# DCPI 3621/2019

[2021] HKDC 237

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO. 3621 OF 2019

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BETWEEN

HU WAN Plaintiff

and

SANWO INTERNATIONAL

COMPANY LIMITED Defendant

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##### Before: His Honour Judge Andrew Li in Court (Open to public)

Date of Trial: 9 - 10 November 2020

Date of handing down assessment of damages: 26 February 2021

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ASSESSMENT OF DAMAGES

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*INTRODUCTION*

1. This is the assessment of damages arising out of an accident happened to the plaintiff at work on 31 January 2016 (“the Accident”). Interlocutory judgment on liability having been entered against the defendant, the only issue remains for the Court to decide is the amount of damages which the plaintiff is entitled to in this case.

*BACKGROUND*

*The Accident*

1. The plaintiff was 27 years old at the time of the Accident. She worked for the defendant as a saleslady in the defendant’s shop situated within a large shopping centre in Tseung Kwan O. The defendant is a retailer of shoes.
2. On the date of the Accident, at the request of her customers, the plaintiff had to go into the storeroom and climbed up a set of ladder in order to get 2 pairs of shoes for her customers for fitting. While she was still standing on the ladder and carrying the 2 boxes of shoes in her hands, she slipped and fell from the ladder and thereby injured her left ankle.

*Injuries and treatment*

1. Immediately after the Accident, the plaintiff attended the Accident & Emergency Department of Tseung Kwan O Hospital (“TKOH”). Physical examination revealed ‘bimalleolar fracture to her left ankle’. Surgery of open reduction and internal fixation was done on 2 February 2016. She was discharged from the hospital on 4 February 2016. At the time of discharge, she had to walk with a frame.
2. On 26 February 2016, ankle foot orthosis was moulded and fitted post operation for immobilization after the plaintiff attended the Department of Prosthetic and Orthotic of TKOH.
3. The plaintiff was then followed up by the Department of Orthopaedics & Traumatology of TKOH where she received physiotherapy and occupational therapy treatments.
4. She also attended various out-patient clinics at Tsueng Kwan O Hospital Mona Fong General Out Patient Clinic (“Mona Fong Clinic”), Kwun Tong Community Health Centre and Ngau Tau Kok General Out Patient Clinic for follow-up treatments.

*DISCUSSION*

*The medical experts’ evidence*

1. On 26 March 2019, the plaintiff was jointly examined by Dr. Wong See Hoi (the plaintiff’s orthopaedic expert) (“Dr Wong”) and Dr. Tsoi Chi Wah Danny (the defendant’s orthopaedic expert) (“Dr. Tsoi”) and a joint expert report was prepared by them which was dated 30 April 2019 (“the Joint Report”).
2. In the Joint Report, both experts agree that the plaintiff suffered from ‘fracture of bimalleolar of left ankle’ which was directly caused by the Accident.
3. The experts opine that the treatments that the plaintiff received including the operation of open reduction and internal fixation with screw and K-wire, followed by 1st course of physiotherapy from 25 February 2016 to 12 January 2017, occupational therapy from 3 August 2016 to 1 January 2017 and 2nd course of physiotherapy from 28 August 2017 to 28 February 2018 were standard and appropriate.
4. Judging from the medical records, particularly the record of the last physiotherapy treatment dated 28 February 2018, the experts opine that the plaintiff has achieved a satisfactory recovery from left ankle fracture after rehabilitation by early 2018.
5. During the joint examination, the plaintiff attended the clinic and was able to walk normally. She managed to perform most tasks including sitting to standing, heels walking, single leg standing with no difficulty except presented with mild pain in tip-toes walking. She could perform full squat but needed support to get up.
6. Physical examination showed mild degree of muscle wasting over left thigh and calf muscle which indicated disuse atrophy after injury. The experts opine that the pain and weakness were compatible with post fracture status.
7. As to prognosis, Dr. Wong opines that it is fair. The plaintiff is expected to have intermittent attack of left ankle pain chiefly on exertion such as heavy lifting and carrying from supermarket, prolonged walking and standing in long journey or walking on uneven ground. Dr. Tsoi opines that the plaintiff has recovered well. Residual ankle soreness on prolonged walking, jumping, running and climbing is possible but should be of mild degree.
8. As to working capacity, the experts agree that the plaintiff should be able to resume her pre-injury occupation with mild reduced efficiency and capacity, especially in prolonged and persistent standing during sales duty, climbing up and down stairs and ladder for taking stocks, occasional squatting for picking up or serving customers in wearing shoes. She may require intermittent rest because of left ankle pain.

