## DCPI 803/2017

[2021] HKDC 4

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 803 OF 2017

BETWEEN

CHENG KWOK HUNG SAMUEL Plaintiff

and

POON TUNG HOI <潘東海> 1st Defendant

LIU CHENG YI <劉成一> 2nd Defendant

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Before: Deputy District Judge YW Hew in Chambers

Date of Hearing: 20 December 2019

Date of Decision: 27 January 2021

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DECISION

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*INTRODUCTION*

1. This is my decision in relation to the plaintiff’s summons dated 21 November 2019 (“the Summons”), pursuant to which the plaintiff applies pursuant to RDC O 62 r 35 to review the decision of the learned Master Peony Wong (“the Decision”). The Decision was the learned Master’s review (“the Review”) of her earlier taxation of the plaintiff’s bill of costs (“the Plaintiff’s Bill”).
2. The matters in dispute before me concerned Paragraph 12 of the Decision, and in particular Items 1 to 3, 6 and 10 of the Review.

*BACKGROUND*

1. The action concerns a claim by the plaintiff against the 1st and 2nd defendants for personal injury caused by a traffic accident.
2. The plaintiff was the passenger in a private car driven by the 2nd defendant, which collided with a taxi driven by the 1st defendant. The plaintiff accordingly claimed for damages including pain, suffering and loss of amenities (**“**PSLA**”**), special damages, and future medical damages.
3. Each of the 1st and 2nd defendants had, in their respective defences, alleged that the other defendant was solely responsible for the plaintiff’s injury.
4. After close of pleadings and completion of discovery, the parties filed witness statements of fact addressing *inter alia* the circumstances of the traffic accident.
5. On 17 May 2018, the defendants issued a joint letter (“the Joint Letter”) to the plaintiff offering to settle the claim for HK$150,000, with costs to be taxed if not agreed, “subject to determination of liability by the Court”. The plaintiff accepted the offer, also “subject to determination of liability”. Eventually, a settlement agreement was embodied in a consent order dated 8 June 2018 whereby *inter alia* “On a without admission of liability basis” the defendants agreed to pay HK$150,000.00 (apportioned between themselves) in full and final settlement of all claims by the plaintiff, and separately also his costs (also apportioned between themselves), while the contribution and indemnity proceedings between the defendants would be discontinued with no order as to costs between them.
6. The said consent order provided that the plaintiff’s costs would be taxed if not agreed and payment would be made in proportions between the 1st and 2nd defendants.

1. In January 2019, the plaintiff (as receiving party) filed and served a Notice of Commencement of Taxation and Bill of Costs on the defendants (as paying parties). After the defendants had filed and served their List of Objections on the plaintiff, a taxation hearing took place on 12 June 2019 before the learned Master.
2. Subsequent to such hearing the defendants filed and served a summons for variation of the costs *nisi* of taxation, the plaintiff filed and served an appointment to review taxation, and the defendants filed and served their Answer to the plaintiff’s application for review. The review of taxation hearing then took place on 21 August 2019 (“the Review Hearing”). The reasons for the Decision were then provided on 7 November 2019 pursuant to RDC O 62 r 34(4), and eventually the Summons was issued and heard before me.
3. A not insignificant portion of the Review Hearing before, and hence of the Decision of, the learned Master concerned other matters which are not pursued by the plaintiff in the Summons.
4. Before me the plaintiff was represented by counsel Mr Justin Lam, while the defendants (who filed a joint skeleton) were represented by Ms Chan Wai Ling of M/s Winnie Leung & Co and Mr Tim Ngai of M/s Munros, although it was Ms Chan who made oral submissions on behalf of both defendants.

*APPLICABLE LEGAL PRINCIPLES*

1. There was no dispute by the parties as to the applicable principles in relation to the Summons.
2. Per Lam V-P and Kwan JA in *Lam and Lai Solicitors v Ho Chun Yan Albert* [2018] 2 HKLRD 127 at paragraphs 3, 23, 26, 29, and 31 to 32, a review of taxation by a judge is not a hearing *de novo*. Rather, as taxation is an exercise of the court’s discretion, the judge can interfere with the decision of the taxing master in limited circumstances, namely if it is shown to have been arrived at under a mistake of law, or in disregard of principles, or under a palpable misapprehension as to the facts, or plainly in reliance on irrelevant matters, or if it failed to take into account relevant matters, or to be such as to fall outside the generous ambit within which reasonable disagreement is possible. Reference was also made to paragraph 2 of the decision of Deputy High Court Judge To (as he was then) in *林哲民經營日昌電業公司 訴 香港塑膠科技中心有限公司* (English translation reported as *Lin Zhen Man v Topfine Machinery Co Ltd* [2010] 1 HKLRD 135) and *余國英 對 麥紹棠* (unrep, FACV 4/2004, 14 February 2006) which was also cited in *Lin Zhen Man*, which are of similar effect.
3. It was also not disputed that when costs are awarded on a party and party basis, only such costs should be allowed as are “necessary or proper” for the attainment of justice or for enforcing or defending the rights of the receiving party, and that regard must be had as to what is proportionate and reasonable in order to give effect to the underlying objectives in RDC O 1A, which are *inter alia* to increase cost effectiveness of practice and procedure, and to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings: see *Poon Shu Fan v Wong Tin Yan & anor* (unrep, CACV 81/2012) at paragraphs 12 to 14.

*DISCUSSION: ITEM 1 OF THE REVIEW*

1. This item concerns the hourly rate of fee earners, as the Master had reduced the hourly rate allowed from HK$2,600 or HK$3,860 to HK$2,200 or HK$3,000.
2. Her bases for doing so were that the action was straightforward and lacking in complexity and that “Liability was not disputed”. Reliance was also placed on a letter from the plaintiff’s solicitors’ dated 3 January 2018 (“the Plaintiff's Letter”) which contained, in the view of the learned Master, a statement by the plaintiff’s solicitors that they were of the view that the case was less complicated than ordinary personal injury litigation. It was also said that a solicitor of “much less PQE would be capable of handling the case”.
3. The Plaintiff’s Letter related to a mediation notice that had been filed by the plaintiff that day, and had stated that “In [that] connection, we take the considered view that the 2 major heads of our client’s claim being PSLA and special damages (medical expenses), rendering the matter less complicated than the ordinary person[al] injury litigation. As such, it would serve to save the parties’ time and costs, in particular, the expert fees for conducting [Joint Medical Expert] on our client, by expediting mediation to explore amicable settlement” (my emphasis).
4. The plaintiff submitted that the learned Master had palpably misapprehended the facts, and/or taken into account irrelevant considerations in departing from the standard rates. In summary, his case was as follows.
5. Firstly, liability was disputed until, at least, the day when the defendants issued their joint offer, in the Joint Letter, to settle the plaintiff’s claims, prior to which the parties had filed pleadings and witness statements and carried out discovery. There was also no evidential basis for the case to be said to be a straightforward quantum-only case. Rather, the liability issue was complex as it involved the complicated issue of causation between two defendants, when only one may be liable but not the other.
6. In support of this submission, Mr Lam emphasised (as I have mentioned in paragraph 5 above) that it was an important feature of the plaintiff’s case that each defendant had alleged the other was solely responsible for the plaintiff’s injury. He submitted that it was a real concern on the plaintiff’s part as to whether he could successfully establish liability against the 1st defendant, or the 2nd defendant, independently, and that this was a similar situation to the classic example in *Fairchild v Glenhaven Funeral Services Ltd* [2003] 1 AC 32 per paragraph 38 of the judgment of Lord Nicholls. For context, I set out the relevant part of his lordship’s discussion as follows:-

