#### DCPI1779/2005

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 1779 OF 2005

BETWEEN

NGUYEN XUAN HOAN Plaintiff

and

HUI SAU HUNG 1st Defendant

YUNG WAI KUEN 2nd Defendant

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

Date of Hearing: 5 June 2008

Date of Decision: 5 June 2008

## D E C I S I O N

1. The Defence counsel submits that the only issue in this case is whether the Plaintiff knew that he was going through red lights at the material time. He relies on paragraphs 8 and 11 of the judgment handed down on 3.7.2007 to support his argument. He argues that it is implicit in these two paragraphs that the Plaintiff knew that he was going through the red lights.
2. Under paragraph 8, I gave the reason for not believing what the Plaintiff said in his witness statement. The ruling is that I disbelieve him. I did not make any further finding. Therefore, there is no factual basis upon which a further finding of fact can be inferred by implication. Under this paragraph I said that I did not believe the evidence of the Plaintiff, whereas under paragraph 11 I said that I believe the Defendants’ evidence and I gave reasons for doing so.
3. It can hardly be inferred by implication from these two paragraphs that the Plaintiff knew that he was going through the red lights when he rode his bicycle into the road junction.
4. There is no evidence that when the Plaintiff commenced these proceedings he knew that he would lose his case. There is no evidence to show that he knew that his evidence would not be believed and that the evidence of the Defendants would be accepted when he started his action. Of course, if the Plaintiff’s version about the occurrence of the incident is believed by court, he will win his case.
5. So in conclusion there is no evidence that the Plaintiff when he commenced these proceedings knew that he was going through the red rights and he still proceeded with the case against the Defendants. Therefore, it cannot be said that he was unreasonable in instituting these proceedings. I therefore dismiss the application made by the Defendants.
6. I order that the costs of this application be costs in the cause of this action, to be taxed, if not agreed, on party-and-party basis, with certificate for counsel. The Plaintiff’s own costs be taxed in accordance with Legal Aid regulations.

# (Chow)

# District Court Judge

Mr Daniel Chan, instructed by Messrs Fong Chan & Lee, for the Plaintiff

Mr Patrick Lim, instructed by Messrs Tsang, Chan & Wong, for the 1st Defendant

Mr Patrick Lim, instructed by Messrs Kenneth C C Man & Co., for the 2nd Defendant