## LA/RD/12039/2003 (CB04)

## DCPI565/2005

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 565 OF 2005

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BETWEEN

PANG LAI HUNG Plaintiff

and

MAXSON TRANSPORTATION LIMITED 1st Defendant

CHENG KWONG SUM 2nd Defendant

LEE HI YAU 3rd Defendant

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Coram: H.H. Judge Chow in Chambers

Date of Hearing: 25 April 2006

Date of Handing Down Decision: 1st June 2006

DECISION

1. This is a summons application taken out by the Plaintiff and the 1st and 2nd Defendants for an Order that: -
   1. the trial fixed for on 15th, 16th and 17th day of May 2006 be vacated;
   2. upon the Plaintiff’s acceptance of the payment into Court made by the 1st and 2nd Defendants, the party and party costs of all the proceedings be taxed at District Court scale payable by the 1st and 2nd Defendants to the Plaintiff; and
   3. the aforesaid costs of all the proceedings shall cover and include the Plaintiff’s costs of prosecuting the claim against the 3rd Defendant.
      1. The parties have no dispute on items 1 and 2 of the summons, but the 1st and 2nd Defendants oppose the application made under item 3.
      2. In the Statement of Claim it was pleaded that on 18 July 2001 the Plaintiff was the passenger in a public light bus (PLB) owned by the 1st Defendant and driven by the 2nd Defendant. Due to a sudden brake, the Plaintiff fell down inside the PLB and sustained personal injuries. The Plaintiff took out the Writ on 23 June 2004. On 30 September 2003, the 1st and 2nd Defendants wrote to the Plaintiff, alleging that the Plaintiff was responsible for her own misfortune; alternatively the accident was caused by a third party dashing onto the road, and not due to the negligence of the 1st and 2nd Defendants. Subsequently the Plaintiff ascertained the identity of the third party from the police, and then she sued the 1st and 2nd Defendants as well as the 3rd party (the 3rd Defendant).
      3. The 1st and 2nd Defendants made a payment into Court, which was accepted by the Plaintiff. By an order dated 16 March 2006 granted by H.H. Judge H.C. Wong, the Plaintiff reached a settlement with the 3rd Defendant. Under that Order the Plaintiff and the 3rd Defendant bears her/his own costs and the Plaintiff reserved her right to claim her costs against the 1st and 2nd Defendants. The sum paid in by the 1st and 2nd Defendants was released to the Plaintiff on 3 April 2006.
      4. In relation to the issue as to whether the Plaintiff’s costs of prosecuting the claim against the 3rd Defendant was to be paid by the 1st and 2nd Defendants, the Plaintiff submitted that the test should be “Was it not unreasonable for the Plaintiff to join the 3rd Defendant into the proceedings?”. The 1st and 2nd Defendants blame the 3rd Defendant for causing the accident, and vice versa. So it was not unreasonable for the Plaintiff to join the 3rd Defendant into the proceedings. But this is only 1 of the factors to be considered by the Court before it makes an order for costs. The question to be considered in awarding costs ultimately rests on liability, and liability cannot be determined until there is a full trial of the case or until there is an admission of liability by the party concerned. There is no admission of liability in this case. After a trial, the following scenarios may ensue:-
2. the Plaintiff may fail in her claim;
3. the 1st and 2nd Defendants may fail in their defence;
4. the 1st and 2nd Defendants may succeed in their defence;
5. the 3rd Defendant may be liable for the Plaintiff’s injuries.

Under scenarios (1), (3) and (4), the 1st and 2nd Defendants would not have to pay costs of this action.

* + - 1. The Plaintiff submitted that:-

“Furthermore, since P accepted the payment in made by D1 & D2, and without the help of D1 & D2, it would be impossible for P to claim against D2 (P did not actual see the D3), P was compelled to settle with D3 and P should therefore be entitled to recover her costs of prosecuting the claim against D3 from D1 & D2. If P would have to pay costs to D3 (for costs of D3 to defend in these proceedings), P should be entitled to recover that part of costs from D1 & D2 as well. In that sense D1 & D2 have already saved that part of costs.”

* + - 1. I do not accept that because the Plaintiff accepted the payment in made by the 1st and 2nd Defendants, and without the help of the 1st and 2nd Defendants, it would be impossible for the Plaintiff to claim against the 3rd Defendant. She can summon them as witnesses in the trial. There is no indication to support the allegation that they will not help in the trial against the 3rd Defendant.
      2. To join in the 3rd Defendant is only an important step in the proceedings. But this step alone do not assist the Court in the determination of liability between the parties. The onus is on the Plaintiff to show that the 1st and the 2nd Defendants are liable for the Accident. But without a trial or admissions on liability from the 1st and 2nd Defendants, the issue of liability cannot be determined. Therefore the Plaintiff has failed to discharge the burden that they are liable for the accident. Therefore there is no basis to support the application that the costs under paragraphs (1) and (2) of the summons should also cover and include the Plaintiff’s costs of prosecuting the claim against the 3rd Defendant. I therefore dismiss item (3) of the summons.

Costs

* + - 1. I make an order nisi, to be made absolute 14 days’ time, that the Plaintiff do bear costs of this application, to be taxed, if not agreed, and that the Plaintiff’s own costs are to be taxed in accordance with the Legal Aid Regulations.

( S. Chow )

District Judge

The Plaintiff: represented by Mr. H.T. Chan of Messrs. K.Y. Lo & Co., Solicitors.

The 1st and 2nd Defendants: represented by Miss Chak Mei Sze of Messrs. W.K. To & Co., Solicitors.