DCPI 297/10

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**PERSONAL INJURIES ACTION DCPI 297 of 2010**

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

BETWEEN

LEUNG KANG WAI Plaintiff

And

DUSSMANN SERVICE HONG KONG

LIMITED formerly known as P.

DUSSMANN HONG KONG LIMITED Defendant

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

Coram: Before Master J Chow in Chambers

Date of Handing Down Decision : 25th May 2011 (by way of paper disposal)

DECISION

Introduction

1. The Plaintiff took out a summons on 11th March 2011 for leave to adduce psychiatric expert evidence at trial. The Defendant objected on the grounds that it is not relevant, not necessary and without probative value.

Background

1. The Plaintiff suffered injuries in the course of his employment on 27th March 2007. At the material times, he was working as a cleaning worker with the Defendant at the Ground Floor of the HACTL Super Terminal 1 of the Hong Kong International Airport. He slipped and fell backwards as he had stepped onto a plastic roll covered by a plastic sheet (“the Accident”).
2. Parties agreed to adduce a joint orthopaedic expert report by the Plaintiff’s expert, Dr. Peter Ko and the Defendant’s expert, Dr. Lee Po Chin dated 6th July 2010 without calling the makers thereof. In para 11.1 of the said report, both experts opined the Plaintiff suffered “left shoulder sprain or contusion or contusion to the low back”. In para 11.5, both experts agreed the Plaintiff has reached maximal medical improvement and further treatment is not necessary.
3. Nevertheless, in respect of the Plaintiff’s psychiatric injuries, Dr. Ko said in para 11.9, inter alia that he can only assess the Plaintiff’s “muscolo – skeletal condition and injuries and would leave the post – traumatic stress [dis]order to relevant experts for comments and opinion”. On the other hand, Dr. Lee was silent on this point.
4. The Plaintiff claimed he had suffered psychiatric injures arising from this accident and applied for leave to adduce a psychiatric expert report.

The Plaintiff’s justification for leave

1. The Plaintiff solicitors submitted that the Plaintiff has a history of psychiatric illness since 1993 where he was involved in a traffic accident. In 2002, he recovered and attained stable condition. The Plaintiff ceased to attend further psychiatric treatment since then.
2. The Plaintiff complained of mental distress after the Accident and was referred to psychological trauma clinic for further management on 13th March 2008 (which was almost one year after the Accident). On record, the Plaintiff was treated 13 times in the Caritis Medical Centre (“CMC”) psychologically from 23rd April 2008 until 19th January 2009. In short, the Plaintiff claimed he has suffered from Posttraumatic Stress Disorder (“PTSD”) as a result of the Accident. He was given psychoeducation, improvement was noted accordingly.
3. Interestingly, Dr. Valdo Cho, a clinical psychiatrist of CMC, stated in para 5 of her letter dated 25th February 2009,

“However, treatment was interrupted by the arrangement of his compensation proceeding. He was impressed to have some excessive worries over it. Sessions were spent in helping him to reinstate his mood, regulating stress management and problem solving skills. He excessive worries and distorted thought about the compensation proceeding were challenged through cognitive restructuring. He was impressed to be more able to handle the compensation proceeding then.

1. Excepts of more updated medical reports by Dr. Cheng Kin Shing of Kwai Chung Hospital are noted as follows:
2. *1st Report dated 25th October 2010*: Dr. Cheng confirmed the Plaintiff’s past history of psychiatric illness from a traffic accident in 1993, he became stable in 2002. Dr. Cheng had seen the Plaintiff since 23 February 2003, he was diagnosed to have suffered from recurrent depressive disorder, moderate with somatic syndrome.
3. *2nd Report dated 20th December 2010*: Dr. Cheng provided a medical report between the period from January 1993 to 27th March 2007. Dr. Cheng reconfirmed the Plaintiff had suffered from PTSD since the traffic accident in 1993, he failed to attend follow up treatment from 1998. He came back again for treatment in June 2001 and was transferred to West Kowloon Psychiatric Centre out patient clinic. The Plaintiff was given medication and did not attend treatment from January 2001.
4. *3rd Report dated 1st February 2011*: Dr. Cheng said the Plaintiff was seen on 21st December 2010, 18th January 2011, “he was still bothered by pain and he was bothered by having to involve solicitors in the compensation issue. He felt more irritable and wanted to cry”. The Plaintiff was administered with anti depressant medication.
5. In light of the medical report, the Plaintiff articulated it was necessary to adduce psychiatric expert report. I do not intend to repeat the legal propositions relied by the Plaintiff, I agree, those cited were applicable principles. [[1]](#footnote-1)

The Defendant’s Objection

1. The Defendant’s solicitors, succinctly raised in the Affirmation of Leung Fung Chi that the psychiatric illness of the Plaintiff is unrelated to the Accident and thus, the Court shall refuse to grant leave to the Plaintiff to adduce a psychiatric expert report.
2. The general principles deduced from various authorities cited by the Defendant can be deduced as[[2]](#footnote-2):
3. The expert report must be one of relevance, necessity and probative value;
4. The Plaintiff’s symptoms, largely contained in the government hospital medical reports, must demonstrate a link with the subject accident.
5. The expert report must be capable of assisting the trial judge, if the materials in the reports of treatment and care by the doctors were sufficiently abundance to assist the trial judge, it will render the expert report unnecessary.