“37 In the normal way, in order to recover damages for negligence, a plaintiff must prove that but for the defendant’s wrongful conduct he would not have sustained the harm or loss in question. He must establish at least this degree of causal connection between his damage and the defendant’s conduct before the defendant will be held responsible for the damage.

38 Exceptionally this is not so. In some circumstances a lesser degree of causal connection may suffice. This sometimes occurs where the damage flowed from one or other of two alternative causes. Take the well known example where two hunters, acting independently of each other, fire their guns carelessly in a wood, and a pellet from one of the guns injures an innocent passer-by. No one knows, and the plaintiff is unable to prove, from which gun the pellet came. Should the law of negligence leave the plaintiff remediless, and allow both hunters to go away scot-free, even though one of them must have fired the injurious pellet?

39 Not surprisingly, the courts have declined to reach such an unjust decision: see *Summers v Tice* (1948) 199 P 2d 1, a decision of the Supreme Court of California, and *Cook v Lewis* [1951] SCR 830 , a decision of the Supreme Court of Canada. As between the plaintiff and the two hunters, the evidential difficulty arising from the impossibility of identifying the gun which fired the crucial pellet should redound upon the negligent hunters, not the blameless plaintiff. The unattractive consequence, that one of the hunters will be held liable for an injury he did not in fact inflict, is outweighed by the even less attractive alternative, that the innocent plaintiff should receive no recompense even though one of the negligent hunters injured him. It is this balance ("... outweighed by ...") which justifies a relaxation in the standard of causation required. Insistence on the normal standard of causation would work an injustice. Hunting in a careless manner and thereby creating a risk of injury to others, followed by injury to another person, is regarded by the law as sufficient causal connection in the circumstances to found responsibility.

40 This balancing exercise involves a value judgment. This is not at variance with basic principles in this area of the law. The extent to which the law requires a defendant to assume responsibility for loss following upon his wrongful conduct always involves a value judgment. The law habitually limits the extent of the damage for which a defendant is held responsible, even when the damage passes the threshold "but for" test. The converse is also true. On occasions the threshold "but for" test of causal connection may be over-exclusionary. Where justice so requires, the threshold itself may be lowered. In this way the scope of a defendant’s liability may be extended. The circumstances where this is appropriate will be exceptional, because of the adverse consequences which the lowering of the threshold will have for a defendant. He will be held responsible for a loss the plaintiff might have suffered even if the defendant had not been involved at all. To impose liability on a defendant in such circumstances normally runs counter to ordinary perceptions of responsibility. Normally this is unacceptable. But there are circumstances, of which the two hunters' case is an example, where this unattractiveness is outweighed by leaving the plaintiff without a remedy.”

1. Mr Lam submitted the defendant had wrongly understood the law by claiming that there was no dispute as to liability. Rather, he said, the position was that the plaintiff needed to establish his cause of action, on the balance of probabilities, against each and every defendant, separately and specifically (ie the court would give consideration to, firstly, the 1st defendant then move on to the 2nd defendant). It was said that this gave rise to a real risk that the court might hold neither defendant liable and it was pointed out that liability was (at least until the HK$150,000 offer was made in the Joint Letter) clearly disputed by both defendants who had not, in fact, put forward a joint position to allow the court to pick who was liable. Indeed and with reference to *Fairchild, supra,* the key issue of causation would therefore have to be resolved at trial. He pointed out that this was not a case where the defendants had admitted joint and several liability, hence it was not a case where the plaintiff did not even need to put forward his claim or be cross-examined at trial. Instead, they had maintained their stance and put their burden on the plaintiff to prove his case against each and both of the defendants. That the defendants had spent time before me having to explain the position as to whether liability was disputed was said to also demonstrate that the case, and the plaintiff’s decision as to whether to proceed to trial, was not uncomplicated. It was submitted that for me to accept the defendants’ submissions, they would have to demonstrate zero risk that the plaintiff would fail at trial, and that the plaintiff was bound to win at trial. However, that was not so since the plaintiff was still bound to prove his case against each of the defendants separately.
2. Secondly, it was said that the reference to the Plaintiff’s Letter was wholly out of context as the reduced complexity mentioned therein only related to the quantum of the claim, rather than liability. Furthermore, its purpose was simply to encourage the defendants to conduct a mediation. It was submitted that it was not proper to ignore the entire procedural background to the action and take one sentence out of the Plaintiff’s Letter (being the first sentence thereof which I have quoted from at paragraph 18 above), or even the Plaintiff’ Letter on its own, to conclude that the case was simple. The learned Master had therefore taken into account irrelevant considerations or acted in palpably misapprehension of the facts. Mr Lam also emphasised that if (as had been submitted by the defendants) this was indeed a standard traffic accident case involving a dispute as to liability, then the standard rate should be applied, as there was no reason to use a lower rate.
3. The defendants said in response that the learned Master had not erred in law or misapprehended the facts. This was based on the following propositions.
4. Firstly, the learned Master was correct to take the view that the action was straightforward and lacking in complexity. While Ms Chan fairly agreed that liability had not been admitted by either of the defendants vis-à-vis the plaintiff, she submitted that it was clear that the defendants were not seeking to blame the plaintiff (eg by way of a plea of contributory negligence on the part of the plaintiff), but rather sought to blame each other. It was further submitted that in light of the plaintiff’s plea of *res ipsa loquitur* and his position as a passenger of the 2nd defendant, not only was this a common situation, but one in which the plaintiff would inevitably prevail on (or at least was in a very safe position as to) liability, subject to costs between the defendants being the subject of a Bullock Order or Sanderson Order if only one of them was held liable. Inevitably and in context it was not a case where no-one would be found be liable (ie the plaintiff would not be faced with a position where both defendants had escaped from liability) and that it was a simple traffic accident case concerning common chain collisions, which were not particularly complicated. She submitted that this was an outcome that the plaintiff would have been aware of, as an experienced personal injury lawyer and/or the handling solicitor. In other words it was said, looking at the pleadings, that the only real issue before the trial judge was whether the 1st or the 2nd defendant’s version of events (which were different[[1]](#footnote-1)) should be preferred, hence resulting in a finding of liability on behalf of either or (in proportions) both of them, since the accident could not be avoided (due to, for example, *force majeure*, which had not been pleaded) and there was no plea of contributory negligence on the part of the plaintiff. The defendant further contended that the dispute as to apportionment of liability between the defendants therefore did not concern the plaintiff, whose claim was indeed limited only to PSLA and special damages (although Ms Chan, again, fairly accepted that the plaintiff had raised relevant pleas alleging negligence and liability on the part of both defendants). It was said that it was clear, even from the plaintiff’s counsel’s advice, that the plaintiff merely needed to put forward his allegations and could then sit back and let the defendants fight it out amongst themselves, the end result most likely being apportionment of liability between them. Finally, it was also mentioned that the plaintiff did not file a Reply.
5. Ms Chan also sought to distinguish *Fairchild, supra*. Referring to such and in particular paragraph 39 thereof, she emphasised that the *ratio* thereof concerned the standard of proof that had to be met by the plaintiff in determining which bullet had hit him, but that in the instant case the question was which of the defendants had caused the traffic accident, which she said was different. It was said that a more appropriate example might have been of 3 cars involved in a hit-and-run.
6. In relation to the Plaintiff’s Letter, it was said that the learned Master had not acted improperly in taking into account the statement made therein. I was taken to the Amended Statement of Damages, and it was submitted that the plaintiff had accordingly decided to revise his case and claim less damages than in the original Statement of Damages (although I note that the amendments did not affect the total specific amount claimed of HK$369,500.00). Ms Lam contended that the learned Master’s conclusion was justified as there were in fact only 2 heads of damages, namely PSLA (which at HK$250,000 was the biggest portion of the claim) as to which there were ample authorities on which a decision could be based, and Special Damages as to which certain items thereof (Medical Expenses, Travelling, and Tonic Food) had eventually been quantified in the plaintiff’s witness statement at HK$25,000 (rather than the HK$35,000 claimed in the Amended Statement of Damages) while other items amounting to HK$64,500 had been abandoned.
7. Reference was also made to paragraph 62/App/22 of *Hong Kong Civil Procedure*, wherein the learned editors stated that while the Law Society Circular’s suggested hourly rates of solicitors with different seniority and unqualified staff that may be allowed on taxation are of considerable use in taxation, they are not binding on the taxing masters, who may adjust the hourly rates when necessary, and that the appropriate rate:-

