DCPI164/2003

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 164 OF 2003

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BETWEEN

MAN LAI MUI Plaintiff

and

DIRECTOR OF TERRITORY DEVELOPMENT 1st Defendant

WELCOME CONSTRUCTION 2nd Defendant

COMPANY LIMITED

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Before: Her Honour District Court Judge Marlene Ng in Chambers (Open to Public)

Date of Hearing: 8th February, 2006

Date of Handing Down Decision: 28th February, 2006

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D E C I S I O N

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##### The applications

1. There are 3 applications before me :
   1. to review (the “Review Application”) Master J Ko’s written decision on review of taxation dated 9th July 2005 (the “Decision”) pursuant to Order 62 rule 35 of the Rules of the District Court (the “RDC”);
   2. to appeal (the “9/7/05 Costs Appeal”) against Master J Ko’s cost order *nisi* of 9th July 2005 (made absolute on 9th August 2005) that the Plaintiff do pay the Defendants 4/5 of the costs of the application for review of taxation before Master J Ko (the “Review”) including costs reserved to be taxed if not agreed (the “9/7/05 Costs Order”);
   3. to appeal (the “9/8/05 Costs Appeal”) against Master J Ko’s order made on 9th August 2005 that there be no order as to costs of the hearing of 9th August 2005 (the “9/8/05 Costs Order”).

# *The background*

1. This is a straightforward personal injuries claim. On 22nd April 2002, the Plaintiff, an 80-year old lady, fell down at a construction site on her way home and sustained a fracture of the right neck of femur. On 17th April 2003, the Plaintiff issued legal proceedings against the 1st Defendant as the owner of the road works at the construction site and the 2nd Defendant as the principal contractor of the road works for negligence and/or breach of occupier’s liability.
2. The Statement of Damages (the “SOD”) and Revised Statement of Damages (the “RSOD”) revealed that the Plaintiff’s claims were essentially for past medical/ miscellaneous expenses, past cost of care/attention by an overseas domestic helper and the Plaintiff’s daughter (the “Daughter”), future cost of continued care/attention as aforesaid and an award for pain, suffering and loss of amenities. There were no claims for past/future loss of earnings or loss of earning capacity.
3. The documentary support for the Plaintiff’s past loss comprised 28 receipts for medical supplies/equipment, tonic food and hospital fees (the “Receipts”), 1 standard form overseas domestic helper contract with receipt (the “Employment Documents”), 3 government hospital reports (the substantive contents of each was about half a page (the “Medical Reports”)) (collectively, the “Other Documents”) and about 300 odd pages of medical records (the “Medical Records”).
4. The Plaintiff retained Dr Lau Hoi Kuen (“Dr Lau”) as her medical expert. Dr Arthur Chiang (“Dr Chiang”) was the Defendants’ medical expert. The witness statements of the Plaintiff, the Daughter and the Plaintiff’s son (Mr Li Sang Edward (“Mr Li”), a solicitor of Messrs Weir & Associates (“WA”)) were prepared. The Daughter and Mr Li lived with the Plaintiff (see their witness statements).
5. According to Dr Lau, internal fixation of the Plaintiff’s fracture was delayed due to chest infection and cerebral vascular accident. She recovered well from the cerebral vascular accident. There was no suggestion that the chest infection and/or the cerebral vascular accident were relevant to the present claim. However, due to the delay the fracture disimpacted and had to be repaired by Austin Moore arthroplasty (ie removal of the femoral head and replacing it with a metal prosthesis) with consequent significant residual pain and stiffness of the hip joint due to progressive wear of the cartilage from pressure of the metal prosthesis. The Plaintiff had difficulty in activities of daily living and ambulation, and Dr Lau expected the problem to progress in future due to progressive wear of the cartilage. Dr Lau pointed out that the Plaintiff required a full time domestic helper to relieve the burden on the Daughter, diapers when going out and a walking frame for walking at home. She could not climb stairs. However, the Plaintiff would not require further therapeutic treatment except analgesics for her right hip pain.
6. The trial of the present case was fixed to be heard on 31st December 2003 with 3 days reserved. By a consent order filed on 17th December 2003 (ie 14 days before the trial), the parties settled the claim. The Defendants agreed *inter alia* to pay the Plaintiff’s costs of the proceedings to be taxed if not agreed. The Plaintiff’s bill of costs (the “Bill”) was taxed by Master J Ko on 23rd July 2004. The total amount allowed under the Bill was HK$106,058.00 (profit costs of HK$83,713.00 and disbursements of HK$22,345.00). The Plaintiff took out an application for review pursuant to Order 62 rule 33(2) of the RDC. The Review resulted in the Decision and the 9/7/05 Costs Order.
7. The Plaintiff retained consecutively 3 firms of solicitors, namely, Messrs Ng, Tam, Ko & Chan (“NKTC”), WA and Messrs Ng & Lam (“NL”) for the present case. The handling solicitors in each of the above firms were respectively Ms Ada Lo (“Ms Lo”), Mr Li and Mr Keith Tang (“Mr Tang”).

# *The law*

1. Mr Tang and Mr Wong, solicitor for the Defendants, are in agreement as to the applicable legal principles.
2. In respect of the Review Application, Order 62 rule 35(4) of the RDC provides that “…… on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the taxing master in relation to the subject matter of the application.” Barma J in **In the matter of Greater Beijing Region Expressways Limited** HCCW399/1999 (unreported, 12th May 2004) held that it was open to him to exercise the powers and discretion which vested in the taxing master “without being fettered in the manner in which he dealt with the matter”.
3. In **Tung Ka Hung & ors v Wan Kin Chung Daniel & ors** HCCW736/2002 (unreported, 29th July 2004), Tang J (as he then was) referred to **Kawarindrasingh v White** [1997] 1 All ER 714 and said as follows :

“…… I believe it is now settled that the approach to this kind of appeal should be no different from other interlocutory appeals. In other words, the principles which govern this appeal are those stated by Lord Atkin in **Evans v Bartlam** [1937] AC 473. In the words of Lord Atkin at page 478 :

“… His own discretion (referring to the judge’s discretion) is intended by the rules to determine the parties’ right, and he is entitled to exercise it as though the matter came before him for the first time. He will, of course, give the weight it deserves to the previous decision of the master, but he is in no way bound by it. …”

On an appeal against the quantum of fees allowed by a taxing master, the master’s views, in my opinion, deserves more than the usual weight. After all, they deal with taxation on a regular basis.”

1. In respect of the 9/7/05 and 9/8/05 Costs Appeals, “[in] general, a judge in chambers will not allow an appeal from a master’s costs order unless it is unreasonable or the master erred in law” (see **Hong Kong Civil Procedure 2006** Vol.1 para.58/1/6 at p.841). Sakhrani J in **Paul Y-ITC Construction Ltd v Kin Shing Co Ltd** [1999] 1 HKC 511, 515 said “as this is an appeal as to costs only from the discretion of the master, such application should not be allowed unless it can be shown that the order made by the master was unreasonable or erred in law, *i.e.*, if he either failed to take into account proper matters or took into account matters that should not have been taken into account.”
2. With the above legal principles in mind, I now proceed to consider the applications before me.

# *The Review Application*

# *(a) Global consideration*

1. Mr Tang started off by saying that the taxed profit costs of HK$83,713.00 covering profit costs from the commencement of the present proceedings to 14 days before trial was grossly inadequate. He submitted that the legal work set out in paragraph 8 of his written submission justifies that I should “review seriously the taxation awards made by Master J. Ko”.
2. However, Mr Tang acknowledged that the taxation of the Bill was on an item-by-item basis. Further, the Review and the Review Application are based on specific objections to particular items. Mr Tang failed to identify any statutory or other basis for the court to take into consideration the aggregate total sum of the taxed profit costs in ascertaining whether the allowance for any particular item was appropriate. It is said in **Hong Kong Civil Procedure 2006** (supra, para/62/App/3 at p.959) that “[on] the taxation of a bill, the indemnity principle is to be applied on an item by item basis rather than on a global basis.” Indeed, the irrelevance of any global consideration can be seen from the fact that even if the receiving party’s solicitors have agreed with their client to limit their charges to a certain sum, taxation of the bill of costs as drawn is not limited to such amount and the ceiling is only applied at the end of the taxation against the paying party. In my view, under an item-by-item taxation it is inappropriate to take into account the global consideration as suggested by Mr Tang.
3. I now proceed to deal with each Objection raised by the Plaintiff. I do not propose to set out the background for each Objection in detail since such background as well as the arguments by the parties have been helpfully summarised in the Decision. I will try to set out any new matters/submissions raised by Mr Tang and/or Mr Wong before me. Where I have (after considering the matter afresh upon the exercise of my own discretion) come to the same conclusion as the learned Master for any particular Objection, I propose for convenience to adopt his reasons in the Decision unless otherwise stated.

