#### DCPI465/2009

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 465 OF 2009

BETWEEN

譚惠安 Plaintiff

and

陳力恆 1st Defendant

TSUN TAT STATIONERY 2nd Defendant

MANUFACTORY LTD.

##### Before: H H Judge Lok in Chambers (Open to the public)

Date of Hearing: 8 June 2011

Date of Decision: 8 June 2011

## D E C I S I O N

1. This is an appeal against the order of Master J Chow made on 1 June 2011.
2. This is a claim for damages for personal injuries relating to a traffic accident on 6 October 2006. During the accident, the minibus driven by the Plaintiff collided with the Defendants’ vehicle.
3. In the pleading, the Plaintiff claims that the amount of his claim is $2,800,000 which is in excess of the jurisdiction of the District Court, and he therefore applied to transfer the case to the Court of First Instance. Master J Chow refused the application on 1 June 2011 and struck out the Plaintiff’s claim insofar as it relates to a claim exceeding $1,000,000. The Plaintiff therefore appeals against the order of Master J Chow. In the notice of appeal, the Plaintiff also applies to call the doctor of the government hospital to testify at the trial, and to amend the Statement of Special Damages adding a claim for damages relating to the psychiatric disability suffered by the Plaintiff as a result of the accident.
4. The Plaintiff does not appear in today’s hearing and so I can dismiss the Plaintiff’s appeal for want of prosecution.
5. Even if I have to consider the merits of the appeal, the result would be the same. In considering whether to transfer the case to the Court of First Instance, I would adopt the principle set out in *Wong Kwong Wa v Hip Hing Construction Company Limited,* unreported, DCPI2039 of 2006,(decision of H H Judge Au on 11 July 2007). For the purpose of considering the amount of the claim in a transfer application, the court would put the plaintiff’s case at the highest and will not conduct a mini‑trial to examine the merits of the claim. However, if it is clear that the plaintiff’s claim will not exceed $1,000,000, the court should decline the application for transfer.
6. The Plaintiff has been examined by a joint orthopaedic expert, Dr Lau Hoi-kuen, who prepared a joint medical report dated 2 September 2010. According to Dr Lau, the injury suffered by the Plaintiff is relatively minor and the Plaintiff should be able to resume the employment of a minibus driver. Dr Lau assesses the Plaintiff to have suffered 2.5% of permanent injury impairment of the whole person and 2.5% of loss of earning capacity.
7. The Plaintiff claims for total loss of earnings after the accident on the basis that he could not take up any work after the accident. If he is able to do so, his claim may well exceed $1 million. However, the court will not just accept anything said by the Plaintiff and there must be medical evidence to support the Plaintiff’s claim in this regard. At this stage, the Plaintiff is not suggesting to adduce any further evidence from other orthopaedic expert to contradict the evidence of Dr Lau. In such case, it is just impossible for the Plaintiff to claim for total loss of earnings after the accident.
8. In the hearing before Master J Chow, the Plaintiff seeks to rely on the medical report prepared by the government doctor, Dr Chan Sheung‑chun, and also other medical reports by the government doctors. According to Dr Chan, who is a psychiatric doctor, the Plaintiff may well be suffering from depression now. Based on such diagnosis, the Plaintiff therefore applies to call Dr Chan and the other doctors to testify in court and to add a claim for damages for psychiatric disability.
9. The diagnosis made by Dr Chan is medical evidence. If the Plaintiff wants to rely on such expert opinion, the Plaintiff has to apply for leave from the court to adduce such expert evidence. In deciding whether to grant such leave, the court has to consider the interests of the Defendants as well. Obviously, the Defendants need to know all the details of what Dr Chan would have to say in court, and the Defendants may have to consider whether to engage their own psychiatric expert to examine the Plaintiff. A joint examination may also be necessary. At present, the court has only a brief report from Dr Chan. The court does not know the full details of the diagnosis and so a further detailed report from Dr Chan would be necessary. Further, Dr Chan is a government doctor and so I do not think that the Hospital Authority would allow Dr Chan to attend a joint examination with a private medical practitioner. At this stage, the chance of the Plaintiff in seeking further assistance from the government doctors is rather slim. In such case, unless the Plaintiff is prepared to engage a psychiatric expert in private practice to assist his case, it is impossible for the Plaintiff to make out a case based on the psychiatric disability.
10. Based on the aforesaid analysis, it is quite impossible for the Plaintiff to claim for total loss of earnings based on the existing medical reports. Taking into account that the Plaintiff’s injury is relatively minor, his claim cannot exceed $1,000,000. The learned Master was therefore right in refusing the application for transfer, and I therefore dismiss the appeal. I also dismiss the other related applications of the Plaintiff.

# (David Lok)

# District Judge

Plaintiff, in person, absent

Mr C K Ho, of Katherine Y W Or & Co., for both Defendants