“… is a matter for the individual judgment of the master who has examined the court file and will have seen whether, for instance, great responsibility has been accepted by the solicitor, or whether he has been exercising specialist skill, so as to justify a higher than usual rate. Similarly, the taxing master will consider whether there has been unusual reliance upon counsel or failure to delegate mechanical tasks to junior staff so as to attract a lower than normal hourly rate. The hourly rate so arrived at is what is considered fair and reasonable in all the circumstances.” (my emphasis)

1. It was therefore submitted that as the case was simple, the learned Master had justly and reasonably exercised her discretion to allow respectively hourly rates of HK$2,200 (pre-2018) and HK$3,000 (post-2018) which represented the hourly rates of a solicitor of 7 years’ PQE per the guidelines in the relevant Law Society Circular.
2. For the following reasons, I consider that I should allow the application to review the master’s decision in relation to Item 1 of the Review, but in doing so exercise my discretion to allow an hourly rate in relation to Item 1 of HK$2,400 (prior to 31 December 2017) and HK$3,460 (after 1 January 2018, which reflects the hourly rates of a solicitor of 9 to 15 years PQE per the guidelines in the relevant Law Society Circular).
3. Firstly, I am of the view that the learned Master had palpably misapprehended the facts in holding that “Liability was not disputed” (although in fairness to her I note the apparent breadth and nature of topics at the Review Hearing as reflected in the Decision, and that it is not readily apparent how fully the parties canvassed this particular point before her). Here, the plaintiff had issued and sought to prove his claim against both defendants, and it is clear that both of them had disputed that they were in any way liable to him. Although it is also clear that each of the defendants had then gone on to try and blame each other for the accident, and while none of them had pleaded (for example) contributory negligence on the part of the plaintiff or *force majeure*, the reality was that prior to that train of inquiry, the plaintiff would therefore still have had to proceed to trial to prove his pleaded cases of negligence against each of the defendants. While the plaintiff’s evidence and case (as used in his establishing liability) might be relevant in the course of the second stage on apportionment of liability between the defendants, that does not justify the conclusion that liability was not disputed. Indeed, and if anything, the defendants’ pleas as to the circumstances of the accident would have to be considered and dealt with by the plaintiff in seeking to establish his pleaded case on liability (including by way of producing evidence) against them.
4. Secondly, such error(s) would have affected the conclusions reached by the learned Master in relation to Item 1 of the Review. I therefore consider it proper for me to exercise my discretion afresh, taking into account all of the matters raised before me, the approach set out at paragraphs 26, 27 and 32 of *Lam and Lai Solicitors, supra*, the amount at stake when considered alongside the underlying objectives of the CJR, and my powers under RDC O 62 r 35.

1. Thirdly, while I have in exercising such discretion considered that liability to the plaintiff was in fact disputed, I do not think that the procedural background and issues in the present case relevant to establishing that liability (rather than the split in responsibility between the defendants) are overly complicated. Rather, they would have been relatively uncomplicated. After all, the defendants’ allegations which were relevant to the plaintiff’s case on liability were relatively limited in scope and were not unusual, as they concerned the general circumstances of the accident and did not include any pleas of (for example) *force majeure* and/or contributory negligence on the part of the plaintiff. Nor do I see how the principles and example in *Fairchild, supra,* suggest that this case is particularly complicated in terms of causation.
2. In relation to quantum, I agree with Mr Lam’s submission that the contents of the Plaintiff’s Letter should be viewed in the relevant context, including the procedural background. That context is that by reason of the plaintiff’s own actions, the 2 remaining “major” heads of damage at the time of the Plaintiff’s Letter were PSLA and a certain portion of Special Damages, which fact was deployed by the plaintiff in an attempt to push the defendants toward mediation. The relevant actions as taken by the plaintiff were the removal of several heads of damage by way of the Amended Statement of Damages (dated 9 June 2017, original Statement of Damages dated 7 April 2017), and the apparent decision (given the contents of the plaintiff’s witness statement dated 28 November 2017) not to pursue certain other heads of damage maintained therein[[2]](#footnote-2) such as Future Medical Expenses, while also reducing the number of items that had been claimed under the heading of Special Damages[[3]](#footnote-3). Taking a holistic view of the matter and bearing in mind the underlying objectives, I will therefore accord (in relation to both pre and post-2018 rates) some weight to the fact that the overall position in relation to quantum can be considered to be relatively simpler when compared to that of other personal injury litigation.