*(b) Amendment of the summons for the Review Application*

1. At the hearing before me, Mr Tang applied to amend the annexure to the summons for the Review Application to add Objections 1 and 2 to the list of objections for review. After hearing arguments, I granted leave to the Plaintiff to so amend the annexure to such summons and ordered her to pay the Defendants’ costs of the application to be taxed if not agreed. I also apportioned 25 minutes of the hearing time before me for such application in order to assist the taxing master.

*(c) Objection 1*

1. Master J Ko allowed HK$2,100.00 instead of the claimed HK$2,280.00 as the hourly rate of NTKC’s Ms Lo. Ms Lo had about 7 years’ experience at the time of the issuance of the writ of summons.
2. Mr Tang’s chief complaints are as follows :
   1. Master J Ko failed to take into account that no counsel was instructed throughout this matter and Ms Lo had to perform counsel’s role in drafting and settling the pleadings.
   2. Master J Ko failed to justify why a solicitor of 6-7 years’ standing was appropriate.
   3. Although Master J Ko acknowledged that a solicitor of 6*-7* years’ experience would be sufficient to handle the case and given that the usual hourly rate allowed in the District Court for such solicitor is about HK$2,000.00-HK$2,300.00, Master J Ko in allowing HK$2,100.00 as Ms Lo’s hourly rate in fact treated her as a solicitor of 6 years’ standing.
3. Mr Tang referred me to the Law Society Circular no.00-393 (PA) dated 11th December 2000 on High Court Taxation matters. Paragraph 6 thereof provided *inter alia* as follows :

“Members are requested to note that the Masters will be paying more attention to the level at which work has been done, e.g. if the work could have been done by a trainee or even a clerk, the costs will be allowed only on that basis. Conversely, if the work is that which would normally be done by counsel or the solicitor is exercising particular expertise and taking unusual responsibility then he may be allowed more than the norm.”

1. Mr Tang next referred me to **Chu Shiu Wah v Wu Kwok On** HCPI1123/1997, Seagroatt J (unreported, 13th July 2000) in which the learned judge overturned the taxing master’s decision to disallow counsel’s fees for settling the statement of claim and statement of damages. The learned judge doubted the general competence of solicitors in pleading cases. He was of the view that counsel were trained pleaders and should always be instructed to *settle* the statement of claim (paras.11-13). But the majority of the work for the statement of damages ought to be done by the instructing solicitor, leaving counsel “to put the finishing touches to it so as to accord with the pleaded case and to be in a form which [he] would be expected to present at trial”.
2. Having considered the facts and circumstances of the present case, I agree with the learned Master that this is a relatively simple and straightforward personal injuries case. I bear in mind that Ms Lo handled the pre-action and early part of this litigation, which I find is well within the competence of a solicitor of 6 years’ standing. I see no reason to disturb the learned Master’s conclusion. In respect of Mr Tang’s submissions on hourly rates, it should be noted that they are not binding on the taxing masters who may adjust the rates when necessary (see **Hong Kong Civil Procedure 2006** (supra) para.62/App/22 at p.963).
3. It appears that the rationale for Seagroatt J’s comments that counsel should be instructed to settle pleadings is as follows :

“They are required in their advocacy to advance the case on the strength of the pleaded case. If they settle the pleading they are responsible for it and must shoulder the consequences if that pleading is defective …… If counsel has settled the pleading, it is part of the solicitors’ insurance.”

But I note that this case was commenced and concluded in the District Court where solicitors have right of audience. A private solicitor could have handled cases and appeared in this Court alone without briefing counsel. If a private solicitor acts as the advocate, he/she should also shoulder the responsibility of the consequences of any defective pleading. The Law Society Circular and Seagroatt J’s comments in **Chu Shiu Wah**’s case must be read in light of the actual circumstance of this case being carried on in the District Court and of its relatively straightforward nature. Having carefully studied the hearing bundle for the Review Application, I do not consider the handling of this case required the exercise of “particular expertise and taking unusual responsibility”. Further, as discussed in more detail below, Seagroatt J’s comments did not say that counsel should always be instructed to *draft* the statement of claim and statement of damages.

1. I note that the learned Master has carefully considered Mr Tang’s submission that no counsel had been instructed throughout the proceedings (paragraph 13 of the Decision) as well as the 7 matters noted in Schedule 1, Part II, para.1(2) of the RDC. The criticism that the learned Master failed to justify his decision is without merit.

*(d) Objection 2*

1. Master J Ko allowed HK$2,200.00 instead of the claimed HK$2,300.00 as the hourly rate of Mr Li, the handling solicitor of WA with about 8 years’ experience. Mr Tang relied on the same complaints as set out under Objection 1.
2. Mr Tang laid strong emphasis on the fact that no counsel was instructed throughout the present proceedings, so Mr Li had to perform the role of counsel in drafting and settling the pleadings. However, the only documents drafted by Mr Li appears to be the 3 witness statements for the Plaintiff, the RSOD as well as court documents associated with the Checklist Review (the “CLR”). Seagroatt J in **Chan Siu Wah**’s case (supra) as cited by Mr Tang endorsed the taxing master’s decision to disallow counsel’s fee for settling witness statements and the revised statement of damages on the basis that they were properly within the purview of the instructing solicitors. I do not see any basis for “uplifting” Mr Li’s hourly rate to reflect the non-involvement of counsel.
3. In any event, I consider that a solicitor of 6 years’ standing would be competent to handle this case even beyond the early stages and I rely on the analysis set out under Objection 1 above. However, I will not disturb the learned Master’s allowance under this Objection, which I regard as generous but not overly so.

*(e) Objection 3*

1. By this disbursement item, the Plaintiff asked for the professional fee paid to Dr Lau for his medical examination of the Plaintiff and for the preparation of his report dated 9th July 2003 (“Dr Lau’s Report”). The sum claimed was HK$10,300.00 but the amount allowed on taxation by Master J Ko was HK$9,000.00.
2. Mr Wong fairly accepted that Dr Lau was not unknown to this Court as an orthopaedic medical expert in personal injury cases. The learned Master was also satisfied that Dr Lau’s standing was appropriate for the present case.
3. Mr Tang complained that :
   1. Master J Ko “failed to explain the reason why HK$1,300 (but not HK$5,000 or HK$500) should be deducted”.
   2. Master J Ko erroneously assumed Dr Lau had only perused/considered the Medical Reports and not the Medical Records. Mr Tang argued that this assumption affronted common sense, so Master J Ko must be wrong.
4. I reject (a) above. The learned master set out his detailed analysis in 7 paragraphs (ie paragraphs 17-23) of the Decision and gave a succinct summary of his reasons for allowing HK$9,000.00 in paragraph 23 therein.
5. In respect of (b) above, I note that the Defendants challenged the Plaintiff’s case that Dr Lau had in fact perused the Medical Records. There is no dispute that the burden is on the receiving party to justify his case. In my view, there is simply no evidence to prove or even infer that the Medical Records had been delivered to Dr Lau, let alone that he had perused/considered the same. Dr Lau’s Report identified on its face that the Medical Reports were available to him, but there was no reference to the Medical Records at all in Dr Lau’s Report. In contrast, I note that Dr Chiang’s medical report dated 14th August 2003 (“Dr Chiang’s Report”) expressly set out at the beginning that the Medical Reports as well as the Medical Records from Tuen Mun Hospital were available for reference.
6. Mr Tang relied on “common sense”, but any application of common sense must be premised on a determination as to whether Dr Lau actually had access to the Medical Records or not. Opportunity had been given to the Plaintiff to produce the instructions to Dr Lau or other documentary evidence of the delivery of the Medical Records to him, but she had not availed herself of such opportunity. In my view, the learned Master is correct in refusing to accept that Dr Lau had perused/considered the Medical Records.
7. In short, Mr Tang’s argument boils down to this : since this is a disbursement item, Dr Lau’s professional fee (which is akin to counsel’s fee) should be allowed unless it is excessive. However, taking into account the above matters, the straightforward nature of the Medical Records and the stabilised orthopaedic condition of the Plaintiff (see paragraph 6 above), I see no reason to depart from the learned Master’s conclusion.