*The plaintiff’s evidence*

1. The plaintiff gave evidence at the assessment hearing. I find her to be an honest and truthful witness. Eventhough she was subjected to extensive cross-examination by the defendant’s counsel, she came across as a straightforward and forthcoming witness. She was never evasive or ambivalent in the answers she gave. I accept her evidence.
2. The plaintiff was born and grew up in the Mainland. She received education up to secondary three level there. In 2007, she started to work as a saleslady in Shenzhen. In 2014, she came to reside in Hong Kong and continued working as a saleslady. By the time of the Accident, she had been working in the retail industry as a saleslady for about 9 years.
3. In her pre-accident job with the defendant, she had to stand for at least 8 hours a day and climb on the ladder to fetch shoes for customers’ fitting for 40-50 times a day. Since the Accident, she is not able to stand for more than 2-3 hours at a time.
4. I accept her evidence that after the Accident, she was persuaded by the defendant to resign from her job after the 2-year sick leave period had expired. She felt that she had no alternative but to resign. She did that on 21 February 2019. The defendant has not produced any evidence to contradict her evidence in this respect.
5. Since the Accident, the plaintiff had tried to look for a sales job for some time in less demanding trades but could not find one. In this regard, she has produced advertisements on such jobs which paid substantially less than her pre-accident job. Again, this part of the evidence was not challenged by the defendant.
6. Eventually, she managed to find a sales job and started working for Dah Chong Hong on 5 June 2019 at a monthly salary of $11,020. However, the plaintiff found that she could not cope with the demands of this job which caused her further pain in her ankle. After consulting a private doctor,she quit the job on 10 June 2019.
7. The plaintiff then found a new job as an office assistant earning $11,000 per month which does not require her to stand for long hours or outdoor work. She has been working in this job since 1 July 2019.
8. I agree with the plaintiff’s counsel Mr Simon Wong’s submissions that the Court is never bound by the experts’ opinion. On the issue of suitability to return to a particular job, the Court will take into account of all the evidence available in the case, including both factual and expert evidence. In this case, besides the experts’ opinions stated in the Joint Report, I have taken into account of the nature of the plaintiff’s injuries; the objective medical evidence; her treatment records and history; the plaintiff’s explanations as to why she was unable to cope with the job as a saleslady; her attempts to find and work in other sales jobs; the demand of her pre-accident job; and her present complaints.
9. I notice in the Joint Report there is no suggestion by the experts that the plaintiff has exaggerated her complaints. Indeed, objective findings made by the experts shows that there was muscle wasting on her left lower limb. This is not something which plaintiff could have feigned. Further, the experts agree that there would be pain and weakness, reduced efficiency and capacity and that she may require intermittent rest due to the left ankle pain.
10. I accept the plaintiff’s injuries have caused her to suffer from some permanent lower limb deficit which would affect her job performance and earning capacity. Given the relatively high physical demands of her pre-accident job, I accept that she would not be cope and therefore able to return to that job.