*DISCUSSION: ITEMS 2 AND 3 OF THE REVIEW*

1. I deal with these 2 items of the Review together, as Item 2 concerns pre-action General Care and Conduct, while Item 3 concerns General Care and Conduct during the course of the action.
2. Item 2 of the Review was fully taxed off. The reasons given by the Learned Master for doing so were that:

“- The general care and conduct for the pre-action stage concerns the solicitor overseeing the conduct of the staff in collection of documents and conducting company searches.

* For pre-action stage, the [Legal Executive] did not claim any time costs, whereas [the Handling Solicitor] claimed approximately 14 hours. There was therefore no supervision as [the Handling Solicitor had] performed all simple matters without the assistance of [the Legal Executive].” (my emphasis)

1. As for Item 3 of the Review, as per the Decision, the plaintiff had submitted at the Review Hearing that there was no reason to deprive it of the general allowance of 5 minutes per month. However, the learned Master said “There is no fixed rule for allowing 5 minutes per month for general care and conduct in the post-action stage” and had allowed a “just and reasonable amount of” 30 minutes, bearing in mind “the simple and straightforward nature of the case”.
2. In relation to Item 2 of the Review, Mr Lam submitted that the Master had thereby considered that the time costs claimed by the plaintiff’s solicitors in supervising the legal executive were not actually incurred, ie the solicitor performed all matters without the assistance of the legal executive. It was said that finding amounted to there being a false claim for time costs which were never incurred, which is a serious allegation of fraud that the Master had no legal or evidential basis to make, let alone reach a conclusion on. It was emphasised that the fact that no time costs were claimed for the legal executive did not mean that he/she did not carry out any work requiring the supervision of the plaintiff’s solicitors, and absent any viable objection from the defendants, the amount should have been allowed in full.
3. In relation to Item 3 of the Review, Mr Lam submitted that there is in fact a well-established practice (albeit not a fixed rule) to allow 5 minutes per month during the course of proceedings under General Care and Conduct, which should not be departed from without good reason to ensure coherency. He cited 2 authorities in support of the proposition:-
   1. In *Au Ming Ling v Wong Ding Yick* (unrep., FCMC 6671/1996, 19 January 2000), Master Barnes held that:

“The “practice” of some Masters in allowing “5 min. per month during the course of the proceedings” under General Care and Conduct enables the Supervising solicitor to be compensated for time he has spent on supervising his/her junior staff”.

* 1. In *Yeung Yuk Sut v Tse Chun Yip* (unrep, HCA 682/2006, 5 May 2020) Madam Registrar Au-Yeung (as she was then) held at paragraph 17 that there was a:

“… general practice in taxation, under which 5 minutes per month of the litigation was allowed for general care and conduct.”