*(f) Objection 6*

1. Objection 6 relates to the Plaintiff’s claim for 7 hours of work by Ms Lo for conferences and telephone conversations with the Plaintiff and her family members, for taking instructions as to the background of the accident before the commencement of the action and for finalising the SOD. Master J Ko allowed 2 hours.
2. Mr Tang complained that :
   1. Master J Ko ignored the reality that it took more time to take instructions from the Plaintiff who was over 80 years old and that NTKC had to find out what happened during the Plaintiff’s 2-months’ stay at the hospital following the accident.
   2. Whilst no attendance notes were produced, Master J Ko was wrong in “penalizing the Plaintiff for mistake, so to speak, of her lawyer for not keeping attendance records”. It was suggested that the taxing master failed to properly assess the time required for the work under this item.
3. The learned Master is correct to note that not only were the attendance notes not produced, the Plaintiff did not give particulars as to the claimed conferences and telephone conversations. The court was at a loss to know the number of conferences or telephone conversations, the time incurred for each conference or telephone conversation. The burden is on the receiving party to establish his entitlement to costs under the indemnity principle. Thus the learned Master as well as this Court in exercising the discretion to allow costs for this item have to bear the aforesaid circumstances in mind.
4. Mr Tang suggested that a review of the SOD would show that a lot of information had been collated, ie the Plaintiff’s medical treatment, her general/special damages, her household arrangements and the relevant calculations. In his written submissions, Mr Tang argued that 2 hours was definitely inadequate to (i) collate the background information for commencement of the present case, (ii) take the client’s instructions, (iii) *draft the SOD*, (iv) check its contents with the client and (v) *finalise the SOD* for filing with the court.
5. First, I note that the Plaintiff claimed as a separate item profit costs for preparing the SOD (see discussion on Objection 9 below). Secondly, the SOD reveals that the particulars of injuries and treatment therein were largely extracted from the Medical Reports. Information on the special loss and the past/future costs of care and attention largely came from the Receipts and Employment Documents. I also note that Mr Li and the Daughter (who also looked after the Plaintiff) lived with the Plaintiff and would be well familiar with the condition of the Plaintiff since the accident. No doubt Mr Li as a solicitor would also be conversant with the legal and procedural aspects of litigation. I believe that the Daughter and Mr Li being the Plaintiff’s *family members* would be able to substantively assist in giving instructions on the Plaintiff’s situation. Bearing in mind the above matters but recognising the added effort required to liaise with the Plaintiff in view of her old age, I agree with the learned Master that 2 hours is clearly sufficient for Ms Lo to obtain instructions. There are no other unusual features that justify more than 2 hours of work for this item.

*(g) Objection 7*

1. By this item, the Plaintiff claimed for 1 hour of work by Ms Lo for each pre-action letter (both dated 15th October 2002) to the 1st and 2nd Defendants respectively. The time allowed on taxation by Master J Ko was 20 minutes for the letter addressed to the 1st Defendant and 10 minutes for the letter to the 2nd Defendant.
2. Mr Tang accepted that Practice Direction 18.1 contained a standard form specimen pre-action letter. However, he submitted that Master J Ko failed to take into consideration “intellectual input had to given for the handling solicitor and that the time claimed should accordingly be allowed in full, i.e. 2 hours”. In fact this was the very argument that Mr Tang made before the learned Master at the Review (see paragraph 30 of the Decision). Mr Tang suggested that 10 minutes was not even enough for typing up and proof-reading the letter to the 2nd Defendant. I should point out that taxation of costs on party-and-party basis does not allow secretarial and proof-reading time costs. The hourly rate takes into account overhead costs incurred in the course of solicitor’s work that are not recoverable as a separate item.
3. There cannot be substantial input as to the format of the pre-action letters, which are in standard-form. As regards the specific assertions in the letters for the present case, I do not see any difficulty in such a straightforward accident and injury claim for Ms Lo to formulate such assertions after she had already spent reasonable time in taking instructions from the Plaintiff and her family members. In any event, the contents of the 2 letters do not admit of any complexity. Further, Mr Tang also did not produce any legal research or attendance note to justify any further unspecified “intellectual input” that had gone into the preparation of the 2 pre-action letters. It was suggested before the learned Master that Ms Lo had attended the Site and conducted investigations. Such submissions were not pursued before me. I find in all the circumstances that 20 minutes would be sufficient for preparing the pre-action letter to the 1st Defendant.
4. There can be no dispute that the pre-action letter to the 2nd Defendant is somewhat similar to the pre-action letter to the 1st Defendant. The circumstances of the accident as described are the same and there is substantial resemblance in the allegations of fault. I have no hesitation in concluding that part of the letter to the 1st Defendant was borrowed to form the basis for part of the letter to the 2nd Defendant. The learned Master is clearly correct in discounting effort spent on the former letter (which is claimed as a separate item) in assessing the time for work done on the latter letter. I see no reason to disturb the learned Master’s conclusion of 10 minutes of work.

*(h) Objection 8*

1. The Plaintiff claimed for 6 hours and 30 minutes of work by Ms Lo for preparing the Statement of Claim. The amount allowed by Master J Ko was 2 hours of work. Mr Tang submitted this was “grossly inadequate”.
2. Mr Tang submitted that Master J Ko failed to address the Plaintiff’s submission that the drafting of the Statement of Claim should be “the job/expertise of Counsel, i.e. in drafting pleadings”, so that *either* a higher hourly rate *or* more time should be allowed “if it is solely performed by a handling solicitor, *regardless of the experience level of counsel*” (my emphasis). I cannot accept such proposition because it is always necessary to ensure that the paying party should only pay for work done by a professional of commensurate and not excessive expertise under party-and-party taxation. I completely reject Mr Tang’s submission that a counsel of 7-10 years’ standing is appropriate for drafting the simple and straightforward Statement of Claim in the present case.
3. Mr Tang’s next argued that Master J Ko ignored the fact that the pleader (ie Ms Lo) would have to go through the draft Statement of Claim with the client and make changes where appropriate. However, attendance notes as well as particulars of the attendances and time spent are sadly lacking in this respect.
4. The plain fact is that this is a straightforward personal injuries case. The contents of the Statement of Claim do not reveal any complexity. As explained in the discussion for Objection 1, I do not consider this an appropriate case for the involvement of counsel for either drafting or settling the Statement of Claim. I find that the Statement of Claim is within the competence of a solicitor of 6 years’ standing and therefore well within Ms Lo’s competence. The comments by Seagroatt J in **Chu Shiu Wah**’s case (supra) cannot be applied without regard to the particular circumstances of each case. Even if otherwise (which I disagree), the learned judge only suggested that it might be appropriate to instruct counsel to *settle* the statement of claim, which in any event does not justify the claim for 6 hours 30 minutes. Instructions had been taken from the Plaintiff and her family members and pre-action letters had been sent. By then, Ms Lo should have a fairly clear idea of the formulation of the claim and it was really the process of putting pen to paper in setting out the claim in a pleading form. The learned Master in allowing 2 hours on taxation and on review is clearly correct and I have also come to the same conclusion.