*P’s pre-accident employment*

1. The plaintiff was first employed by the defendant in October 2014. Like many other new immigrants to Hong Kong, the plaintiff worked hard in order to earn more money and gain more relevant working experience. She obviously did so to equip herself for better promotion prospects and better future job opportunities. Not long after she was employed by the defendant, she was promoted to the position of ‘Experienced Salesperson’. She worked many overtime hours as her income records have indicated. The defendant provided incentive to the plaintiff and her colleagues to do that as their remunerations were calculated based on the volume of sales they made and number of hours they worked.
2. The following summary of the plaintiff’s earnings for the 12 months prior to the Accident has supported the above:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Basic salary | Commission | Allowance | Overtime | Total |
| Jan 2015 | 7,800 | 1,200 | 1,000 | --- | 10,000 |
| Feb 2015 | 7,800 | 1,200 | 1,800 | 1,295 | 12,095 |
| Mar 2015 | 7,800 | 1,200 | 1,450 | 857.50 | 11,307.50 |
| Apr 2015 | 7,800 | 1,200 | 1,400 | 1,400 | 11,800 |
| May 2015 | 7,800 | 1,200 | 1,800 | 980 | 11,780 |
| Jun 2015 | 7,800 | 1,200 | 1,000 | 530 | 10,530 |
| Jul 2015 | 7,800 | 1,200 | 1,000 | 805 | 10,805 |
| Aug 2015 | 7,800 | 1,200 | 1,400 | 700 | 11,100 |
| Sep 2015 | 7,800 | 1,200 | 1,000 | 1,225 | 11,225 |
| Oct 2015 | 7,800 | 1,200 | 1,000 + 400 | 1,120 | 11,520 |
| Nov 2015 | 7,800 | 1,200 | 1,000 + 800 | 1,032.50 | 11,832.50 |
| Dec 2015 | 7,800 | 1,305.90 | 1,000 + 1,200 | 630 | 11,935.90 |
|  |  |  |  | Average | 11,327.58 |

*Sick leave period*

1. It is not disputed that the plaintiff was granted sick leave by the doctors at TKOH and various out-patient clinics from 31 January 2016 to 18 February 2019 (a total of 36.5 months).
2. When considering the significance and relevance of sick leave periods granted by doctors at public hospitals or clinics, the starting point is the case of *Tam Fu Yip Fip v Sincere Engineering & Trading Co Ltd* [2008] 5 HKLRD 210 where Le Pichon JA stated that medical certificates were no more than a piece of evidence to be evaluated in the light of all available evidence including medical evidence, and the judge could not be bound by the mere issue of medical certificates since the issuance of such certificates would be primarily because of subjective symptoms reported to the doctors by the plaintiff. Hence, the end of sick leave as a result of static of maximum medical improvement state on the basis that no further active or therapeutic treatment will be of assistance does not necessarily mean the patient has made full recovery or he can immediately return to pre-accident work or other gainful employment. After all, it is a matter of assessment and degree.
3. The experts in the present case agree with the sick leave granted up to 25 October 2017 as endorsed by Employees’ Compensation (Ordinary Assessment) Board (“MAB”) in the Form 9 is reasonable. They further recommend one more month of sick leave after the removal of the implants.
4. With respect to both experts, they did not seem to have given any particular reasons to support their opinion of why sick leave of 21 months was appropriate in this case. It appears that the experts did not analyze whether the plaintiff’s condition was static on 25 October 2017 or not. Their opinion on the sick leave seems to have based solely on the opinion stated in the Form 9 which was dated 8 November 2017. They have not taken into consideration of the further sick leave obtained by the plaintiff after she attended the MAB for assessment.
5. Judging from the medical evidence which has become available after the MAB assessment, I accept the plaintiff’s condition had indeed not yet become static and had not reached the maximum medical improvement state by 25 October 2017. At that time, she was still receiving physiotherapy treatments, which, as the physiotherapist’s report suggests, had led to further improvements to her condition when comparing her August 2017 condition to that of her January 2018 condition.[[1]](#footnote-1) The last session of physiotherapy treatment was on 28 February 2018, when she reported overall subjective improvement was 60-70% and she subjectively felt condition static. She was discharged from physiotherapy on that day. Obviously, the plaintiff must have found the physiotherapy treatments helpful, otherwise I do not think she would have agreed to undergo the 2 lengthy treatment sessions.
6. I do not accept the defendant’s contention that the plaintiff had deliberately “gambled” for longer sick leave when she went back to consult the doctors at the Mona Fong Clinic. Nor do I accept the proposition that she had deliberately refused to undergo any “vocational resettlement program” offered by the occupational therapist because she wanted to have longer sick leave. I do not find the plaintiff as such kind of person. I believe her when she said the reason of her in declining the resettlement programme was because at that time she could not walk for more than 2-3 hours and any resettlement programme may further aggravate her condition.
7. The defendant submits that the plaintiff has adopted a “sick role” after the reasonable sick leave period had expired. It submits that she was “unmotivated to get back to work”. I do not find that was the case at all.
8. Taking all the circumstances into account, I would allow sick leave up to end of the plaintiff’s last course of physiotherapy treatment on 28 February 2018 in this case.