1. Mr Lam submitted the learned Master had departed, without grounds for doing so, from this well-established practice. After all, he said, the description of the action as “simple and straightforward” (which appeared to be the main basis for such departure) was clearly wrong having regard to the plaintiff’s approach and issues as he had set out in Item 1 of the Review. Moreover it was emphasised that General Care and Conduct would still be required even if it were a “simple and straightforward” case, since for even the simplest kind of case, court attendance and/or filing of documents would still be required. There was nothing, therefore, to bring it out of the general practice of allowing 5 minutes per month. It was therefore submitted that the claim should have been allowed in full.
2. Ms Chan responded, for the following reasons, that the learned Master did not err in law. In relation to Item 2 of the Review, it was said that she had been correct to conclude that there was no supervision required, as the Plaintiff’s Bill did not indicate that anyone other than the Handling Solicitor had carried out any work, hence the latter had apparently performed such work without the assistance of a Legal Executive. In relation to both Items 2 and 3 of the Review, the defendants also submitted that there was no basis or supporting authority for the submission that the learned Master was obliged to give a general allowance of 5 minutes per month for General Care and Conduct whether at the pre-action stage or during the course of the action. In particular, the defendants contended that Mr Lam’s authorities only related to the general practice of awarding 5 minutes for General Care and Conduct during the course of proceedings, and not prior thereto. It was said that there was a practical difference, namely, in that it was only after the action had commenced that there would be filing, court preparation, and/or mechanical work which would need the supervision of senior staff. Finally, it was submitted that in any event the learned Master had, given the relative simplicity of the case, allowed sufficient time for General Care and Conduct under Item 3 of the Review (namely a total of 60 minutes as reduced from the original claim totalling 80 minutes).
3. At the hearing, I had asked whether the effect of the Master’s decision in relation to Item 2 of the Review was that she had found that there was insufficient evidence to suggest that a Legal Executive had been involved, without necessarily finding that such amounted to a serious allegation as to fraud, or something similarly strong. Mr Lam pointed to the nature of General Care and Conduct, observing that as such would not necessarily result in a specific document/documentary trail being produced, it would be very difficult for a firm to produce specific evidence to substantiate the claim for such an item. Hence if the Master (or the effect of her decision) had required specific evidence to establish/substantiate that costs had been incurred in relation to pre-action General Care and Conduct, that would have been unreasonable (and hence liable to be reviewed by me) given that it would be generally impossible for a firm to do so. On that basis, it was said, I would not necessarily need to go into the question of whether there had been an allegation of fraud, but rather could sufficiently approach Item 2 with reference to the 5 minute principle.
4. Furthermore and in that regard, Mr Lam referred to the fact that while staff who were not legally qualified (such as secretaries) would have had to carry out rudimentary work such as ensuring that relevant documents were obtained from authorities, such work would not usually be reflected in legal bills (which submission was not disputed or objected to by the defendants). He therefore submitted that a minimal and reasonable amount of 5 minutes per month should therefore be allowed to cover General Care and Conduct in the form of supervision of such rudimentary matters, particularly when the Plaintiff’s Bill indicated that such rudimentary work had indeed been carried out (eg by requiring documents from the Inland Revenue Department, the police, and hospitals and medical authorities).
5. As to Item 3 of the Review, in my view, the learned Master was correct to hold that there was no fixed rule of granting the 5 minutes per month in relation to General Care and Conduct during the course of action. Rather, as fairly submitted by Mr Lam, there is only a general practice of doing so. However, and looking at the salient parts of the Decision as a whole, and with particular regard to the reasoning in relation to Items 1, 3, 6 and 10 of the Review, it seems to me that her view as to liability, and hence the relative complexity of the matter, in relation to Item 1 of the Review had also affected her views on the complexity of the matter in relation to those other Items. Accordingly, I find that the same error in relation to Item 1 of the Review caused her to palpably misapprehend the facts when she characterised the matter, in relation to Item 3 of the Review, as being “simple and straightforward”. I should therefore exercise my discretion afresh. In doing so I do not see why the procedural background and nature of the case in relation to liability and quantum (which I have set out above in relation to Item 1 of the Review) justifies any divergence from the general practice – which I appreciate is not a fixed rule – of allowing 5 minutes per month for General Care and Conduct to supervise certain mechanical tasks. Indeed, if anything, the amount, and nature of the items set out in the Plaintiff’s Bill for the period are consistent with the suggestion that the general practice should not be departed from. I therefore exercise my discretion and would allow the full 45 minutes sought by the plaintiff for the period up to 31 December 2017, and the full 35 minutes claimed by the plaintiff in relation to the period from 1 January 2018 onward.
6. As to Item 2, it appears to me that the Master approached the matter by requiring (given the pre-action nature of the claim) that there should be evidence that work was done by unqualified staff in order to justify an award of General Care and Conduct. In doing so, she apparently considered that such would have had to refer to the legal executive. She did not, however, consider whether, and if so why and how much, time should be allowed for pre-action General Care and Conduct in terms of supervising other non-qualified staff, including whether the general practice of allowing 5 minutes per month should also apply at the pre-action stage. In view of this and the submissions made before me, I approach the matter in the following manner.
7. Firstly, as no claim was made for the legal executive’s fees, the learned Master cannot be faulted for concluding that on the basis of the evidence before her, the fee earner was not actually assisted by the legal executive and hence for rejecting a claim for such General Care and Conduct premised on supervision of the said legal executive.
8. Secondly, and however, I am of the view that the learned Master should have considered, but did not so consider, the relevant factors of whether, why, and if so how much time (if any) should have been allowed for General Care and Conduct per supervision of non-qualified staff other than the legal executive, whose work/costs would and could not necessarily be reflected in the bill (which factor, as I have mentioned in paragraph 43 above, the defendants did not dispute). Such were and are relevant in this case given the nature of the objections placed before her at the Review and the evidence indicating that the fee earner had claimed costs in relation to certain tasks (including Items 2 to 15 of the Plaintiff’s Bill) which could, in the ordinary course of events, be expected to require at least some supervision of non-qualified staff (other than, and not necessarily or only, the legal executive) handling such related mechanical/rudimentary matters[[4]](#footnote-4). As she did not consider such factors, I am therefore entitled to interfere with her decision, including by (if I think fit) exercising my discretion afresh in line with such.
9. However, and thirdly, I do not consider that I am presently in a position where I should exercise my discretion afresh in the plaintiff’s favour by simply applying (as Mr Lam suggested) the general practice of allowing 5 minutes per month for General Care and Conduct to the pre-action stage to allow Item 2. This is primarily because it appears to me that there are likely to be at least some material differences between both stages which suggest that it may not be appropriate, as a matter of principle, to simply extend or apply such general practice to the pre-action stage:
   1. Generally speaking, after an action has been commenced, the parties would be subject to and have to deal with various obligations imposed on them by the practice and procedure of the court. It can therefore be reasonably expected (*a fortiori* if the matter is contested) that such would, in the normal course of events, give rise to at least some mechanical work during the course of the action. There are hence good underlying reasons for there to be a general practice (as set out in the authorities) of allowing 5 minutes per month for General Care and Conduct of the action in the nature of supervising non-qualified staff in relation to such mechanical work.
   2. However, and also generally speaking, at the pre-action stage the parties are not subject to, nor do they have to deal with, those obligations. Absent such obligations, it would generally be expected that less rudimentary/ mechanical work (and hence supervision of such) would be carried out of the nature which might be carried out during the course of proceedings (eg filing in or attendance at court, and preparation for hearings). Moreover, and again generally speaking, a party that is considering the commencement of (or that intends to commence) proceedings is more likely to have control over the duration of the pre-action stage, and the nature of costs incurred.
10. Furthermore, while Items 2 to 15 of the Plaintiff’s Bill do seem to suggest that there would in the normal course of events have been some supervision of non-qualified staff other than the Legal Executive, they do not appear to justify the plaintiff’s claimed total of 1 hour and 5 minutes (which is based on 5 minutes per month for a period of 15 months).
11. Given the above, and taking a holistic approach to the matter with particular regard to the amount in question and the underlying objectives, I will exercise my discretion afresh to allow, on the matters before me, a total of 30 minutes, out of the 65 claimed, in relation to Item 2 of the Review as being necessary and proper (in this particular case) to cover pre-action General Care and Conduct.

