#### DCPI 1846/2008

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 1846 OF 2008

BETWEEN

LAU CHI KEUNG Plaintiff

and

WONG WAI KEI 1st Defendant

YAU LEE CONSTRUCTION 2nd Defendant

COMPANY LIMITED

##### Coram: Deputy District Judge Edward Shum in Chambers

Date of Hearing: 28th April 2010

Date of handing down Decision: 22nd June 2010

DECISION

1. The present applications raise interesting questions as to the award of interest on damages and costs.
2. This is a personal injuries action the trial of which was concluded on 30th November 2009. On 4th March 2010, I handed down my written judgment in favour of the Plaintiff and assessing his damages (net of interest) at $618,561, which is made up of the following:-

(1) PSLA : $150,000

(2) Pre-trial loss of earnings : $456,941

(3) Special damages : $11,620

1. Against that sum, I ordered that the Plaintiff should give credit for the sum of $207,464 received by him as employees’ compensation. I also awarded interest at 2% per annum on general damages from the date of writ to the date of judgment and thereafter at judgment rate. As for the damages for pre-trial loss of earnings and special damages, interest would be awarded on these damages at half judgment rate from the date of accident to the date of judgment and thereafter at judgment rate. I further made a costs order *nisi* giving the costs of the action to the Plaintiff to be taxed on the District Court scale if not agreed.
   1. By their Summons dated 11th March 2010 (“the Defendants’ Summons”), the Defendants now seek to:-

(1) amend the judgment sealed on 9th March 2010 (“the Judgment”) on the ground that it does not truly reflect the orders that I have made in my written judgment;

(2) vary the costs order *nisi* by requiring *inter alia* the Plaintiff to pay the Defendants’ costs incurred after the date of their sanctioned payment i.e. from 25th September 2009, on an indemnity basis together with enhanced interest on such costs at a rate not exceeding 10% above judgment rate; and

(3) retain part of the moneys now in Court as security for the Defendants’ costs incurred after the date of the sanctioned payment.

1. It is pertinent to note at this juncture that RDC O.22 r.23(4), on basis of which application (2) is made, provides that:-

“The Court may order the plaintiff to pay any costs incurred by the defendant *after the latest date on which the payment or offer could have been accepted without requiring the leave of the Court*.” (my emphasis)

Clearly, therefore, I have no power under RDC O.22 r.23(4) to order the Plaintiff to pay the Defendants’ costs incurred during the 28 days period within which sanctioned payment may be accepted without the leave of the Court.

*Cardinal principle in awarding interest on damages*

1. Before I proceed to deal with these applications, I need to remind myself of the cardinal principle in awarding interest on damages and that is: interest should be awarded to the plaintiff, not as compensation for the damage done, but for *being kept out of the money* which ought to have been paid to him [see: *London, Chatham & Dover Railway Co. v South Eastern Railway Co.* [1893] AC 429 per Lord Herschell LC at 437; see also: *Union Base Ltd. v Tsang Shek Tong* [1998] 2 HKC 349 per Godfrey JA at 352D and *Jefford v Gee* [1970] 2 QB 130 per Lord Denning MR at 146A].
   1. In this case, both parties accepted that out of the employees’ compensation assessed by the Commissioner of Labour pursuant to section 16A(2) of the Employees’ Compensation Ordinance, Cap. 282, in the amount of $207,464, a total sum of $181,500 had already been paid by the 2nd Defendant (as employer) to the Plaintiff from time to time as advance payments and reimbursement of medical expenses. Since there is nothing in the evidence to indicate that there might have been delay in making these payments, I agree with Mr. Chan, Counsel for the Defendants, that insofar as the sum of $181,500 is concerned, the Plaintiff was never kept out of his money. In this connection, Mr. Chan also submits that by purporting to calculate interest on past losses without first giving credit for the sum of $181,500 already paid by the 2nd Defendant, the Plaintiff is effectively over-compensating himself. I agree.
      1. Mr. Clough, Counsel for the Plaintiff, disagrees. He submits that calculation of interest on past losses should be done on a broad-brush approach. In his words, the normal methodology of calculation is as follows:

“i. The special damages including pre-trial loss of earnings are determined

1. Interest at half judgment rate is added

iii. Any payment on account is deducted from the sum of i) and ii)”

* + 1. Mr. Clough further submits that it is wholly inappropriate for the Defendants to ask the Court to depart from the normal methodology for it would be highly prejudicial to the Plaintiff. He argues that the Plaintiff faced with a sanctioned payment is entitled to clear advice as to the effect of the payment and risks involved in its acceptance or non-acceptance and the Plaintiff’s legal advisers cannot do this with any confidence if there may be a departure from the normal methodology. Mr. Clough also draws my attention to the local decision in *Wong Wai Man v Yi Wo Yuen Aged Sanatorium Centre Limited* (unreported) HCPI No.77 of 2007; 9th September 2008 where the normal methodology was applied in calculating interest on damages for past losses. However, it must not be forgotten that the question as to when credit for employees’ compensation would have to be given was never raised or argued in that case.

*Exception to the half-rate approach*

1. Mr. Chan is unable to provide me with any local authorities on this point. In the course of the hearing, I indicated to Counsel for the parties that in my view the relevant principle must be that of justice and fairness. And thus, the UK Law Commission on Damages for Personal Injury (Law Com No.262) has this to say in its report published in November 1999 after conducting a thorough study on interest on damages for pecuniary loss:-

“7.5 …the use of a half-rate calculation is only an approximation, and is accurate only if the loss has accrued at a constant rate between the injury and the trial. Where losses have occurred over a period which has ended before, or are discrete items of expenditure, the half-rate approach becomes inaccurate, and his inaccuracy is exacerbated where the loss occurs either very shortly after the injury, or not long before the trial…

* 1. In his judgment in *Jefford v Gee*, Lord Denning MR recognised that in principle interest on discrete items of loss ought to be calculated separately. He thought, however, that such items were “not usually so large as to warrant separate calculation” and so suggested a half-rate approach as a ‘broad-brush’ measure to be disapplied only in exceptional cases…
  2. …the calculation of interest on individual items of loss is an easier task today than it was in 1970. Bill Braithwaite QC said that computerised assistance had made accurate interest calculations ‘astoundingly easy’, and both the Association of Consulting Actuaries and the Institute and Faculty of Actuaries described such calculations as ‘straightforward’. We are not convinced that it can still be argued, as it was in *Jefford v Gee*, that the accurate calculation of interest is unnecessarily time-consuming or complex in all but the most exceptional circumstances…
  3. Two changes in practice since *Jefford v Gee* are also significant. At the time of that decision, a claim for interest did not have to be specifically pleaded by a claimant, because it was not regarded as a cause of action in itself. It followed from this that a defendant did not have to include any amount in respect of interest in a payment into court of a sum in satisfaction of the claimant’s claim. But this position is different today on both counts. Firstly, interest must now be specifically claimed. The statement of case should state, (where possible), the date from which and the rate at which interest is claimed. Secondly, a cause of action in respect of a debt or damages is now to be construed, for the purposes of payment into court, as a cause of action also in respect of interest on the money claimed. Any payment into court should therefore include a sum in respect of interest…
  4. We accept, however, that for periodic or continuing losses, precise calculation may be unnecessary. Where, as in *Jefford v Gee*, the claimant suffers a constant and continuing loss throughout the period from injury to trial, the half-rate approach provides a good approximation…
  5. We regard the general principle set out in paragraph 7.12 above as the default position. In this respect, we envisage that *where either the claimant or the defendant is able to establish that an alternative method of calculating interest is more appropriate, this method should be applied*.” (my emphasis)