*Assessment of Damages*

1. The plaintiff has claimed damages under the following heads which I shall make my assessment accordingly.
2. *Pain & suffering and loss of amenities (“PSLA”)*
3. The plaintiff submits that PSLA award should be in the range of $260,000 to $310,000 while Mr Poon for the defendant submits that a reasonable PSLA award should be in the region of $150,000 to $200,000.
4. Mr Wong for the plaintiff relies on the following cases:

(a) *Tamang Tikaram v Tong Kee Company Limited & Others* (unreported, HCPI 19/2013, 1 April 2015), the 36-year-old plaintiff had a minimally displaced fracture of right medial malleolus. He received no operation but was given a short leg dynast which he wore for 7 weeks. He was hospitalized for 3 days, attended 19 sessions of physiotherapy and 17 sessions of occupational therapy. He could walk unaided. X-ray showed no the fracture to have healed in anatomic position. PSLA of $200,000 was awarded. The award would be about $220,000 now[[2]](#footnote-2).

(b) *Li Chi Sing v Equal Link Limited* (unreported, DCPI 1930/2011, 6 March 2013), the plaintiff had a fracture of left malleolus and received open reduction and internal fixation with plate and screws. He had 14 sessions of physiotherapy and total sick leave of 166 days. He could achieve good recovery with normal walking resumed. The fracture was also healed with good alignment. Prognosis was good. PSLA was awarded at $220,000. The award would be about $260,000 now[[3]](#footnote-3).

(c) *Lam Kam Fai v Yau Shing Scaffolding Co Ltd* [2014] 2 HKLRD 448, the plaintiff was 24 years old at time of accident. He had a fracture of left distal fibula requiring surgery. He had to walk with crutches for about 9 months, and underwent 4-month physiotherapy. Two years later, he was readmitted for 6 days for removal of implants and required further physiotherapy. But he could walk unaided and achieved full recovery. The prognosis was good. The Court accepted expert evidence that he suffered from a pre-existing old injury to left ankle and therefore made a discount of 10% to $325,000 to arrive at a PSLA award of $292,500. The award of $325,000 would be about $370,000 now[[4]](#footnote-4).

(d) *Tsui Wai Ho v Pride Glory Limited trading as Ziti’s* [2019] HKDC 657, the plaintiff suffered from fractured distal fibula requiring open reduction and internal fixation. There was also an operation for implant removal. The fracture was found to be healed well with satisfactory range of movement. There was no limitation to his daily activities and full recovery was achieved 2 years after the accident. PSLA of $250,000 was awarded.

(e) *Chan Mok Yau v 黃吉利 and Another* [2018] HKCFI 1084, the plaintiff was 54 years old. He only received conservative treatment by way of cast for his right ankle fracture. But he required 424 days of sick leave. Almost 2 years after accident, he still had moderately reduced range of movement as examined by an orthopaedic specialist. PSLA of $250,000 was awarded.