Analysis

1. Upon consideration of all medical reports made available to me, it is evident that the Plaintiff has psychiatric symptoms. However, I do not find such symptoms were Accident-related. The Defendant’s solicitors has correctly put it, there must be a link between the Accident and the complaints. It is far from sufficient to justify adducing psychiatric expert report if the Plaintiff can only demonstrate psychiatric symptoms and the occurrence of the Accident.
2. I accept the Plaintiff is reported to have suffered from psychiatric illness as early as 1993, when he was involved in a traffic accident. He received treatment until 2002.
3. Subsequently, on 13th March 2008, the Plaintiff claimed he again suffered from PTSD and resorted to regular medical treatments. Even though the Plaintiff has gone through various follow up treatments, it is inappropriate to say the more the number of treatments, the higher the likelihood the Plaintiff has had psychiatric injuries resulted from the Accident. After all, the current psychiatric complaints were noted almost one year after the Accident.
4. Dr. Cheng clarified in his medical experts that in fact the Plaintiff has defaulted treatments after in 1998 and 2001[[3]](#footnote-3). I have no evidence before me that the current psychiatric symptoms were or might be a relapse, but at least, I believe the existence of the symptoms and its causation is distinctive.
5. Neither did the orthorpaedic experts comment on his psychiatric aspect, only that Dr. Peter Ko put it subtly that he would leave the PTSD to relevant experts for comments and opinion. Both experts did not positively recommend the Plaintiff to be examined by a psychiatric expert for his PTSD syndrome.
6. Apart from that, the Plaintiff seemed concerned with the on-going litigation. This was noted by Dr. Valdo Cho[[4]](#footnote-4) and also those from Dr. Cheng[[5]](#footnote-5). The two comments cast serious doubts whether the psychiatric symptoms were Accident- related.
7. Lastly, this is a classic slip and fall case, the Plaintiff suffered left shoulder sprain and low back contusion, one could expect the impact on the Plaintiff would be far below a traffic accident. I find the Plaintiff has pitched his case too high to say the fall has contributed to PTSD. Coupled with his past medical history and remarks from the medical officers, the Plaintiff’s allegation that the psychiatric injury was made on shaky grounds, I find his psychiatric symptoms and the Accident coexisted without sufficient nexus. What follows is, a psychiatric expert report would not be of any assistance to the trial judge.

Conclusion

1. In the premises, I refuse to grant leave to the Plaintiff for leave to obtain a psychiatric expert report. I therefore dismiss the Plaintiff’s summons.
2. I see nothing in the application that I shall depart from the usual costs order to follow the event. I make an order nisi that the costs of the summons be to the Defendant, taxed if not agreed. The Checklist Review Hearing was fixed on 25th May 2011 at 2:30 pm in Court 46. I shall hear submissions on costs at the hearing.

(J Chow)

District Court Master

Representation:

Mr. K. Lam of Messrs. Au & Vrijmoed for the Plaintiff

Ms. G. Ko of Messrs. Winnie Leung for the Defendant

1. Arfan Muhammad v. MPS Engineering Ltd & Ors (unreported, HCPI 457/2003, 20 June 2004);

   Lam Siu Kong v. Luck On Enterprise t/a Ocean Super Seafood Restaurant (unreported, HCPI 698/2009, 26 Aug 2010); Wong Ka Yee v. Gay Giano Int Ltd (unreported, DCEC 436/2007, 4 August 2009); Chan Yuet Keung v. Harmony (International) Knitting Factory Ltd [2010] 5 HKLRD 599 and So Cheuk Yi v Pang Harling Harry (unreported, HCPI 526/2007) [↑](#footnote-ref-1)
2. Ip Sau Lin v. Hospital Authority (DCEC 584 of 2007); Farman Khan v. Shun Sum Engineering Co. (HCPI 850/2008); Ho May Fong v. Sime Darby Motor Services Ltd (HCPI 1096/2003) and Chan Man Sze v. Chan Siu Wan & ors (HCPI 290 off 2007) [↑](#footnote-ref-2)
3. See para 9(ii) hereinabove. [↑](#footnote-ref-3)
4. in para 5 of her letter dated 25th February 2009 (of which I have cited in para 7 hereinabove) [↑](#footnote-ref-4)
5. in the 3rd Report dated 1st February 2011(of which I have cited in para 8(iii) hereinabove). [↑](#footnote-ref-5)