DCPI 1228/10

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**PERSONAL INJURIES ACTION DCPI 1228 of 2010**

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BETWEEN

CHEUNG TAK WOO TOMMY Plaintiff

And

LI HOI CHI JAMES Defendant

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Coram: Before Master J Chow

Date of Handing Down Decision : 15th June 2011 (by way of paper disposal)

DECISION

Introduction

1. In the Plaintiff’s summons dated 3rd March 2011, the Plaintiff seeks leave to adduce orthorpaedic and neurological expert evidence at trial. The Defendant objects on the grounds that it is not relevant, necessary and with probative value.

Background

1. The Plaintiff suffered injuries in a traffic accident on 3rd August 2009. At the material times, he was riding his motorcycle FX 839 on the 3rd lane of Shanghai Street whereas the Defendant was driving his private car NJ 4866 and started to proceed leftwards from a parking space near the junction of Shanghai Street and Dundas Street. Both vehicles were headed towards the same direction. While the Plaintiff approached the Defendant’s private car, the offside of the Plaintiff’s motorcycle collided with the nearside of the Defendant’s private car (“the Accident”).

The Plaintiff’s Reasons

1. The Plaintiff was admitted to the Accident & Emergency Department of Kwong Wah Hospital after the Accident, in a brief, one-paragraphed medical report of the dated 9th Jan 2010, Dr. Lee Ting On of the same department, he was diagnosed as follows,

“The patient [the Plaintiff] attended our Emergency Department on 3rd Aug 2009 for right elbow and right knee injuries sustained in a traffic accident and was seen by me. Physical examination revealed abrasions over right elbow and right knee. Wound dressing and first dose of tetanus vaccine were provided to the patient. He was discharged home with analgesic. No further treatment or operation was required.”

1. Another medical report of the STFA Leung Kau Kui Clinic dated 26th Feb 2011, Dr. Li Yim Chu stated,

“According to our medical record, the above-named person was first seen at our clinic on 4th Jan 2010, complaining of worsening of memory and poor concentration. He claimed the problem was related to a road traffic accident happened 2 months ago (counted from the date of consultation), in which he sustained head injury with loss of consciousness. The exact date of accident was not mentioned. He claimed that he had attended Accidental and Emergency Department of Kwong Wah Hospital that time.

Physical examination showed normal pupils, but subjective double vision upon eyeball movement. There were no other focal neurology detected.

He was referred to the Medical unit of Kwong Wah Hospital for further workup. The appointment date will be on 30th Sep 2011.”

1. The Plaintiff applied for leave to adduce orthopaedic and neurological expert evidence on the premise of the symptoms diagnosed in the said two medical reports. He also stated in his affirmation dated 20th April 2011,

“I believe should the Accident not have occurred, I would have been able to carry on my pre accident employment. Moreover, should the Accident not have occurred, I would have been able to secure gainful employment of similar nature with other employers. That is the reason I consider adducing expert orthopaedic and expert neurological evidence is likely to address this issue”.

The Defendant’s Objection

1. Apparently, there were other medical evidence on the Plaintiff’s treatment and care after the Accident. The Defendant’s solicitors raised the following objections:
2. *Irrelevant sick leave certificate submitted*: The Plaintiff disclosed a sick leave certificate issued by 黃祥華流行堂中醫中藥館 dated 14th Dec 2009, the injury recorded was left foot injury instead of right foot injury as pleaded. The Defendant argued it was irrelevant to the Accident.
3. *Range of movement was normal as recorded in the medical notes of the A&E Department of Kwong Wah Hospital*: The Defendant solicitors submitted there was only abrasion of limbs, “power and range of movement of Plaintiff’s right elbow, right knee and left wrist were full”. The treating doctor wrote “neck no pain, head no pain, chest no pain, pelvic stable” under the heading of physical examination in the same record.
4. *Lack of medical evidence to prove acupuncture massage and physiotherapy treatments in mainland China:* The Defendant’s solicitors said the Plaintiff could not submit evidence under this head.
5. *The Plaintiff’s complaint of head injury was exaggerated*: The Plaintiff did not make the complaint of head injury, which is more serious than abrasion of his limbs, to the medical officers of the A & E Department in Kwong Wah Hospital contemporaneously.

Analysis

1. The Plaintiff bears the burden to demonstrate the necessity of obtaining a medical expert report which is relevant and can be of assistance to the trial judge. Having considered all evidence, and adopting the usual test of adducing an expert report, that is necessity, relevance and with probative value, I fail to see the Plaintiff can successfully discharge his burden.
2. Let alone the Plaintiff’s evidence, he suffered from minor injuries as diagnosed by Dr. Lee of Kwong Wah Hospital at the date of Accident. I cannot put it in any way more concise than Dr. Lee had done in his the four - sentenced description: *“abrasions over right elbow and right knee. Wound dressing and first dose of tetanus vaccine were provided to the patient. He was discharged home with analgesic. No further treatment or operation was required.”*
3. It was only 5 months after the Accident, the Plaintiff complained of poor memory to Dr. Li of STFA Leung Kau Kui Clinic. He was diagnosed with “subjective double vision”. The Plaintiff’s symptoms were not linked with the Accident.
4. The Plaintiff suffered no fracture; no dislocation of joints, he was not even admitted to hospital for operations, but was discharged home with analgesic only. Nothing could be added from the minor injuries suffered on the date of Accident, it was from nowhere he then complained of poor memory and subjective double vision 5 months later. These reasons were far short of justifications for either or both orthopaedic and neurological expert report(s).
5. On the other hand, the Defendant raised solid objections to the Plaintiff’s application. The Plaintiff submitted a sick leave certificate from a Chinese herbal medical practitioner (黃祥華流行堂中醫中藥館) which is unrelated to the Accident, in that the Plaintiff’s injuries was on his left foot, not the right one. It should not be accountable by the Defendant.
6. The Defendant’s solicitors have correctly relied on an A&E report, the Plaintiff was diagnosed with abrasion of limbs; full range movement of right elbow, right knee and left wrist; and to quote from the said medical report: *“neck no pain, head no pain, chest no pain, pelvic stable”*. I find this contemporaneous medical report unequivocal and it speaks for itself.
7. Lastly, I also agree with the Defendant’s submissions that the Plaintiff has only put forward bare assertions over physiotherapy and acupuncture treatments in mainland China, and more ridiculously, his allegation of head injuries as a result of the Accident.

Conclusion

1. In the premises, I refuse to grant leave for the Plaintiff to adduce both orthopaedic and neurological expert evidence at trial. I therefore dismiss the Plaintiff’s summons.
2. I see nothing in this case shall depart from the usual costs order. I make a costs order *nisi*, that costs of the Plaintiff’s summons be to the Defendant. I will embark on summary assessment on costs of this summons at the Checklist List Review on 15th June 2011.

(J Chow)

District Court Master

Representation:

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

Mr. Leo Cheng of Messrs. Leo Cheng & Co. for the Defendant

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