1. Mr Poon on the other hand has asked the Court to take into account of the following cases (besides case (b) & (e) above which have also been relied on by him) when considering the PSLA award:-

(a) *Cheng Muk Ping v Chan’s Machine Engineering Company Limited* (unreported, DCPI 932/2007, 20 October 2008), the plaintiff was hurt by the push arm of a bulldozer and sustained a Lisfranc fracture on his right foot second metatarsal. He received an operation of open reduction and internal fixation. His foot was put in cast for 6 weeks. Sick leave for almost 6 months was granted. Further operation was conducted to remove screws inserted. The plaintiff suffered from 10% whole person impairment and 8% loss of earning capacity. PSLA of HK$180,000 was awarded.

(b) *Hau Kit Ho v Starway International Development Limited trading as Tao Heung Super 88* (unreported, DCPI 329/2002, 22 September 2003), the plaintiff was a customer of the defendant’s restaurant. When she went to the female toilet after the tea, she had a fall and suffered a fracture to her left ankle. X-ray on admission showed a fracture over the left lateral malleolus. Open reduction and screw fixation of the fracture were performed. The wound healing was satisfactory. There was no post-traumatic arthritic change. PSLA of HK$200,000 was awarded.

1. In considering what would be the appropriate PSLA award in this case, I have taken into account of the following special features in the present case:
2. The plaintiff is relatively young: she was only 27 at the time of the Accident and 32 at the date of assessment;
3. She had a fracture which required open reduction and internal fixation;
4. She was hospitalized for 5 days;
5. There is a possibility that the plaintiff will need to have another operation for the removal of implant sometime in future although in my view this is rather unlikely;
6. She required 2 courses of physiotherapy treatments (from February 2016 to January 2017 and from August 2017 to February 2018) and 1 course of occupational therapy treatment (from August 2016 to January 2017) after the Accident;
7. There was slight muscle wastage at her thigh and calf on her left leg;