*DISCUSSION: ITEM 6 OF THE REVIEW*

1. This concerned the Master’s decision to tax off 5 minutes spent by the fee-earner considering a climatological report supplied by the Hong Kong Observatory (“the Report”) on 1 August 2017. As set out in the Decision, the plaintiff had pointed out at the Review Hearing that the 2nd defendant had stated in the Police Statement and the Witness Statement that the weather at the time of the accident was “heavy rain”, but according to the Report, the weather at the time was drizzling/rainfall at 0.5mm. It was said that it was obtained for use in the plaintiff’s witness statement and to rebut, when necessary, the 2nd defendant’s evidence of the weather at the time of the accident, and that the report was hence proper and necessary for the conduct of the action.
2. In the Decision, the learned Master had refused to review this Item as she was of the view, firstly, that liability was not in dispute hence the weather condition was not relevant, and secondly, that the climatological report was never disclosed in the plaintiff’s 2 lists of documents, or relied on by the plaintiff.
3. The plaintiff submitted that further to its submissions in relation to Items 1 to 3 of the Review, the Master was under a palpable misapprehension in holding the belief that liability was not in dispute. It was submitted that the Report was clearly relevant to liability as it would shed light on the weather conditions, particularly given the 2nd defendant’s positive allegation in his Defence (filed on 19 May 2017) that “[i]t was raining heavily and the visibility was not good”. *A fortiori* when the Report had stated that the weather was “drizzling/rainfall at 0.5mm” and was hence clearly relevant to destroying the 2nd defendant’s credibility, or at least a relevant fact to be taken into account when dealing with the issue of liability at trial (ie that at least someone was liable).
4. In that regard it was said that whether or not it had been disclosed in the plaintiffs’ lists of documents was irrelevant, for the plaintiff would still need (in his witness statement) to cross-check and see, with reference to the Report, whether the weather on that date was as remembered by the plaintiff. In other words, the fact that it was not disclosed did not mean that it was not useful or relevant to the proceedings.
5. In that regard, I was referred to the witness statements filed on behalf of the plaintiff, which contained the assertion that the road surface was slippery, and that it was drizzling. I also note that the 2nd defendant had pleaded that “it was raining heavily and the visibility was not good”, and had given evidence to similar effect in his witness statement, including that there was heavy rain at that time which had become heavier. It was said that the report might hence be relevant at trial insofar as an issue might arise in relation to weather conditions, which might be relevant to the relative liability (and possibly quantum) of the defendants.
6. The defendant relied on the learned Master’s reasoning. It was further submitted with reference to the defendants’ pleadings (the weather not being the subject of the plaintiff’s pleadings, although I note that it was briefly mentioned in the plaintiff’s witness statement), that there was no dispute between the parties that it was raining at the time of the subject accident. It was hence said that the plaintiff did not need to prove the weather conditions at trial, and the Report (the detail of which it was said was not readily apparent) was not being used as a basis for saying that the collision could have been avoided. Ms Chan also submitted that even if it were relevant to the issue of apportionment between the defendants given discrepancies in their case as to the amount of rain, that would only be an issue between the defendants, rather than one that concerned the plaintiff. Hence the Report was “plainly unnecessary”, not relevant, a luxury, and/or excessive, and the learned Master made no error in law and was not under any misapprehension as to fact.
7. There was no dispute that the Report in question was obtained shortly after close of pleadings (including the 2nd defendant’s plea as to the weather) but before discovery and exchange of the parties’ witness statements, and that the Report was not disclosed in the plaintiff’s 2 lists of documents.
8. For reasons I have outlined in relation to Item 1 of the Review, I consider that in relation to Item 6 of the Review, the learned Master was under a palpable misapprehension of fact in holding that liability was not in dispute.
9. In the circumstances, and especially given the amount in question, I am further also of the view that I should exercise my discretion afresh, and in doing so allow the claim for 5 minutes to consider the Report under Item 6 on the basis that that such was hence relevant, and necessary and proper to enforce the rights of the plaintiff, and also proportionate and reasonable in the proceedings. My reasons are as follows.
10. Firstly, I disagree that the Report was relevant only to the issue of apportionment between the defendants. In my view, it was relevant to the question of liability (which the plaintiff had to establish) between the plaintiff and the defendants. I accept that the plaintiff had not raised a plea as to the weather conditions and there was no dispute that it was raining at the time of the accident. However, given the different and positive pleaded factual cases of the defendants in relation to the intensity of rainfall (and to some extent visibility), in my view the Report would have been relevant to a reasonable line of inquiry/questioning (including by the plaintiff), and to any averment the plaintiff (or they) might make, on such issue, and ultimately also to the plaintiff’s (and either or both of the defendants’) credibility as it would to enable him to cross-check as to the type of the rainfall at that time. *A fortiori* when the plaintiff’s averment in his witness statement that it was drizzling was followed by mention that (apparently shortly thereafter) he had proceeded to rest his eyes.
11. Secondly, I also do not consider on the matters before me that the claim for costs in relation to consideration of the Report was “plainly unnecessary”, irrelevant, a luxury, and/or excessive. Rather, given the pleadings and evidence, it was in my view reasonable and necessary for the plaintiff to obtain and consider such. That it was not disclosed in both of the plaintiff’s Lists of Documents does not appears to me to be a decisive factor to the contrary, particularly when in the plaintiff’s instructions to his counsel to advise on liability and quantum (which are explored in more detail per Item 10 below) the Report was described as having been “not disclosed yet”.
12. I would therefore review the learned Master’s decision to allow, in relation to Item 6 of the Review, the full sum of 5 minutes as claimed for consideration of the Report.