*(i) Objection 9*

1. By this item, the Plaintiff claimed for 4 hours and 30 minutes of work by Ms Lo for preparing the SOD. The time allowed by Master Ko was 2 hours. Mr Tang submitted that this was grossly inadequate.
2. The learned Master gave the following reason for his decision : “I do not accept that the work involved is not within the competence of a solicitor of Miss Lo’s standing”. Mr Tang complained that Master J Ko failed to address the Plaintiff’s submission that the drafting of the SOD fell within the expertise of counsel and if this were to be done solely by a solicitor, the court should allow *either* a higher hourly rate *or* more time for the task. In my view, this argument ignores Seagroatt J’s comment that the majority of the work for the statement of damages ought to be done by the instructing solicitor and counsel only put the “finishing touches”. It is wrong to say that the drafting of the SOD falls within the expertise of counsel, much less a counsel of 7-10 years’ standing.
3. The SOD is in fact relatively simple. I note also that in the SOD there is no claim for past/future loss of income or loss of earning capacity. The incurred expenses came from the Receipts and the need and costs for future care/attention were largely based on the Employment Documents. The amount of the overseas domestic helper’s wages was at a standard rate. The only items of damages that might require more substantial legal input would be the claim for pain, suffering and loss of amenities and the multiplier for the future loss. In all the circumstances, the learned Master in allowing 2 hours of work for Ms Lo is eminently reasonable.
4. Mr Tang argued that it would be necessary for the pleader to consider the Medical Reports/Records to prepare the SOD. But in fact there is a separate item of the Bill claiming for profit costs for considering the Medical Reports/Records, which I will deal with in more detail under Objection 13. Suffice here to say there should not be double recovery under Objection 13 and this Objection for considering the Medical Reports/Reports.
5. Mr Tang further submitted that Master J Ko “ignored the fact that anyone (whether solicitor or counsel) preparing such statement of claim [*sic*, should be the SOD] would have to go through the drafted document with client and make amendment where appropriate”. This of course overlapped with Mr Tang’s submissions for Objection 6 (see above) and there should not be double recovery. There is also the further concern that such assertion is unsupported by any attendance note or even particulars of the claimed attendance and time incurred for the same.
6. I see no reason to disturb the learned Master’s exercise of discretion since I would have exercised my discretion in a similar manner.

*(j) Objection 12*

1. By this item, the Plaintiff claimed 1 hour of work by Ms Lo for preparing the checklist dated 13th August 2003 when Master J Ko mistakenly referred such claim as 45 minutes in paragraph 47 of the Decision. Master J Ko deducted 15 minutes of work. Both Mr Tang and Mr Wong agreed that in line with the learned Master’s deduction of 15 minutes, the time allowed should be 45 minutes. By consent of the parties, I vary the allowance under this item to 45 minutes of work by Ms Lo. Minimal time was taken up at the hearing before me for this item.

*(k) Objection 13*

1. By this item, the Plaintiff claimed 12 hours of work by Ms Lo for considering the Other Documents and the Medical Reports/Records. The amount allowed by Master J Ko was 3 hours of work by Ms Lo. Mr Tang invited me to examine this item again and make appropriate adjustments.
2. Mr Tang accepted that where the plaintiff was assisted or would be assisted by a medical expert who had set out or would be expected to set out the medical history, present complaints, physical examination findings, radiological findings and medical expert opinion in his expert medical report (as Dr Lau eventually did in his expert report), it is unnecessary for the pleader, who is not a medical expert, to go through the totality of the medical records in any detail. In my view, Ms Lo’s review of the Medical Records should be limited to an overview and not detailed perusal.
3. As regards the Other Documents, their perusal would have taken little time. There were altogether only 28 Receipts. Most of the standard form clauses of the employment contract with the overseas domestic helper had little relevance to the contested issues of the present case. As discussed above, the substantive contents of each of the 3 Medical Reports consisted of only half a page. In my view, the learned Master has been generous but not overly so in allowing 3 hours of work by Ms Lo. I would not disturb his exercise of discretion for this item.

*(l) Objection 16*

1. By this item, the Plaintiff claimed 3 hours of work by Ms Lo for researching the law and quantifying the Plaintiff’s claim so as to determine the court venue for the present case. Master J Ko allowed 20 minutes of work done by Ms Lo. Mr Tang urged me to make appropriate adjustments.
2. Mr Tang conceded he was unable to say what was the nature of the legal research undertaken or why 3 hours were required. The only plausible basis raised by Mr Tang in his submissions was the then HK$600,000.00 monetary limit of the civil jurisdiction of the District Court. In this respect, I agree with the learned Master that solicitors are expected to be conversant with the general law, practice and procedure and no costs for doing research on these areas will be allowed (**Hong Kong Civil Procedure 2006** (supra) para.62/App/21 at p.963). In my view, the monetary limit of the civil jurisdiction of the District Court should be well known to solicitors engaged in civil or personal injuries litigation and I see no need for conducting any legal research.
3. In respect of the claim for time incurred for quantifying the Plaintiff’s claim so as to determine the court venue for the present case (ie whether it is within or above HK$600,000.00), there would have been clarification of such issue upon the preparation of the SOD. In the present case, all items set out in the SOD (including future loss and general damages) were quantified in precise amounts. Hence, the jurisdiction issue would be resolved once the items of loss were quantified in the course of preparing the SOD (the costs of which preparation are subject of another item in the Bill discussed under Objection 9). 30 minutes of work for Ms Lo as allowed by the learned Master is, in my view, quite sufficient for her to ponder on the close proximity of the total quantified damages and the District Court jurisdictional limit and to determine on the court venue. I see no reason to disturb the learned Master’s decision for this item.

*(m) Objection 19*

1. By this item, the Plaintiff claimed 4 hours of work by Mr Li for attending the Plaintiff including advising her on the likely damages to be recovered and on the progress of the present case from time to time as well as conferring with the Plaintiff on the contents of Dr Lau’s and Dr Chiang’s Reports.
2. Mr Tang criticised Master J Ko for assuming that Mr Li should be familiar with the case : “Since Mr. Li is [the Plaintiff’s] son, he should be familiar to her and vice versa. As such, Mr. Li would not need to spend much warm up time in conversing with the Plaintiff. Moreover, Mr Li should already have much information about the Plaintiff so that he did not need to spend much time in obtaining such information for the purpose of considering the quantum of the claim.”
3. Mr Tang argued that Master J Ko committed several errors :
   1. Master J Ko was wrong “in assuming that Mr. Li knows everything”. Mr Li was not involved in the early stages of the legal action and Ms Lo did the legal work from 17th April to 25th August 2003.
   2. It is necessary for Mr Li, upon receipt of Dr Chiang’s Report, to go through both Dr Lau’s and Dr Chiang’s Reports and discuss with the Plaintiff the strategy on the way forward.
   3. The fact that Mr Li is the Plaintiff’s son should not be a ground for cutting the time claimed by the Plaintiff. Any lawyer acting as the handling solicitor had to do the work that Mr Li did in this case.
4. For this item, the Plaintiff failed to produce any attendance notes to confirm the actual time spent and to particularise the number of and time spent on the attendances on the Plaintiff. The learned Master is plainly correct to bear this in mind in determining the time to be allowed for this item.
5. The learned Master mentioned the parent-son relationship between the Plaintiff and Mr Li not for the purpose of cutting the time as alleged, but to underline the fact that the time actually spent by Mr Li (given the known circumstances and in the absence of any attendance notes) in advising/conferring with the Plaintiff would have been less than the time spent by any other solicitor for the same work. As I see it, this is an application of the indemnity principle of taxation, which is to enable the receiving party to recover what has already incurred and not more. Plainly, it is within the taxing master’s power to investigate whether the indemnity principle has been satisfied. If the court finds that because of the familial relationship less time was actually spent by Mr Li than normally expected of any other solicitor, the court cannot give a notionally increased time for Mr Li’s work to bring it on par with the time required by any other solicitor to undertake the same work.
6. But is the learned Master correct in coming to the view that Mr Li would spend less time than any other solicitor undertaking the same work? Mr Tang is incorrect in saying that the learned Master assumed that Mr Li “knows everything”. I have carefully studied paragraphs 68-71 of the Decision and am unable to come to such conclusion. Mr Tang suggested that Mr Li was not involved in the early stages of the legal action. But that is a far cry from being ignorant of the circumstances of the accident and the Plaintiff’s condition. On the liability issue, I refer to Objection 6 above which deals with Ms Lo’s conferences and telephone conversations with the Plaintiff and *her family members* for taking instructions as to the background of the accident. Further, according to Mr Tang, Mr Li attended the Site 3 times to take photographs even before WA became solicitors on the record (see discussion on Objection 24 below). On the quantum side, Mr Li and the Daughter lived with the Plaintiff and plainly must have known of her condition. Mr Li himself employed the overseas domestic helper (see his witness statement at paragraph 13) and he also knew the Daughter had been taking care of the Plaintiff. Further, it is unlikely that the Plaintiff in her old age would personally purchase the medical equipment and consumables. Since these particulars appear in Mr Li’s witness statement and not in either the Plaintiff’s or the Daughter’s witness statements, it is natural to infer (and I so infer) that Mr Li as the Plaintiff’s son handled these payments. The dates of the Receipts were all before WA (and hence Mr Li) became solicitors on the record.
7. In the circumstances, I entirely agree with the learned Master that not only Mr Li as the Plaintiff’s son would require less time to warm up and gain the Plaintiff’s trust and confidence, he would have been privy to a fairly good deal of background facts and circumstances of the case even before WA took over the matter from NKTC. I also agree with the learned Master that Mr Li did not actually spend much time in obtaining information for the purpose of considering the quantum of the claim.
8. Mr Tang and Mr Wong agreed that since Ms Lo handled the present case up to 25th August 2003, she would not have read Dr Chiang’s Report, which was served on 4th September 2003. It was suggested that the learned Master was mistaken about this, but having carefully read paragraphs 68-71 of the Decision in respect of Objection 19, the learned Master did not expressly give regard to any such mistaken belief as a relevant factor in his deliberations for Objection 19.
9. As regards Mr Tang’s written submissions that upon receipt of Dr Chiang’s Report “it is necessary and reasonable for Mr Li to go through the reports prepared by both Dr. Lau and Dr Chiang” and discuss with the Plaintiff the strategy on the way forward, I note that the perusal/consideration of Dr Lau’s and Dr Chiang’s Reports by Mr Li constituted separate items of the Bill (see discussion on Objection 20 below and Items 118 [Part II] (C) (1) and (2) of the Bill). I am, however, prepared to allow a little time for refreshing memory in respect of the expert medical reports for discussion with the Plaintiff.
10. Taking into account all the above matters, I agree with the learned Master that the time allowed for this item should be 2 hours. The Plaintiff has not shown any special feature that may bring the allowance beyond 2 hours.

