DCPI 871/10

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**PERSONAL INJURIES ACTION DCPI 871 of 2010**

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BETWEEN

CHAK CHUN ON (翟頌安) Plaintiff

And

TAI CHUNG WAH (戴仲華) 1st Defendant

HONG KONG TRAMSWAYS 2nd Defendant

LIMITED

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Coram: Before Master J Chow in Chambers (Paper Disposal)

Date of Handing Down Decision : 4th April 2011

DECISION

Introduction

1. The Plaintiff took out a summons on 15th February 2011 for an order that leave be granted to the Plaintiff to adduce the “Plastic Surgery export report of Dr. Chow Sik Kuen (“Dr. Chow”) dated 22nd December 2010 as expert evidence at trial without calling him as an expert witness, unless otherwise directed by the Trial Judge”. The Defendant resisted. The summons was dealt with by way of paper disposal.

Background

1. The accident happened on 23rd October 2008. The Plaintiff was a pedestrian, she was knocked down by a tram driven by the 1st Defendant of whom the 2nd Defendant was his employer. The Plaintiff claimed damages against the 1st and 2nd Defendant for negligence.
2. The Plaintiff sustained rupture of right Achilles tendon. She recovered after operations, scars were left on various places of her body.
3. In light of medical expert evidence, the parties agreed to adduce a joint orthopaedic report by Dr. Arthur Chiang and Dr. Justin Cheng dated 8th March 2010 as evidence without calling the makers (“the Joint Orthopaedic Expert Report). The orthopaedic experts indentified visible scars, inter alia, on her right leg and left shoulder. Both experts opined the Plaintiff has reached maximal medical improvement and she was not required to be further examined by other experts.
4. Apparently, the Plaintiff is not satisfied with the scars left on her body, she claims damages for future medical expenses for plastic surgical treatments to improve her appearance. She therefore applies for leave herein.

The Expert Report by Plastic Surgeon

1. Dr. Chow examined the Plaintiff on 17th December 2010. He identified scars on the right forearm, right leg and right foot. To be precise, Dr. Chow stated under the heading “Physical Examination”:
2. Right forearm – abrasion scar on ulnar side 10 x 10 cm, flat, soft, barely noticeable;
3. Right leg – abrasion scar 46 x 5 mm on the shin, flat, soft, thin, deeply pigmented in mid portion;
4. Right foot –
5. medial border – linear scar 2 x 45 mm, raisrd firm, pigmented

with scaling;

1. postero-medial side of the Tendo Archilles, vertical hypertrophic scar 143 x 6.5 mm, raised, thick, firm and pigmented;
2. Cannot squat fully.
3. Dr. Chow opined the scars were a result of the accident and subsequent operation. They were stable for the last 6 months. Dr. Chow agreed the Plaintiff can opt for active cosmetic intervention to reduce the appearance of the scars. He quoted the fees for semi private patients (second class) in private hospital as follows:
4. Steroid injections @$2,000 x 6 = $12,000
5. Silicone gel $2,000
6. Lazer treatment @$4,000 x 10 = $40,000
7. Follow up consultation @$1,000 x 15 = $15,000
8. Total: $69,000

The Defendant’s opposition

1. The Defendant submitted the orthopaedic experts commented the Plaintiff was not required to be examined by other experts or to undergo further treatments. The Plastic Surgeon Report was unnecessary.
2. The scars were a result of an operation underwent by the Plaintiff on 12th January 2009, it is optional for the Plaintiff to decide whether to undergo cosmetic surgery to improve the appearance of the existing scars.
3. The Defendant relied on Chang Man Sze v. Chan Siu Wai & anor HCPI 290/2007, in that Master B Kwan decided, the plaintiff suffered injury after a traffic accident, she had scars on her leg after operations to fix her fractured femur. Master B Kwan said it is not necessary for a cosmetic expert to say the new scars were a result of the operations and was therefore caused by the traffic accident.
4. She also said,

“the new scars were situated on the right side of the torso, near or above the pantyline and therefore would not have been seen by other people under normal circumstances. *I cannot see that it can be proportional under CJR to allow the costs of the cosmetic surgeons’ reports simply to provide grounds for a debate on the viability of operations and to try to improve the appearance of the new scars*”.

