with this matter. Evidence is therefore required in order to prove the extent, if any, of the risk that the claimant will at some future time during his working life lose his employment. If he is, and has been for many years, in secure employment with a public authority the risk may be negligible. In other cases the degree of risk may vary almost infinitely, depending on inter alia the claimant’s age and the nature of his employment. Evidence will also be generally required in order to show how far the claimant’s earning capacity would be adversely affected by his disability. This will depend largely on the nature of his employment. Loss of an arm or a leg will have a much more serious effect upon the earning capacity of a labourer than on that of an accountant.”

1. The first issue is whether the Plaintiff will have a risk of losing his present job at some future time. Mr Cheng submits that there is no evidence that the Plaintiff has real risk of losing his present job and the Plaintiff suffered no disadvantage in the labour market. In this regard, I accept that since the current job was of temporary and part time nature, the Plaintiff do have real risk of losing his present job.
2. The next issue is whether the Plaintiff will suffer any disadvantage in the labour market. In the Joint Report, Dr Fong opined that the Plaintiff could return to his pre-injury duty as a travel agent but his performance would be affected by reduced tolerance for prolonged sitting for more than 2 hours. He also commented that the Plaintiff could not be able to cope with outdoor work as his left hip pain would be aggravated by prolonged standing and walking. Impairment of the whole person was assessed at 4%. Dr Ho considered that the Plaintiff should have no difficulty of returning to the normal duty as a travel agent and should be fit to travel overseas if required. Impairment of the whole person was assessed at 3%. In view of the experts’ opinion, and having considered the overall injuries suffered by the Plaintiff, I accept that the Plaintiff will suffer a disadvantage in the labour market.
3. Mr Cheng submitted that if the Court finds that the Plaintiff suffered a disadvantage in the labour market, a sum of $50,000 should be more than sufficient. Having considered the nature of the Plaintiff’s current employment, his age and physical condition, I agree that a sum of $50,000 should be sufficient.

**Special damages**

1. The Plaintiff claimed the following special damages:

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| --- | --- | --- |
| (a) | Medical expenses | $300 |
| (b) | Travelling expenses | $21,950 |
| (c) | Tonic food | $20,000 |
| (d) | Medical report from Dr Woo | $1,500 |
| (e) | medication | $3,000 |
| (f) | 2 crutches | $600 |
| (g) | Loss of earning of the Plaintiff’s mother as a part-time tutor in order to take care of the Plaintiff | $44,800 |
|  | **Total:** | **$92,150** |

1. Mr Cheng pointed out to the Plaintiff in cross examination that the medical expenses and most of the travelling expenses were reimbursed by the Defendant. The records of the medical and travelling expenses kept by the Defendant were shown to the Plaintiff. The Plaintiff did not raise any objection to that. In this regards, I note that despite the fact that there were various medical consultations and the two operations performed on the Plaintiff, the Plaintiff only claims a total sum of $300 being medical expenses. The Plaintiff explained in the Witness Statement that the medical expenses incurred in the Tseung Kwan O Hospital in the sum of $300 was not reimbursed. However, the Plaintiff’s evidence is inconsistent with the records of the medical and travelling expenses kept by the Defendant. The Plaintiff’s claim for $300 is not allowed.
2. Mr Cheng suggests that the travelling expenses and the tonic food should be in the respective sums of $5,000. Given that most of the travelling expenses had already been reimbursed by the Defendant, I agree with Mr Cheng that the sum of $5,000 should be sufficient to compensate the Plaintiff for the travelling expenses not already reimbursed.
3. The Plaintiff does not provide any documentary evidence for his claim for tonic food. However, the court may award a reasonable sum for food even no documentary proof has been produced: see ***Tang Yuet Yi, a minor by Tiu Kwai King v. Leung Man Chow*** [2018] HKDC 985. Having considered the nature of the Plaintiff’s injuries, the number of operations received by him and the recovery process, I consider that a sum of $5,000 is appropriate for tonic food.
4. Medical report fee of Dr Woo should be recovered under costs and not special damages, and such costs should not be allowed here.
5. There is no evidence to support the claim for medication in the sum of $3,000. In the Joint Report, both Dr Fong and Dr Ho agreed that the Plaintiff has reached maximal medical improvement. They did not indicate if any further operation or medication would be required for the Plaintiff. Accordingly, I would not allow the Plaintiff’s claim for medication in the sum of $3,000.
6. The Defendant accepts to pay the costs of crutches in the sum of $600.
7. For the loss of earning of the Plaintiff’s mother, as mentioned before, there was no evidence whatsoever, whether documentary or oral, to prove the nature of work of the Plaintiff’s mother, working hours, and salary calculation, not to mention the evidence to show the actual loss as alleged. The Plaintiff’s claim herein is not allowed.
8. The total amount of special damages should be $10,600 [$5,000 + $5,000 + $600].

**Summary**

1. The Plaintiff’s damages is now assessed as follows:

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| --- | --- | --- |
| (a) | PSLA | $400,000 |
| (b) | Pre-trial loss of earnings | $180,126.50 |
| (c) | Loss of earning capacity | $50,000 |
| (d) | Special damages | $10,600 |
|  | **Sub-total** | **$640,726.50** |
|  | Less: employees’ compensation | $214,704 |
|  | **Total:** | **$426,022.50** |

**Interest and costs**

1. Interest will be awarded at 2% per annum on damages for PSLA from the date of service of the writ. Interest on other pre-trial loss and special damages will be awarded at half the judgment rate from the date of the accident. The Plaintiff’s solicitors are directed to calculate the amount of interest to be included in the judgment.
2. I also make a costs order *nisi* against the Defendant in favour of the Plaintiff for the assessment of damages proceedings including all costs previously reserved in relation to the assessment of damages, if any.  The above order *nisi* shall become absolute after 14 days from the date hereof unless any party applies to vary them within this 14 days’ period.
3. It remains for me to thank Mr Law and Mr Cheng for the assistance they have rendered to the court.

(Matthew Leung)

Master of the District Court

Mr Calvin Law, instructed by Messrs Tai & Co., for the Plaintiff

Mr Alfred Cheng, instructed by Messrs Mayer Brown, for the Defendant