1. The injuries have left her with some well healed scars at the ankle area;
2. Both experts agree that there would be some residual attacks of left ankle pain and weakness;
3. She was given sick leave of around 36.5 months; and
4. The plaintiff cannot stand or walk for more than 2-3 hours which makes it extremely difficult if not impossible for her to return to her pre-accident job in a busy shoe shop.
5. In my judgment, the plaintiff’s injuries and condition are more akin to those suffered by the victims in the less serious cases cited by Mr Wong than the more serious cases cited by him and Mr Poon. In particular, I find they are similar to those suffered by the plaintiffs in *Li Chi Sing* and *Tsui Wai Ho*. Having taking into account of the above special features in this case, I consider that an award of $250,000 is reasonable to represent the PSLA award in this case. I so award such sum under this head.
6. *Pre-trial loss of earnings*
7. Based on the evidence given by the plaintiff at the assessment hearing, I find it was reasonable for her not been able to return to her pre-accident job as a saleslady in a busy shoe shop with the defendant. I further find that she has taken reasonable steps in mitigating her loss by looking for and at least tried once to work in jobs similar to her pre-accident employment. I accept that it was reasonable for her not to return to the retail industry which requires long hours of standing and walking. I consider that the office assistant job she was able to find since 1 July 2019 (until now) is a suitable one for her in light of her injuries and present condition.
8. For the would be earnings of the plaintiff with the defendant today had it not been for the Accident, I do not accept the earnings of the 2 supposed “comparable” workers put forward by the defendant are good comparison for several reasons.
9. First, those 2 workers worked at different shops in different areas. Second, the shop which the plaintiff had worked in Tseung Kwan O generally reached a higher “commission level” than the shops where the 2 others workers worked in. Third, the plaintiff earned more commissions, overtime payments and the attendance bonus than the 2 other workers. Last but not the least, Ms Chan Yuk Yi (DW1), who incidentally was not the person who had compiled the information for the comparable workers, accepted that the 2 workers were not good comparison under cross-examination. She could not however explain why these 2 workers had been chosen by her former senior colleague Ms Dream Hui who was the Retail Manager responsible for overseeing over 30 shops for the defendant. I think the inevitable inference must be that the defendant has deliberately chosen 2 workers who were earning substantially less than the plaintiff at the time of the Accident for comparison purposes.
10. However, despite the fact that they are not good comparables, based on the increase in their basic salary, commission and attendance bonus, I find there will at least be a corresponding increase in the plaintiff’s would be income had she been able to continue to work for the defendant after the Accident.
11. For the first comparable worker, the following increase could be found from the records disclosed by the defendant:-
12. Basic salary $7,800, which was increased to $8,100 in February 2019; and further increased to $8,500 in September 2019;
13. Commission $1,200 which was increased to $1,500 in March 2019; and further increased to $1,600 in October 2019; and
14. Attendance bonus $1,000 which was increased to $1,200 in March 2018.
15. For the second comparable worker, the following increases can be found:-
16. Basic salary $7,800 which was increased to $8,100 in February 2017; further increased to $8,200 in February 2018 and further increased to $8,400 in February 2019;
17. Commission $1,200 which was increased to $1,400 in March 2018 and further increased to $1,600 in March 2019; and
18. Attendance bonus $1,000, increased to $1,200 in March 2018.
19. Hence, even assuming there would have been no promotion had the plaintiff been able to continue to work for the defendant, I find the plaintiff’s salary with the defendant would have increased at least by 4% per annum by the time of the assessment as the average increase of those 2 “comparable” workers over the years has suggested. This is consistent with the government statistics of the average of around 4% per annum increase for the service industry workers in the past 4 years since the Accident.
20. However, I shall adopt a higher starting point for the plaintiff at $11,328 as her average income at the time of the Accident in January 2016. Hence, I assess her would be earnings with the defendant had it not been for the Accident would be at $13,252 by the date of the assessment, which is based on an annual increase of 4% on her average income at the time of the Accident.
21. For her notional earnings after the expiry of her sick leave period, I shall adopt a sum of $11,000 per month which is what she is earning in her current job as an office assistant. Given her lack of education and inability to speak or write any English, it is not surprising that she earns less than an average office assistant as shown in the government statistics. However, I accept that it is perhaps the best she can earn given her disabilities.
22. I will therefore assess the pre-trial loss of earnings of the plaintiff, including MPF contributions from her employer, in this case as follows:-
23. From 31 January 2016 (date of Accident) to 28 February 2018 (end of sick leave)

($11,328 + $12,252) / 2 x 25 months x 1.05 = $309,488

1. From 1 March 2018 to 9 November 2020 (date of assessment)

[($12,252 + $13,252) / 2 - $11,000] x 32.3 months x 1.05 = $59,419

Total: $368,907

1. *Post-trial loss of earnings*
2. Had it not been for the Accident, I estimate that the plaintiff’s earnings at the date of assessment with the defendant would be at no less than $13,252.
3. Thus, her notional monthly loss will be at $2,252 ($13,252 – $11,000) during the post-trial period.
4. The plaintiff is 32 years old at the date of assessment. Assuming a retirement age of 65 and applying a discount rate at 2.5%, I would allow a multiplier of 22.37 (Table 10 of Chan’s Tables refers):