1. Apart from that, Dr. Chow made comments the Plaintiff “may be prejudiced when she looks for jobs because the scars cannot be hidden under the silk stockings”. The Defendant articulated the said comment is outside the ambit of comment that could be given by a professional plastic surgeon.

Analysis

1. In deciding whether leave should be granted to adduce the Plastic Surgeon Report, this case is no different from adopting the classic test of relevance, necessary and with probative value[[1]](#footnote-1). I am not persuaded the Plaintiff can satisfy the requirements with the following reasons.
2. The Joint Orthopaedic Report stated the Plaintiff has reached maximum medical improvement and she was not required to be further assessed by other medical experts. The scars existed and were visible. The orthopaedic experts had identified them in their report already, I do not find the Plastic Surgeon Report is necessary to identify the scars again.
3. The Plaintiff’s argument on the necessity to substantiate the claim on future plastic surgical treatments is unsound. Dr. Chow himself said the treatment is optional, not a must.

Dr. Chow said in para 40,

“action intervention is necessary to improve the scars so as to alleviate Ms. Chak’s symptoms and complaints”.

He continued in para 45,

“Given the fact that the scars cannot be removed, it remains the duty of plastic surgeons to inform the patient what treatments are available to give the best possible outcome of the cosmetic appearance of the injured parts. Whether it is worth undertaking the treatments after due consideration (of the time involved, pain and procedure, etc) will be the *decision of the patient himself*.”

1. If the treatments are optional, I agree and adopt the test laid down in Chan Man Sze, in that the Plastic Surgeon Report is unnecessary; and also because, the costs of the report would render it disproportionate to the claim.
2. The scars are can be seen by a naked eye, as I learn from the position of the scars (in para 33 – 38 of the Plastic Surgeon Report and with photos attached), the one with relative impact on the Plaintiff were the two scars on her right foot. The trial judge is able to learn from the photos the location and pigmentation of the scars without the Plastic Surgeon Report. It is not surprising that the wounds of the injury will develop into scars upon recovery, the appearance and discomfort should be considered under the pain, suffering and loss of amenities category.
3. Furthermore, Dr. Chow said in para 41,

“Ms Chak may be prejudiced when she looks for jobs because the scars

cannot be hidden under the silk stockings.”

I am bewildered by Dr. Chow’s comment that the Plaintiff be disadvantaged in the labour market because *“the scars* *[on her right foot] cannot be hidden under the silk stockings”*. There was nothing in the report to state the basis of such opinion: Dr. Chow was well aware the Plaintiff was working as a financial planner with ING[[2]](#footnote-2), I doubt very much Dr. Chow can give one valid reason that a lady who has attained tertiary education, has been working as a financial planner with a reputable institution before and after the accident, would rely on the appearance of her right foot to achieve job security. This is an obvious feature of lack of probative value, the comment itself provided basis for the Defendant’s objection to adduce the report.

Conclusions

1. In the premises, I find the Plastic Surgeon Report failed to satisfy the test of necessity, relevance and with probative value. I dismiss the Plaintiff’s summons, there be an order of costs nisi that costs of the summons be to the Defendant. I shall invite parties to submit a statement of costs at the Checklist Review on 4th April 2011 and I shall hear submissions on costs on the same day.

(J Chow)

District Court Master

Representation:

Mr. Tang Tze Pun of Messrs. Chiristine M. Koo & Ip for the Plaintiff

Messrs. Charles Yeung Clement Lam Liu& Yip for the Defendant

1. Authorities referred to by the Plaintiff includes Yeung Tin To v. Ann’s Travel Service Co Ltd , DCEC 922/2007; Leung Wan Lung v. Cheung Wai Man, HCPI 6/2009; Arfan Muhammad v. MPS Engineering Ltd & ors, HCPI 457/2003 and Lam Ting Tong v. Kam Hung Construction (Holdings) Ltd & ors, HCPI 1144/2003. [↑](#footnote-ref-1)
2. See para 25 of the Plastic Surgeon Report [↑](#footnote-ref-2)