*(n) Objection 20*

1. By this item, the Plaintiff claimed 1 hour and 30 minutes of work by Mr Li for considering Dr Lau’s Report. This item was taxed off by Master J Ko.
2. Mr Wong submitted that since Dr Lau’s Report was disclosed in the Defendants’ List of Documents filed on 6th August 2003 prior to the Plaintiff’s change of solicitors from NTKC to WA and since it was the sole document in the Plaintiff’s bundle of documents for the CLR hearing on 22nd August 1998 attended by Ms Lo, Ms Lo must have perused such report and explained the contents thereof to the Plaintiff.
3. However, there is no item in the Bill for Ms Lo’s consideration of Dr Lau’s Report (see Item 118 [Part I] (F) (I) or (II)). Mr Tang submitted that Master J Ko erroneously assumed that Ms Lo must have reviewed Dr Lau’s Report because it was dated 9th July 2003, ie within the period when she was the handling solicitor. He questioned the learned Master’s conclusion that Ms Lo “has charged for reviewing the files for the purpose of attending the checklist review on 22nd August 2003 under Item 118 [Part I] G (ii) of the Bill. In [Master J Ko’s] view, this should include perusing the said report. In the premises, [Master J Ko does] not think the Plaintiff should be allowed to charge for perusal of the same report again [by Mr Li]”. In fact, under Item 118 [Part I] (G) (ii), the Plaintiff claimed profit costs for “[reviewing] files preparatory to hearing of Check List Review heard on 22nd August, 2003 before H. H. Judge Carlson; ([Ms Lo] engaged 45 mins.)”, but Master J Ko only allowed 20 instead of 45 minutes for this item when he dealt with Objection 17. There is no application for review of this item before me. Mr Tang submitted that since Item 118 [Part I] G (ii) of the Bill only covered preparation for the CLR hearing, including the work of considering Dr Lau’s Report into this item would be unfair. There should be a separate and independent item for consideration of Dr Lau’s Report
4. In the end, Mr Tang and Mr Wong agreed it would be appropriate to allow time for perusal/consideration of Dr Lau’s Report by 1 solicitor. Mr Wong was prepared to allow 45 minutes of work for such purpose. Having considered the contents of Dr Lau’s Report (see summary of his expert opinion in paragraph 6 above), I have no hesitation in concluding that an allowance of 45 minutes is appropriate. However, I find that since (a) Dr Lau’s Report was received by NTKC, (b) Ms Lo put together the Plaintiff’s bundle (which comprised solely of Dr Lau’s Report) for the CLR hearing and (c) Ms Lo attended the CLR hearing on 22nd August 2003 (and given that the attending solicitor should be well familiar with the complete file and papers – see paragraphs 10.12 and 10.13 of Practice Direction 18.1 and paragraph 10 of the Guidance Notes), Ms Lo was the appropriate solicitor to have read Dr Lau’s Report. In the circumstances, I vary the learned Master’s decision for this Objection to transfer this item to Item 118 [Part I] of the Bill and allow 45 minutes of Ms Lo’s work for this item.

*(o) Objections 22 and 23*

1. For this item, the Plaintiff claimed 2 hours of work for each for the Chinese witness statements of the Plaintiff and the Daughter. Master J Ko only allowed 30 minutes for each statement.
2. Mr Tang submitted that Master J Ko is in error when he said about half of the statements were identical. He argued that Master J Ko failed to take into consideration that any prudent lawyer would have to go through the witness statements with the witnesses separately to confirm that the contents were what they would like to say. He urged the Court to revisit this item.
3. In respect of the preparation of the 2 witness statements, the fact remains that about half of such statements were substantially similar. Mr Tang was quite unable to particularise the distinct legal and factual considerations that went into the preparation of the 2 witness statements. As regards the confirmation of the contents of the witness statement with the Daughter, I note the brevity of her statement and the fact that she was able to read Chinese. I see no reason to disturb the learned Master’s discretion in allowing 30 minutes of Mr Li’s work for the Daughter’s witness statement. However, in respect of the Plaintiff’s witness statement, I am prepared to allow 45 minutes of Mr Li’s work to take into account the fact it would probably take slightly longer to confirm the contents with the Plaintiff.