*DISCUSSION: ITEM 10 OF THE REVIEW*

1. This concerns instructions to, communication with, and advise from counsel as to liability, quantum, evidence, and settlement, all of which were taxed off.
2. As recorded in the Decision, at the Review hearing, the plaintiff had submitted that these were justified since no charge was laid by the Police against either of the defendants in relation to the accident, and it was important to consider the complexity of liability as against both, and the chance of succeeding against one or the other. It was also said that it was proper and necessary to seek counsel’s advice on the quantum of the joint offer, the acceptability thereof, and further steps to be taken if it were not accepted. It had also been submitted that in any event even if counsel’s fees were disallowed, an appropriate time should be allowed for a notional solicitor (ie the fee earner) to carry out necessary research on those matters and to advise the plaintiff in relation to acceptance.
3. In the Decision, the learned Master maintained that such should be taxed off. Her reasoning was that the only issue was quantum, which was limited to PSLA and special damages and it was said that for a simple and straightforward personal injury case, it was not necessary to obtain advice from counsel on quantum limited to such. It was also said that the settlement amount of HK$150,000 did not justify seeking counsel’s advice.
4. Mr Lam’s primary submission was that the learned Master was clearly under a palpable misapprehension as to the facts. It was contended that liability was in fact disputed, and hence counsel’s advice was necessarily sought and provided on both liability and quantum. It was submitted that much of the advice dealt, in fact, with the issue of liability. It was emphasised that such advice was necessary particularly given the issues concerning causation of loss by the defendants, and that upon the defendants’ offer to settle coming in mid-May 2018, the plaintiff had to obtain advice from counsel on the prospects of success in his claim against both defendants, and the amount which might be obtained by way of damages if the claim were to succeed. It was also said that the fact that the plaintiff was himself a personal injury solicitor (which was relied on by the defendant as I specify below) was not a good reason to disallow costs for counsel, since he was the victim in the accident and would be as entitled as anyone else to obtain his own independent legal advice (whether from counsel or a notional solicitor) to enable him to make a considered decision on whether to accept the offer, or to proceed to trial.
5. Mr Lam further contended that the learned Master had erred in simply referring to the amount of the proposed settlement, and in thereby concluding that the case was a simple one. After all, the amount at stake, as pleaded in the Statement of Damages, was HK$369,500.00 (under the 3 headings of PSLA, Special Damages, and Future Medical Expenses), hence the relevant question was whether the plaintiff should accept HK$150,000 instead. It was hence submitted that the Master’s reasoning erred in principle, or by reason of irrelevance.
6. The plaintiff’s alternative submission was that the Master erred in law and/or acted in disregard of principles in failing to allow an appropriate time for a notional solicitor to carry out the work that had been done by counsel, for it would still have been necessary for a solicitor to carry out the work themselves to review the merits of the plaintiff’s case and decide whether offer should be accepted or not. In support of this proposition, Mr Lam referred to paragraphs 45 and 52 of *Woo Hing Keung Lawrence v CEF Brokerage Ltd* (unrep, HCCL 39/2004, CACV 148/2007, 3 March 2010) per Master Marlene Ng (as she was then). The plaintiff also submitted that it was incorrect for the defendant to argue that such had already been included pursuant to Item 85.2 of Section A of the Plaintiff’s Bill as the latter was entirely different and did not overlap at all with what had been done by counsel (hence justifying the costs of a notional solicitor for the same work). Rather, the claim made under Item 85.2 was quantification of the plaintiff’s claim to be advanced against the defendant. In contrast, the work carried out by Counsel was to consider the offer in the Joint Letter, issues of causation and liability, and also Sanderson/Bullock costs orders.
7. The defendants submitted, firstly, that the Master was right to point out that the only issue was quantum, and that it was a simple and straightforward personally injury case which did not require counsel’s advice on quantum. Secondly, it was also said that the Master’s reasoning and reference to the settlement sum of HK$150,000 was in line with the underlying objectives of RDC O 1A r 1(c). It was further submitted that as the plaintiff, who was admitted in 1997, was the sole proprietor of the firm and was well-experienced in handling personal injury litigation, it was plainly not necessary or proper (cf paragraph 31 of *Poon Shu Fan, supra*) for him to seek advice from counsel for such a simple and straightforward case, particularly when it was, initially or in part, delivered orally. Finally, and in relation to Mr Lam’s point regarding the notional solicitor, Ms Chan submitted that the plaintiff had already claimed (per Item 85.2 of the Section A of the Plaintiff’s Bill) for a handling solicitor spending 1 hour quantifying the plaintiff’s claim which had been dealt with by the Master, hence there would be no basis for awarding costs for a notional solicitor.
8. At the hearing – but not apparently in their skeleton submissions – the defendants also submitted via Ms Chan that:-
   1. There was said to be an authority to the effect of which that a settlement amount of HK$150,000 would not justify seeking counsel’s advice. However, and as I explained at the hearing, as the authority was not placed before me then it would (unless further submitted to myself and the plaintiff for consideration) not be appropriate to place any reliance on such alleged submission. As the defendants then elected not to submit, and have not in any event submitted, any such authority I have therefore not taken such submission into account.
   2. While counsel had been previously instructed by way of instructions dated 26 April 2017 to advise on liability and quantum, the plaintiff had on 17 May 2018, and upon having received the Joint Letter, apparently made oral inquiries with his counsel about it. However it was unclear why the plaintiff did not tell his counsel that it was now unnecessary to advise on liability, despite it being clear from the Joint Letter that liability had been admitted. Counsel’s advice (including any portions thereof on liability) as delivered orally and in a letter dated 18 May 2018 (“Counsel’s Letter”) was therefore unnecessary and/or the plaintiff’s behaviour had hence apparently, and necessarily, increased costs of the advice. *A fortiori* when the plaintiff had accepted the offer in the Joint Letter the very next day, which in itself indicated that the matter was simple. However Ms Chan made it clear at the hearing that she was not submitting that counsel had not carried out any work on the advice prior to the date of or around the receipt of the Joint Letter.
   3. It was submitted that in any event, many of the items included in the Instructions to Counsel to advise on liability, quantum, and evidence, were unnecessarily provided to him[[5]](#footnote-5). These included the Report, and documents relating to contribution and indemnity proceedings between the defendants which should not bother the plaintiff[[6]](#footnote-6) or which were merely procedural or concerned interlocutory applications that had been disposed of[[7]](#footnote-7).
9. As regards the point made at paragraph 70(2) above, Mr Lam submitted that the Joint Letter was not, apparently, a standard offer accepting liability since it was “subject to determination of liability by the Court” (which term was also used in Counsel’s Letter and the plaintiff’s reply to the Joint Letter). It appeared to be a letter suggesting that if the defendants had gone to trial and managed to beat their offer, then they would get costs of the trial. As to counsel’s advice (including Counsel’s Letter), it was submitted that since the plaintiff was not suggesting that counsel had not started work before 17 April 2018, there would have been no issue with such charges by counsel given that the charge within the Plaintiff’s Bill was in the nature of (and Mr Lam’s instructions were that it was) an agreed fee[[8]](#footnote-8). Moreover, even if the Joint Letter had been a “pure” settlement letter (or was taken to be one) it would be necessary for counsel to have considered liability, as the plaintiff in deciding whether or not to settle the claim would have to take into account the prospects of succeeding at trial against any of the defendants. After all, the plaintiff would not have just gone to the proposed figure in deciding whether to accept it, but would rather have looked at the case as a whole to see whether the figure was one that should be reasonably accepted.
10. As regards the point made at paragraph 70(3) above, Mr Lam submitted that from a global perspective, the HK$25,000 fee charged by counsel to advise was entirely reasonable given the number of issues, pleadings, witness statements, and documents, and counsel’s seniority (he having been called in 1998). There could therefore be no basis for alleging that he had had to plow through hundreds of unnecessary documents. Similarly, nothing material arose from any time that may have been taken to prepare the list and/or bundle of documents sent to him.
11. Having had regard to the above, my decision is as follows.
12. Firstly, as and for the same reasons outlined in relation to Item 1 of the Review, I consider that the Master acted under a palpable misapprehension of fact, namely that liability was not in dispute. I consider that such error would have affected the conclusion reached by her in relation to Item 10 of the Review, particularly as it was taxed off in its entirety, and that I can and should interfere with her decision in relation thereto.
13. Secondly, that the plaintiff may be an experienced personal injury solicitor does not disentitle him to his costs for obtaining independent and objective legal advice. I am of the view that he was entitled to seek and obtain such given the substantive and procedural background of the action, and its conduct in relation to both liability and quantum, as apparently set out at paragraphs 4 to 10 and 12 of the instructions to counsel. I am also of the view that that the relevant amount for consideration in relation to the obtaining of advice should be the pleaded claim of HK$369,500. I do not think it would be appropriate to have regard only, or even predominantly, to the settlement sum of HK$150,000. This is because that latter sum only became relevant due to the Joint Letter, which was only issued some 2 weeks after the plaintiff had sent his instructions to counsel. Given its contents, I also do not accept that the plaintiff had acted, after receipt of the Joint Letter, in a manner which unnecessarily increased costs. *A fortiori* when the defendant did not submit that counsel had not, in fact, carried out any work pursuant to his instructions prior to the date of the receipt of the Joint Letter.
14. Thirdly, and notwithstanding the above, in view of my conclusions relating to the nature of the action relating to liability and quantum at paragraphs 33 and 34 above, I do not accept that it was necessary to instruct counsel to give such advice. In my view, the necessary research and advice could have been handled by a person in the position of the fee earner. I should therefore allow an appropriate time for a notional solicitor in the position of the fee earner to handle such. On the papers before me, I consider that a figure of HK$20,760, being 6 hours at the notional fee earner’s revised rate of HK$3,460, should be allowed in respect of Item 10.
15. For the avoidance of doubt, I do not agree with the defendant’s submission that the work done by counsel had already been included pursuant to Item 85.2 of Section A of the Plaintiff’s Bill.