1. I fully agree with the Law Commission’s observations. In my view, it is no longer arguable, as it was in *Jefford v Gee*, that the accurate calculation of interest is unnecessarily time-consuming or complex in all but the most exceptional circumstances. Whilst precise calculation of interest is generally unnecessary for periodic or continuing past losses, it is always open for either of the parties to establish that a different method of calculating interest is more appropriate in the circumstances than the “default position”. As May LJ succinctly pointed out in *Prokop v DHSS* [1985] CLY 1037:-

“If there is any general view in any quarter that the interest on special damages is in any event to be calculated at half-rate, when the losses do not continue from accident to trial, then I think that this is wrong and should not thereafter be followed.”

1. In my view, before the Plaintiff’s legal advisers offered their advice on whether a “broad-brush” approach would provide a good approximation in lieu of precise calculations, they ought to realize that a total sum of $181,150 had already been paid by the 2nd Defendant to the Plaintiff. It would be unjust and unfair to the Defendants if I were to order them to pay interest on a loss which was no longer continuing. As Mr. Chan said, insofar as this sum of $181,500 is concerned, the Plaintiff was never kept out of his money.
2. I therefore rule that in calculating interest on special damages and pre-trial loss of earnings for the period between the date of accident i.e. 9th November 2006 and the date of payment of employees’ compensation i.e. 5th February 2008 (“Period 1”), a sum of $181,500 has to be deducted from the principal sum of $468,561 (i.e. pre-trial loss of earnings of $456,941 plus special damages of $11,620). I also rule that in calculating interest on special damages and pre-trial loss of earnings from 6th February 2008 i.e. the day after employees’ compensation was paid to the last day for acceptance of sanctioned payment i.e. 23rd October 2009 (“Period 2”), the whole sum of $207,464 has to be deducted from the principal sum of $468,561.

*Appropriate rate of interest*

* 1. This brings me to the second issue raised by the parties, namely, the rate of interest that should be applied. Mr. Chan specifically refers me to paragraph [90.1097] in Volume 5(1A) of the Halsbury’s Laws of Hong Kong and argues that in calculating interest on special damages and pre-trial loss of earnings, the normal rule is to apply *one half of the judgment rate prevailing at the time when judgment was delivered*.

1. Mr. Chan also draws my attention to footnote 89 of Chapter 16 in *Wilkinson, Cheung & Booth, A Guide to Civil Procedure in Hong Kong* wherein it was suggested on the strength of *Jefford v Gee* and Deputy High Court Judge Longley’s ruling in *Li Tin Yeung v Chiu Chow Association Secondary School* (unreported) HCPI No.201 of 1999; 27th March 2003 that:-

“…interest on special damages, including pre-trial loss of earnings, should normally be calculated at half the judgment rate from the date of loss; the current judgment rate would usually be applied, but where there was considerable fluctuation in the judgment rates between the date of loss and the date of judgment or where the current judgment rate does not accurately reflect the rates current during the period in which substantial part of the special damages had been incurred, it may be appropriate to apply the judgment rate as applicable from time to time.”

1. However, it is important to note that unlike the Plaintiff in this case, the loss suffered by the plaintiff in *Jefford v Gee* was a continuous one and the main bulk of it, namely, his loss of wages, had accrued at a constant rate between the injury and the trial [see: [1970] 2 QB 130 at 146F-G]. The present case is factually distinguishable from *Jefford v Gee*. In any case, even in *Jefford v Gee*, interest was awarded at half “the rate allowed by the court on the short term investment account, *taken as an average over the period for which interest is awarded*” [see: ibid. at 151D] and not the rate prevailing at the time when judgment was delivered.
2. Indeed, Deputy High Court Judge Longley also expressed a similar view in paragraph 13 of his ruling in *Li Tin Yeung* where he said:-

“It follows that it is in my view appropriate in normal cases for the rate of interest on special damages and pre-trial loss of earnings to reflect one-half of *the rates applicable from time to time during the time the damages accrued* rather than one-half of interest rate current at the time of judgment, except when the latter reflects the former.” (my emphasis)