*(p) Objection 24*

1. By this item, the Plaintiff claimed 5 hours of work by Mr Li for preparing his own witness statement including the documents for Appendix 1 to 12 thereof.
2. Master J Ko in paragraph 84 of the Decision said that “[the] Plaintiff’s solicitor submits that the time claimed has included site visits made by Mr. Li on 23rd April, 2nd July 2002 and 13th June 2003 when he took the photographs annexed to his statement …... The Defendants’ law costs draftsman however submits that Mr. Li may not charge for the work done by him prior to him becoming the Plaintiff’s solicitor. I am of the view that the photographs are relevant to the case and some allowance has to be made to Mr. Li to collect these photographs.”
3. Mr Tang submitted there was no justification for Master J Ko to make some and not all allowance for Mr Li’s 3 site visits for taking photographs. Mr Tang argued that Mr Li had taken a lot of time to collate the photographic evidence after the accident to prepare his witness statement, so full allowance should be given. 2 hours were insufficient for the 3 site visits, the collation of materials such as government notices and location plans, and writing up Mr Li’s witness statement, etc.
4. I am of the view that the entirety of Mr Li’s profit costs claimed for the 3 site visits should be disallowed. The 3 site visits took place whilst NKTC was still the solicitors on the record for the Plaintiff. Mr Li and WA were not solicitors on the record at that time. In those circumstances, Mr Li made the site visits and took the photographs as the Plaintiff’s son rather than as her solicitor. In such circumstances, I do not see any legitimate basis for claiming profit costs for visits to the Site when neither NKTC nor WA incurred such time costs at all. The learned Master fell into error in making some allowance for taking photographs of the Site irrespective of their relevance to the present case.
5. Mr Tang then referred to paragraph 84 of the Decision where Master J Ko said that “[the] Defendants’ law costs draftsman have further observed that paragraphs 10-13 of Mr Li’s statement bear close resemblance to paragraphs 6-7 and 9-11 of the Plaintiff’s Statement of Damages” and therefore “the time spent by Mr. Li in drafting his statement should be reduced”. Mr Tang submitted that there were 2 fundamental errors in such reasoning :
   1. It is true for all litigation (and not just the present case) that all documents for the same legal proceedings would bear some resemblance since they were based on the same facts.
   2. Master J Ko was wrong in cutting 60% of the time simply due to some similarity between Mr Li’s witness statement and certain paragraphs in some other documents. He ignored the fact that Mr Li had to consider whether the information contained in the other documents were correct, and whether the information was suitable for his own witness statement.
6. I have no doubt that part of Mr Li’s witness statement was borrowed from the SOD. I see no reason to allow time costs for Mr Li to consider whether the information contained in the SOD is correct because there are separate claims for (a) Ms Lo’s consideration of the Other Documents and her overview of the Medical Records, (b) her preparation of the SOD (ie drafting the SOD, checking the contents with the client and finalising the SOD), and (c) her taking of instructions from the Plaintiff and *her family members*. I am not persuaded that Mr Li had to start afresh in preparing his own witness statement given that he as the Plaintiff’s son already had background knowledge of this claim. In my view, having considered Mr Li’s witness statement and the hearing bundle submitted for the Review Application, I find there is no complexity or difficulty in determining what should be included in Mr Li’s witness statement. Further, since Mr Li was both the handling solicitor and the witness there would have been savings in time in that he would not need to confirm the contents of the statement with himself.
7. I disagree that the learned Master deducted 60% of time claimed just because there was some resemblance between the SOD and Mr Li’s witness statement. It should not be forgotten that the learned Master also discounted part of the time required for taking photographs of the Site.
8. Since Mr Tang submitted that Mr Li incurred substantial time in carrying out the site visits the entirety of which is not recoverable, it should be appropriately reflected by deduction of time for this item. However, I bear in mind that Mr Li did make efforts to put together various photographs to reflect the scene and to obtain the other appendices for his witness statement, so after taking into account the time required for drafting the witness statement, I still allow 2 hours of Mr Li’s work for this item.

*(q) Objection 25*

1. By this item, the Plaintiff claimed 3 hours of work by Mr Li for preparing the RSOD. Master J Ko allowed 1 hour and 15 minutes at the taxation hearing. However, he mistakenly stated in paragraph 85 of the Decision that the time allowed was 2 hours. Both Mr Tang and Mr Wong agreed that 2 hours should be allowed for this item. Minimal hearing time was taken up by this item.

*(r) Objection 28*

1. By this item, the Plaintiff claimed 1 hour of work by Mr Li for reviewing files and making preparation for the CLR hearing heard on 19th September 2003 before H H Judge Carlson. Master J Ko allowed 15 minutes work by Mr Li. Mr Tang asked me to bear in mind the global consideration to make appropriate adjustments. As explained above, it is inappropriate to do so.
2. Mr Li prepared the witness statements in late August 2003, so when the CLR hearing took place in mid-September 2003 the facts of the present case should still be fresh in his mind. I also agree with and adopt the reasoning of the learned Master at paragraph 96 of the Decision. Mr Wong pointed out (and I agree) that since the Plaintiff only complained against the quantum of fees allowed, I should bear in mind the guidance by Tang J (as he then was) in **Tung Ka Hung**’s case (supra) that the views of the taxing master deserves more than the usual weight (the “Quantum Consideration”). Having considered all the circumstances in relation to this item, I see no reason to disturb the 15 minutes’ work by Mr Li as allowed by the learned Master.

*(s) Objection 29*

1. By this item, the Plaintiff claimed 1 hour 30 minutes of work by Mr Li for considering all the evidence, including circumstantial evidence, making calculations on various heads of damages that the Plaintiff was entitled to before advising her to proceed with the present action. Master J Ko allowed 15 minutes’ work by Mr Li. Mr Tang asked me to bear in mind the global consideration to make appropriate adjustments. As explained above, it is inappropriate to do so.
2. I agree with and adopt the reasoning of the learned Master set out in paragraph 99 of the Decision. I also bear in mind the Quantum Consideration. I see no reason to depart from the learned Master’s discretion in allowing 15 minutes’ work by Mr Li.

*(t) Objection 30*

1. This items mainly covers (a) 3 hours and 30 minutes of work by Mr Tang including 2 hours of conference with the client on 30th November 2003 for making preparations for the forthcoming trial and advising on progress, and telephone conversations with the client for taking necessary instructions to make offers and counter-offers as to achieve settlement with the Defendants, (b) 2 hours of work by Mr Tang for conference with Mr Li on 1st December 2003 for taking necessary instructions to make preparations for the forthcoming trial and (c) 30 minutes of work by Mr Tang for telephone conversations with Mr Li on 3rd and 9th December 2003 for taking instructions. Of the aforesaid total of 8 hours, Master J Ko allowed 1 hour of Mr Tang’s work. Mr Tang submitted such allowance was unreasonably low since 1 hour was definitely insufficient to complete all the work outlined above.
2. In allowing 1 hour of Mr Tang’s work, the learned Master noted that the Plaintiff’s solicitors had changed her solicitors again from WA to NL. The learned Master correctly warned himself that each item of costs should be justified as necessary and proper so that any unwarranted duplication of profit costs caused by the change of solicitors should not be allowed.
3. Of the 8 hours claimed for taking instructions, Mr Tang has been unable to provide a shred of attendance notes or to particularise what further instructions were taken that went beyond the information in the pleadings, the witness statements and the Other Documents/Medical Records. Mr Tang in his oral submissions before me did not address the observation by the Defendants’ law costs draftsman (as noted in paragraph 104 of the Decision) that no new offer or counter-offer was made by the Plaintiff at about that time. He did in his written submissions referred to “the Defendants’ offer for settlement dated 5th December 2003, 11th December 2003, and 12th December 2003” (but copies of such offers (if in written form) were not included in the hearing bundle for the Review Application), but he did not apply for leave to adduce documentary support for such assertion. But even assuming there were some offers during that time, in my view the claim for 8 hours of work should be severely discounted.
4. I agree with the learned Master that with the trial scheduled to start in less than a month, a pre-trial conference with the Plaintiff and her witnesses (who are the Plaintiff’s children) would be appropriate. The learned Master said at paragraph 105 of the Decision that : “I consider that it would still be necessary or proper for Mr. Tang to hold pre-trial conference with the Plaintiff and her witnesses to prepare for trial, such as advising them on trial procedure.” Even so, I find the 2 hours 30 minutes spent in “taking necessary instructions” from Mr Li grossly excessive. By that time, all the evidence either in the form of witness statements or documents or expert medical reports had been filed. There is no suggestion of any new documents lately unearthed or new evidence lately adduced. Mr Li himself was well familiar with the case being the former handling solicitor until the end of November 2003. As a solicitor he would also be conversant with trial procedure. Mr Tang did not say what the “necessary instructions” were.
5. In relation to the Plaintiff, I also find 3 hours and 30 minutes of Mr Tang’s work as claimed is excessive. Although I agree it is appropriate to have a pre-trial conference, there should not be any allowance for the inevitable time cost necessary for a new solicitor to warm up and get up to speed in communicating with an old lady like the Plaintiff. Further, as reflected in the Plaintiff’s witness statement, the scope of her evidence at the trial is not far ranging.
6. Taking into account all the circumstances and the above factors, and bearing in mind that some time would have to be spent in liaising with the Plaintiff/Mr Li on settlement issues, I allow 2 hours of Mr Tang’s work under this Objection.