$2,252 x 12 x 22.37 x 1.05 = $634,753

1. *Loss of earning capacity*
2. The plaintiff claims $150,000 under this head. Mr Wong submits that the plaintiff’s ankle injury has made her much more “vulnerable”. Further, the plaintiff claims that her working capacity will be compromised due to her injuries. Mr Wong relies on the following 2 cases for his claim: *Rai Dipak Kumar v Dragages Hong Kong Limited* [2019] HKCFI 728 and *Gurung Bhakta Bahadur v Green Valley Landfill Limited* (unreported, HCPI 333/2009, 28 January 2011).
3. I do not accept that the plaintiff’s ankle injuries would make her more vulnerable than any other office assistants of her age. According to the experts, this is one of the jobs she is well capable in doing with only “mild reduction in efficiency and capacity”. The plaintiff also gave evidence to the effect that she does not have to perform any outdoor duties and she can spend a lot of time sitting inside the office. Hence, I do not see how she will suffer any risk of losing her present employment and therefore suffer a handicap in the open labour market as a result.
4. I will not allow any award for loss of earning capacity in this case.
5. *Future medical expenses*
6. The plaintiff claims $40,000 as cost for future surgery for removal of the implants in her ankle.
7. I accept Mr Poon’s submission on this issue that the plaintiff had been given 3 separate opportunities by the doctors at TKOH to remove the implants in her ankle but each time she had failed to accept the offer to do so. While her fear on the risks of surgery may or may not be real, I do not consider it is rational or reasonable. In my view, it is extremely unlikely that she will ever willing to undergo such surgery in future.
8. In any event, as the plaintiff has told the Court during her oral evidence, she had been advised by the doctors at TKOH that the screws implanted in her ankle are of the “new type” and “can be dissolved by themselves”. I therefore do not consider it is likely that she will undergo another surgery to remove them in future.
9. Even if she wishes to undergo surgery to remove the implants one day, there is no reason in my view why she cannot make use of the very efficient and high quality public service in the public hospitals which she has been well looked after so far. The cost of such a surgery in the public sector will be nominal and I do not see why she needs to go to the private sector to do that.
10. I therefore will reject this claim.

*(F) Special damages*

1. This sum has been agreed by the parties at $20,000. I so make this award.

*CONCLUSION*

*Summary of Assessment*

(A) PSLA $250,000

(B) Pre-trial loss of earnings $368,907

(C) Post-trial loss of earnings $634,753

(D) Loss of earning capacity nil

(E) Future medical expenses nil

(F) Special damages $20,000

(Less: EC payment) ($282,500)

$991,160

1. I will therefore assess the plaintiff’s loss as a result of the Accident at $991,160.

*Interest*

1. There will be the usual interest at 2% for the PSLA award from the date of issue of writ to date of assessment and thereafter at judgment date. Further, there will be interest on the loss of pre-trial earnings and special damages at half of the judgment rate from date of accident to date of assessment and thereafter at judgment rate.

*Costs*

1. Despite Mr Wong’s submissions to urge the Court to impose a more stringent costs order against the defendant due to the late (and unhelpful) disclosure of the 2 comparable workers, I am not convinced that those data has made any substantial difference to the assessment at all.

1. I therefore make the usual costs order that the defendant shall pay for the costs of the assessment on a party and party basis, such costs to be taxed at the District Court scale, with certificate for counsel.

( Andrew SY Li )

District Judge

Mr Simon Wong, instructed by Messrs Ng & Co, for the plaintiff

Mr Edward Poon, instructed by Messrs Leung & Lau, for the defendant

1. See physiotherapist’s report of Physiotherapy Department of TKOH dated 5 June 2018 at [I/121-125] [↑](#footnote-ref-1)
2. Inflation with reference to the Composite CPI should be considered: *Ng Tat Kuen v Tam Che Fu & Others* [2019] HKCFI 1191 (unreported, HCPI 896/2013, 3 May 2019)*.* The CCPI can be found in *Personal Injury Tables Hong Kong 2019,* pp 77-78, most updated to December 2018. The latest CCPI in 9/2020 is 108.4, according to the government statistics available on the Internet. Hence, there has been an inflationary rate of 8.73% between 4/2015 (99.7) and 9/2020 (108.4), and hence the award would now be $200,000 x 1.0873 = $217,460. [↑](#footnote-ref-2)
3. There has been an inflationary rate of 16.94% between 3/2013 (92.7) and 9/2020 (108.4), and hence the award would now be $220,000 x 1.1694 = $257,268. [↑](#footnote-ref-3)
4. There has been an inflationary rate of 14.23% between 10/2013 (94.9) and 9/2020 (108.4), and hence the award would now be $325,000 x 1.1423 = $371,248 [↑](#footnote-ref-4)