#### DCPI1813/2007

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 1813 OF 2007

(Transferred from HCPI No. 996 of 2006)

BETWEEN

LO KAM MUI, the Administratrix Plaintiff

of the estate of MO WAI FUNG,

the deceased

and

O PUI YIU Defendant

##### Before: H H Judge Lok in Chambers

Date of Hearing: 6 May 2008

Date of Decision: 6 May 2008

## D E C I S I O N

1. This application is about one issue: in a fatal personal injuries claim, while it is trite law that there should be no interest on the damages of post-trial loss of dependency covering the pre-trial period, whether there should be interest on such loss for the post-trial period from the date of the trial until payment?
2. In this action, liability to the extent of 50% had been admitted by the Defendant and the assessment of damages was heard by myself on 18 December 2007. After the hearing, I assessed the quantum of the Plaintiff’s claim in the sum of $444,358.50, and I also awarded interest on certain heads of damages, excluding the damages for post-trial loss of dependency, from the date of the accident to the date of assessment. According to the sealed Judgment and Certificate of Assessment, the Plaintiff is entitled to interest on all the damages from the date of the assessment until payment. As I have not made an order dealing with post-trial interest at the hearing, the Judgment and the Certificate have been amended to cover the interest on the pre-trial period only.
3. In the absence of an order by the court, the question of post‑trial interest is expressly governed by statute. Section 50(1) of the District Court Ordinance, Cap. 336 (“the DCO”), reads as follows:

“*(1) Judgment debts are to carry simple interest*

1. *at the rate of the court orders; or*
2. *in the absence of an order, at the rate the Chief Justice determines by order,*

o*n the total amount of the judgment debt, or on the part that for the time being remains unpaid, from the date of the judgment until payment.*”

1. In this application, the Defendant is, in substance, asking the court to disapply section 50(1) of the DCO and to make an order that there be no post-trial interest in respect of the damages of post-trial loss of dependency.
2. In support of such contention, Mr Shum, solicitor for the Defendant, relies on the House of Lords’ decision in *Cookson v Knowles* [1979] AC 556. After reading this case in some details, I am of the view that it only supports the propositions that:

(1) there should be no interest on future loss of dependency covering the pre-trial period; and

(2) in assessing the post-trial loss of dependency, no allowance should be made for the prospective continuing inflation after the date of the trial.

In my judgment, the Law Lords had not expressly dealt with the issue as to whether there should be interest on post-trial loss of dependency covering the post-trial period from the date of the trial until payment.

1. Mr Shum also relies on 2 decisions by Master Cannon in *Wan Dan Nei and Sy Yuet Ying, the administratrices of the estate of Tam Wai Shing David, deceased v Dragages et Travaux Publics and Penta-Ocean*, unreported, HCPI No. 588 of 1999 (decision of Master Cannon on 20 September 2000) and *Sin Kin, the Administratrix of the estate of Wong Kam Wor, deceased v Dragages Et Travaux Publics and Penta-Ocean Construction Company Limited trading as Dragages-Penta Joint Venture (a firm)*, unreported HCPI No. 599 of 1999 (decision of Master Cannonon 20 September 2000), and the decision of Master Levy in *Li Lai Fun and Choi Chi Ming*, *Administrators of the estate of Chai (or Choi) Kai Chuen, deceased v Leung Yiu Cheung & Others*,unreported, HCPI No. 697 of 2002 (decision of Master Levy on 20 November 2004)
2. Again, I have studied these cases carefully. Although the learned masters disallowed the award of interest for post-trial loss of dependency, it is not clear from these decisions whether the learned masters disallowed the interest covering the pre-trial period only or whether it extended to the post-judgment period. In any event, it seems that post-judgment interest was not an issue argued in these cases and so the learned masters did not give any reason for their decisions in that regard.
3. On the other hand, in *Kong Yuk King, the intended administratrix of the estate of Lau Pik Yan, the deceased v Wong Yiu Wing*, unreported, HCPI No. 713 of 1998 (decision of Suffiad J on 23 October 1999), Suffiad J, while disallowing the award of interest on post-trial loss of dependency for the pre-trial period, had expressly allowed interest at judgment rate on all the damages, including post-trial loss of dependency, from the date of judgment until payment.
4. I can see the reason why the court should not award interest on post-trial loss of dependency covering the pre-trial period. It is clear that such loss is future loss not yet suffered by the dependents of the deceased at the date of the trial, and so there is no reason for them to obtain interest on such award for the period before judgment. However, once the quantum of future loss of dependency has been assessed by the court at the trial, such judgment debt becomes due and payable by the defendant. If the court disallows the post-judgment interest, the defendant can simply delay the payment of such loss without any sanction. Further, the post-trial loss of dependency assessed at the trial has already been discounted in the sense that the court has not taken into account the possible future increase in the deceased’s income and inflation in assessing such loss. Hence, the dependents of the deceased will not be overcompensated by allowing them to obtain interest for future loss of dependency for the post-trial period between trial and the payment of the judgment debt.
5. In fact, similar observation had been made by the Court of Appeal in dealing with the award of interest for loss of accumulation of wealth in the case of *Hsu Li Yun v Incorporated Owners of Yuen Fat Building* [2000] 2 HKC 365. Keith JA, while disallowing the award of interest for loss of accumulation of wealth in respect of any period prior to the trial, said the following about post-trial interest for such loss:

*“Different considerations apply to post-trial interest on such award as has been made at the trial. If interest is not awarded, there will be no effective sanction on a defendant who deliberately delays satisfying the judgment debt insofar as it relates to an award for loss of accumulation of wealth. Moreover, as was said in Kwan Lai Kuen at page 105B:*

*‘...the wealth which [the deceased] would have accumulated has to be discounted substantially to reflect the accelerated receipt of the wealth which would have been accrued to his estate when he eventually died from natural causes.’*

Accordingly, I discount to reflect the accelerated receipt of the wealth should already have been built into the award. If that has been done, there is no reason why post-trial interest on the award should not be awarded.” (at P. 576 C – D)

Based on the aforesaid *dicta*, the Court of Appeal allowed the award of post-trial interest.

1. In my judgment, the said observation by Keith JA also applies in the present case. As I see it, there is no reason to distinguish the award of post-trial interest between loss of accumulation of wealth and post-trial loss of dependency, which are all future losses at the time of the trial, and hence I rule that there should be interest on all the damages, including post-trial loss of dependency, from the date of judgment until payment.
2. I now listen to the parties’ submissions on the appropriate order to be made in the present application and costs.

# (David Lok)

# District Judge

Mr Louis Chan, of Messrs Louis Chan & Co., for the Plaintiff

Mr Shum, of Messrs Simon C W Yung & Co., for the Defendant