*(u) Objection 37*

1. This item mainly covers (a) 8 hours of work by Mr Tang on reviewing files and court documents in making preparation for the trial which was fixed to commence on 31st December 2003, and (b) 6 hours 30 minutes of work done by Mr Tang in considering all evidence (including medical evidence), considering and analysing the quarterly report of wages and payroll statistics pertaining to sanitary and similar services and re-quantifying the client’s claim before advising the client to accept the Defendants’ offer for settlement. Of the total time of 14 hours 30 minutes of work by Mr Tang, the time allowed by Master J Ko was 2 hours.
2. Mr Tang endorsed Master J Ko’s view that “[having] regard to the imminent trial dates, it would still be necessary and proper for Mr. Tang to prepare for trial notwithstanding the ongoing negotiation.” However, Mr Tang submitted that 2 hours was definitely not enough to prepare a case for a trial that was to commence in 14 days. Whilst I accept that Mr Tang might have found it arduous to gear up for trial within the brief time NL was appointed to act for the Plaintiff, it is useful to remember that any duplication of work or additional time spent to get up to speed to meet the imminent trial as a result of change of solicitors cannot be laid at the Defendants’ door in party-and-party taxation.
3. In respect of the time required to review files and documents, I bear in mind that the Plaintiff has claimed for Ms Lo’s review of the Other Documents and the Medical Reports/Records and Ms Lo’s/Mr Li’s review of the expert medical reports. There are also separate claims for Ms Lo’s preparation of the pleadings and Mr Li’s preparation of the RSOD. I believe that at best the Plaintiff would only be entitled to an allowance for refreshing memory in respect of the files and documents for the purpose of trial. I consider 8 hours of Mr Tang’s work grossly excessive. In this respect I also bear in mind the Quantum Consideration.
4. I see no reason for Mr Tang, who handled the present case for such a short period, to claim profit costs under this item for reviewing files and documents (which presumably includes review of the Medical Reports and an overview of the Medical Records) to prepare for trial and then to claim again for reviewing medical evidence for considering the settlement offer (see paragraph 97 above). I note that despite her previous offer to do so, the Plaintiff elected not to produce evidence to substantiate the time claimed under this item.
5. Taking into account all relevant circumstances and the above matters, I see no reason to disturb the learned Master’s allowance of 2 hours for Mr Tang’s work.

*(v) Summary*

1. Apart from Objections 12, 20, 22 and 30, I have considered the other Objections and in the exercise of my discretion I have come to the same allowances as the learned Master. For Objection 12, I allowed 45 minutes of Ms Lo’s work. For Objection 20, although I have allowed 45 minutes of Mr Li’s work (as conceded by Mr Wong at the hearing before me), the Plaintiff was unsuccessful in maintaining her claim for 1 hour and 30 minutes of work. For Objection 22, I allowed 45 minutes instead of the learned Master’s 30 minutes of Mr Li’s work, but it is still a far cry from the 2 hours claimed by the Plaintiff. For Objection 30, although I have increased the learned Master’s allowance of 1 hour of Mr Tang’s work to 2 hours, it is still substantially less than the 8 hours claimed by the Plaintiff.
2. The Review Application is allowed to the above extent. Despite the slight increases in the allowances for the Objections referred to in the above paragraph, the Plaintiff has essentially failed to maintain its stance in all of the Objections save for Objections 12 and 25 which took minimal hearing time. I find that it was legitimate for the Defendants to resist the high ground taken by the Plaintiff. Although costs normally follow event, looking at the matter in the round and bearing in mind the above matters, I consider it appropriate in all the circumstances of the Review Application to grant (and I so grant) a costs order *nisi* that the Plaintiff do pay costs of the Review Application (including all costs reserved in respect of the application if any) to the Defendants to be taxed if not agreed.

*9/7/05 Costs Appeal*

1. The Review before Master J Ko took 5 hearing days, namely, 6th September 2004 (0.5 hours), 5th November 2004 (3.25 hours), 24th November 2004 (0.5 hours), 9th March 2005 (3.5 hours) and 22nd June 2005 (2 hours), and was divided into 2 parts. The first part concerned a preliminary issue raised by the Defendants’ law costs draftsman as to whether the Plaintiff could apply for a review of an item under Order 62 rule 33 of the RDC without raising fresh evidence/argument relating to that item (the “Preliminary Issue”). Mr Tang in his written submissions made detailed calculations of the time spent on the Preliminary Issue and on the Review proper. But at the hearing before me Mr Tang and Mr Wong sensibly agreed that the each part took roughly half of the total hearing time before the learned Master.
2. The learned Master ruled against the Defendants on the Preliminary Issue, but dismissed the Plaintiff’s Review. He also granted the 9/7/05 Costs Order for the Review, which was made absolute on 8th August 2005. The learned Master said that : “[in] awarding four-fifths of the costs of review to the defendants, I have already taken into account the fact that I have ruled in favour of the plaintiff on the preliminary issue taken by the defendants in this review.”
3. Mr Tang submitted that Master J Ko failed to consider the principle that costs should follow event or that he failed to take into account the actual time spent for the Preliminary Issue and the Review proper. Mr Tang argued that the Plaintiff should be entitled to costs of the Preliminary Issue with costs of the Review to follow from my decision in respect of the Review Application. Mr Tang further submitted that alternatively I should consider making no order as to costs if I am not with him on the Review Application.
4. Mr Wong accepted the general principle that costs should follow event, but he argued that the learned Master had not erred in law and had not been unreasonable so as to justify my interference with the exercise of his discretion. Mr Wong further submitted that the learned Master had considered all relevant circumstances and urged me to uphold the 9/7/05 Costs Order.
5. I am persuaded that the 9/7/05 Costs Order should be set aside. It seems that the principle that costs should follow event is a premise commonly accepted by both parties. Although the learned Master must have taken a global view in the exercise of his discretion on costs, it is necessary to bear in mind the common stance between the parties that the hearing time for the Preliminary Issue and the Review proper was about equal. It is true there would have been some pre-hearing costs for the Defendants’ consideration/perusal of the Plaintiff’s Objections for the Review proper and the Plaintiff’s consideration of the legal arguments and authorities raised in correspondence or otherwise for the Preliminary Issue, but there is scant information as to whether such pre-hearing costs were more substantial for the Preliminary Issue or for the Review proper or otherwise. In the circumstances and in light of the principle that costs should follow event, I find that the 9/7/05 Costs Order cannot be supported and the appropriate order is no order as to costs of the Review. Given the parties’ common stance that the hearing time of the Preliminary Issue and the Review proper were about equal and given that the Plaintiff has failed in respect of the Review proper and has substantially failed in respect of the Review Application, such costs order is just and sensible and will obviate the need for further time and costs for taxation of costs.
6. There is no reason why costs should not follow event for the 9/7/05 Costs Appeal. I therefore grant a costs order *nisi* that the Defendants do pay the Plaintiff’s costs of the 9/7/05 Costs Appeal (including all costs reserved in respect of such appeal if any) to be taxed if not agreed.