*CONCLUSION AND ORDERS*

1. In relation to the matters contained in the Summons, I therefore:-
   1. Allow the application to review the Master’s decision in relation to Item 1 of the Review to the extent that the relevant applicable hourly rates be HK$2,400 (prior to 31 December 2017) and HK$3,460 (after 1 January 2018): see paragraph 30 above.
   2. Allow the application to review the Master’s decision in relation to Item 2 of the Review to the extent that I would allow 30 minutes out of the time claimed by the plaintiff in relation to such: see paragraph 49 above.
   3. Allow the application to review the Master’s decision in relation to Item 3 of the Review to allow the full amounts claimed by the plaintiff: see paragraph 44 above.
   4. Allow the application to review the Master’s decision in relation to Item 6 of the Review to allow the full amount claimed by the plaintiff: see paragraph 62 above.
   5. Allow the application to review the Master’s decision in relation to Item 10 of the Review to the extent that I would allow HK$20,760 of costs out of the amount claimed: see paragraph 62 above.
2. While each of the parties naturally sought costs of the application should it be determined in their favour, they agreed that I should hand down a costs order *nisi* in relation to this hearing. The plaintiff had also sought an order that costs of the Review Hearing be paid by the defendants, and be summarily assessed and payable forthwith. However, as the Decision and the Review Hearing had dealt with matters other than the Items of Review that were raised before me, at the hearing before me I asked the parties to consider if they could agree how much time had been spent, at the Review Hearing, on the Items of Review before me. While they were able to agree, in post-hearing correspondence, that the Review Hearing had lasted a total of 1 hour and 15 minutes, within the same the plaintiff did not agree with the defendants’ suggestion that 1/3 of the time spent at the Review Hearing should be apportioned to the Items of Review raised before me, and/or apparently to “the adaptation of any apportionment of time spent at the [Review Hearing]”, and instead submitted that I should either direct that there be further written submissions on the matter or make a costs order *nisi*. The plaintiff did not, however, explain why that approach and/or such apportionment should be rejected.
3. I therefore make a cost order *nisi* that the plaintiff do have 75% of his costs of the hearing before me, and 1/3 of the costs of the Review Hearing, both sets of costs to be summarily assessed and disposed of on paper. In doing so I have taken into account the following matters:-
   1. The plaintiff has substantially, but not entirely, succeeded in respect of his application before me.
   2. While I appreciate the able assistance of Mr Lam, in light of the issues at hand, the amounts at stake, and the underlying objectives, I do not think that this is an appropriate situation to award certificate for counsel for the hearing before me.
   3. Having had regard to the underlying objectives, the papers before me, and the overall nature and context of the Review Hearing, it is in my view appropriate to adopt an approach to the costs of the Review Hearing premised on apportionment of time which also takes into account the outcome before me. In my view, the result is that the plaintiff should be entitled to 1/3 of his costs of the Review Hearing.
4. I also order that such cost order *nisi* shall be made absolute if no application to vary the same is made within 14 days hereof. I will hand down further directions in relation to the paper disposal in relation to any orders that are made absolute by such method.
5. Lastly, it falls to me to thank all of the parties for their assistance.

( YW Hew )

Deputy District Judge

Mr Justin Lam, instructed by Cheng & Co, for the plaintiff

Ms Chan Wai Ling of Winnie Leung & Co, for the 1st defendant

Mr Tim Ngai of Munros, for the 2nd defendant

1. Looking only at the pleadings and putting aside for present purposes any disputes as to visibility, and the intensity of rain, at the time (which I return to in relation to Item 6 of the Review):

   The **plaintiff’s pleas** were to the effect that the 1st defendant had been driving in the 3rd lane, that the 2nd defendant (in whose car the plaintiff was a passenger) had driven through the traffic light when it was green but had suddenly slowed down before stopping to search for his way toward Ap Lei Chau, while at the same time the 1st defendant drove dangerously and passed through the traffic light when he failed to stop in time.

   The **2nd defendant’s** **pleas** were to the effect that he had been driving along in the 3rd lane, stopped the car upon seeing a traffic light change from green to yellow, and that his vehicle was then hit by the 1st defendant’s vehicle.

   The **1st defendant’s** **pleas** were to the effect that the 2nd defendant had suddenly cut from the 2nd lane into the 3rd lane (and hence in front of the 1st defendant) without prior signal or warning, then slowed down, and that despite the 1st defendant braking, the collision occurred due to the wet and slippery road surface. [↑](#footnote-ref-1)
2. As opposed to the plaintiff’s rights merely being reserved. [↑](#footnote-ref-2)
3. However, I do not see how it is materially relevant to the complexity (or otherwise) of quantum that the amount of the claim for such items in the plaintiff’s witness statement ended up being somewhat lower than that as advanced in the original or Amended Statement of Damages. [↑](#footnote-ref-3)
4. From the Decision, the plaintiff’s submissions had referred, in addition to the 5-minute general allowance, to 62/App/23 and regard to the number of “unqualified persons or junior solicitors who required supervision”, specifically to the collection of “evidential documents” which appear to have been those set out at Items 2 to 15 of the Plaintiff’s Bill, and that notwithstanding the fee earner’s experience, the latter work required specific supervision of “unqualified staff” and that the fee earner was entitled to oversee the conduct of the staff in discharging their duties. [↑](#footnote-ref-4)
5. Namely Items 2, 5 to 8, 11 to 12, 14 to 15, 17, 20 to 41, 44 to 55 of the Court Documents provided to counsel, and also the Climatology Report. [↑](#footnote-ref-5)
6. Such as the 1st and 2nd defendants’ notices of contribution and indemnity against each other, and their pleadings against each other in contribution and/or indemnity proceedings. [↑](#footnote-ref-6)
7. Such as documents relating to (apparently) an application for F&BPs which was dealt with by consent (Items 20-25), some other documents relating to another interlocutory application (Items 30 to 41), various mediation certificates/responses, questionnaires, and checklists. [↑](#footnote-ref-7)
8. The defendant pointed out that the Plaintiff’s Bill did not explicitly state that the charge was in the nature of an agreed fee. However, at the same time and in fairness to the plaintiff, this line of inquiry as to the details of counsel’s fees arose from an argument that was not raised in the defendant’s skeleton, and if it had then perhaps evidence could have been obtained on the topic. With that said, given my reasoning below, it does not seem that anything material turns on the issue. [↑](#footnote-ref-8)