*9/8/05 Costs Appeal*

1. The Bill was taxed on 23rd July 2004. On the same day, the Defendants’ law costs draftsman wrote to the Plaintiff’s law costs draftsman to confirm (which the Plaintiff’s law costs draftsman did confirm) the costs as taxed by Master J Ko. On 27th July 2004, NL wrote to the Defendants’ solicitors, Messrs Chu & Lau (“CL”), to ask for the Defendants’ costs of the taxation hearing to prepare the allocatur. On 28th July 2004, CL wrote to NL on the basis of without prejudice save as to costs to make an offer for the costs of the taxation, and enclosed the fee notes of the Defendants’ law costs draftsman for reference. On 4th August 2004, CL wrote to NL proposing to fix a date for the hearing of the costs of the taxation. On 6th August 2004 the Plaintiff applied for the Review and NL wrote to CL proposing to adjourn the hearing of the costs of the taxation until the results of the Review were known in order to save time/costs. On 7th August 2004, NL wrote to CL to confirm that both parties would not attend the appointment to fix a date for the hearing of the costs of the taxation. The Review was heard between 6th September 2004 and 22nd June 2005. Master J Ko handed down the Decision on 9th July 2005.
2. On 11th July 2005, CL wrote to NL to ask for the fixing of a hearing date without clearly spelling out the reasons therefor. NL wrote to CL on 13th July 2005 to say they considered it was pre-mature to attend the District Court for the purpose of fixing a hearing date. By the same letter NL also requested CL to let them have CL’s estimation on “the said costs” for the Plaintiff’s instructions. On 14th July 2005, CL on the basis of without prejudice save as to costs provided NL with (a) the fee notes of the Defendants’ law costs draftsman for *inter alia* preparing the Bill, attending the taxation hearing and attending the Review hearings, and (b) an estimate of the Defendants’ party-and-party costs of taxation (incurred after 12th March 2004). On 14th July 2005 at CL’s request the hearing was fixed to be heard on 9th August 2005.
3. Mr Tang complained that from 11th July to 8th August 2005 (ie the day before the hearing), CL never disclosed what their applications for the proposed hearing were. Mr Tang submitted that NL’s letter to CL on 13th July 2005 was a request to CL to specify the purpose of the fixing of a hearing date, but CL “did not disclose anything about the purpose for the fixing the hearing date and/or the application they intended to apply”. So it was suggested that up to 8th August 2005 the Plaintiff had no idea what the proposed hearing was for. Mr Tang claimed that the enclosures to CL’s letter of 14th July 2005 were merely an oversupply of information by CL and irrelevant to the eventual issues/applications raised by CL at the hearing on 9th August 2005.
4. Mr Tang submitted that NL only became aware of the nature of CL’s applications for the hearing on 9th August 2005 from their skeleton submissions received on 8th August 2005. The written skeleton submissions of the Defendants’ law costs draftsman described the applications at the hearing on 9th August 2005 as follows :

“…… We hereby apply to the Court to vary the costs order nisi in the following manner:-

* 1. The Plaintiff shall be entitled to the taxed costs and disbursements up to and including Bill item No. 127 of the Plaintiff’s Bill of Costs; Bill Item Nos. 128 and onwards be disallowed;
  2. The Plaintiff shall bear the taxing fee of the Bill of Costs.
  3. The Plaintiff shall pay the Defendants’ costs of taxation and 100% of costs of Review, to be assessed at a gross sum or to be taxed if not agreed.”

1. In my view, Mr Tang is right in that CL’s letter of 11th July 2005 is ambiguous. Since the letter started off by referring to the 9/7/05 Costs Order and then immediately proposed fixing a date “for the above purpose”, a reasonable reader would infer that CL intended to vary Master J Ko’s costs order *nisi* (ie the 9/7/05 Costs Order). Indeed, the written skeleton of the Defendants’ law costs draftsman also framed the Defendants’ application as a variation of the costs order *nisi*. I do not accept Mr Tang’s suggestion that NL had no clue what the proposed hearing was for. Any reasonable reader of CL’s letter of 11th July 2005 would logically conclude that the proposed hearing was for variation of the 9/7/05 Costs Order.
2. But as apparent from the paragraph 113 above, the scope of the hearing is much wider since the Defendants sought to deal with the costs of the original taxation as well. These applications which were intended to be canvassed at the hearing on 9th August 2005 do not arise from the 9/7/05 Costs Order at all and cannot be brought under the guise of variation of the costs order *nisi*. Indeed, the hearing of the costs of the original taxation has been deferred in 2004 and not yet restored.
3. In my view, the applications as made known to NL only on 8th August 2005 would have taken them by surprise. It is true that NL could have enquired more precisely about the nature of the Defendants’ applications for the hearing, but it is incumbent on the Defendants having carriage of the matter to make known the intended applications to the other party. Mr Wong also sought to argue that as a result of NL inviting estimation of costs and CL providing the estimate and fee notes to NL the nature of the Defendants’ applications for the hearing on 9th August 2005 would have been plain and obvious. I cannot accept such argument. Communications between solicitors to negotiate and to explore resolutions of disputed matters do not necessarily have direct correlation to the nature of the applications before the court. It is not unusual for parties to explore global settlement when the current issue before the court is more limited. In my view, until 8th August 2005, any logical reader of the correspondence in NL’s shoes would have laboured under the apprehension that the hearing would be for varying the 9/7/05 Costs Order.
4. I note that NL responded with alacrity on receipt of CL’s written submissions. By their written submissions on the following day, ie the day of the hearing, NL complained of the above matters and made clear that they would not be taking issue over the Defendants’ applications in relation to the costs of the taxation of the Bill although the Plaintiff resisted the application to vary the 9/7/05 Costs Order. Mr Tang submitted that had there been earlier notice of the Defendants’ intended applications, the costs associated with the taxation of the Bill could have been amicably resolved by way of Consent Summons. Indeed, these applications were resolved by consent at the hearing on 9th August 2005. Mr Tang argued that such applications were a waste of the Court’s time and caused unnecessary costs and inconvenience to the Plaintiff.
5. Mr Tang submitted that normally costs should follow event and on such basis the Plaintiff should bear the costs of the hearing on 9th August 2005. In addition to the above considerations, the Defendants failed at the hearing on 9th August 2005 to vary the costs order *nisi* ie the 9/7/05 Costs Order. Mr Tang submitted that Master J Ko’s reason for the 9/8/05 Costs Order that “a substantial part of [the hearing of 9th August 2005] was not used in argument on the question of costs of the review but was spent in dealing with other preliminary matters raised by the plaintiff” does not bear scrutiny. The transcript for the hearing on 9th August 2005 (19 pages) showed that only the first 3 pages concerned discussion of the preliminary matters whilst the remaining pages dealt with the Defendants’ applications.
6. In my view, in light of the above matters, there is no sufficient reason on principle for the Plaintiff to bear its own costs in relation to the Defendants’ applications concerning the taxation of the Bill. There is no suggestion that the matter could not have been amicably resolved if proper notice was given. Indeed, the Plaintiff responded promptly on the day following receipt of the Defendants’ written skeleton submissions. The Defendants should shoulder the responsibility for this aspect of the costs of the hearing on 9th August 2005.
7. The Defendants having failed to vary the 9/7/05 Costs Order should on principle also shoulder the responsibility for costs of such application. However, the Plaintiff cannot escape from bearing responsibility of the costs incurred in respect of the preliminary matter of Master J Ko’s jurisdiction. The question of jurisdiction was not raised by the court but by the Plaintiff and in the end the learned Master ruled against the Plaintiff. I reject Mr Tang’s submission that it was wrong for the court to spend hearing time to discuss its own jurisdiction when the court should have come to a decision before the hearing and notified the parties. I find that the jurisdiction issue is a proper issue for address and argument during court hearings and Mr Tang had not cited any authority on why it is appropriate for the court to deal with such issue on paper without the benefit of submissions from both parties.
8. Mr Tang submitted that had CL made clear from the beginning the nature of their applications, it would have been unnecessary for NL to engage in correspondence with the District Court on 3rd and 6th August 2005 on the issue of Master J Ko’s jurisdiction and/or to spend time at the hearing to initially discuss this issue (see the first 3 pages of the transcript of the hearing on 9th August 2005). I disagree with such submissions. The issue is relevant not just to the Defendants’ applications in respect of the costs of the taxation of the Bill but also the application for the variation of the costs order *nisi* being the 9/7/05 Costs Order.
9. In light of the above, bearing in mind the principle that costs follow event, I regret I cannot support the 9/8/05 Costs Order. I therefore set it aside and order that the Defendants do pay the Plaintiff costs of their applications for the hearing on 9th August 2005 and the Plaintiff do pay the Defendants costs of her challenge to Master J Ko’s jurisdiction at the hearing on 9th August 2005, both to be taxed if not agreed. To assist the taxing master, I apportion 85% of the hearing time on 9th August 2005 for the Defendants’ applications and 15% of the hearing time for the Plaintiff’s application.
10. There is no reason why costs should not follow event for the 9/8/05 Costs Appeal. The Plaintiff has been essentially successful and I grant a costs order *nisi* that the Defendants do pay the Plaintiff costs of the 9/8/05 Costs Appeal (including all costs reserved in respect of such appeal if any) to be taxed if not agreed.

(Marlene Ng)

District Judge

Mr Tang Kai Ming of Messrs Ng & Lam for the Plaintiff.

Mr Wong Hau Sheung of Messrs Chu & Lau for the Defendant.