1. In this case, the judgment rates applicable during the whole period of time when the Plaintiff was deprived of the use of his money varied from 11% at the date of Accident to 8% when judgment was delivered. The judgment rate prevailing at the date of judgment clearly does not reflect adequately the rates current during the period in which special damages and pre-trial loss of earnings have accrued. It follows in my view that it would not be just for interest in this case to be calculated on the basis of half judgment rate applicable at the time of the Judgment.
   1. As a fallback argument, Mr. Chan submits that assessment of damages in personal injuries cases is not an exact science. Award of interest is to be dealt with on broad lines without entering into minute details or undertaking detailed mathematical calculations. I do not agree. Computerized assistance has made accurate calculation of interest on individual items of loss is a pretty easy task. It is no longer arguable that the accurate calculation of interest is unnecessarily time-consuming or complex in all but the most exceptional circumstances.
2. Pursuant to my direction, solicitors for the parties have prepared and submitted on 4th May 2010 an agreed table of calculation showing interest on general damages and interest on pre-trial loss of earnings and special damages at one half of the judgment rates current during Period 1 and Period 2. The total interest on damages amounts to $41,825.80, which is made up of the following:-

(1) interest of PSLA : $3,493.15

(2) interest on pre-trial loss : $38,332.65

of earnings & special damages

1. Accordingly, the balance of claim inclusive of interest calculated up to the last day for acceptance of sanctioned payment i.e. 23rd October 2009 was $452,922.80. This is of course marginally better than the sanctioned payment of $450,000.
2. Next, I shall have to consider the important and difficult question as to the appropriate order that should be made as to costs.

*Discretion as to costs*

1. The general power of the Court in relation to costs is to be found in section 53(1) of the District Court Ordinance which provides that “[t]he costs of and incidental to all proceedings… are in the discretion of the Court, and the Court has full power to determine by whom and to what extent the costs are to be paid”. Order 62 rule 3(2) of the Rules of the District Court further provides that “[i]f the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings…, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as the whole or any part of the costs”.
2. The legal position prior to the CJR was neatly summarized by Her Honour Judge Marlene Ng in *Wong Ching Wan v AS Watson & Co. Ltd.*[2007] 4 HKLRD 362 at 370:-

“34. Where there has been payment-in, O.62 r.5(b) of the RDC provides that in exercising its discretion as to costs the court *shall*, to such extent, if any, as may be appropriate in the circumstances, take into account any payment into money into court and the amount of such payment. *Hong Kong Civil Procedure 2007* Vol. 1 para. 22/5/5 at p.406 states *inter alia* that: “This discretion, however, must be exercised judicially…”

* 1. In considering the principle of “costs follow event”, where there has been payment-in, the relevant “event” is the recovery of more than the payment into court or the failure to do so (see *Charm Marine Inc. v Elborne Mitchell* [1997] CLY 553, *per* Swinton Thomas LJ).”

1. And in *Charm Marine Incorporated v Elborne Mitchell* (Transcript: Smith Bernal; 22nd July 1997), the English Court of Appeal was dealing with the specific question, namely, whether the beating of a payment-in by a narrow margin, particularly when the marginal success has been achieved at disproportionate expense, should entitle the claimant to all his costs. Evans LJ (with whom Waite & Swinton Thomas LLJ agreed) had this to say at pp.7-8 of the transcript:-

“[Mrs. Justice Smith] considered and quoted from a number of leading authorities which underline the principle “that costs are in the discretion of the court but that the discretion should be exercised along well established lines unless there are special circumstances which justify a departure from the usual order, which special circumstances must be explained…

In my judgment, the judge’s summary of the authorities was accurate. However, it leaves open two questions. First, what are the “well-established lines” along which the court’s discretion should be exercised, in the absence of special circumstances, when the amount of the payment in and the amount for which judgment is recovered are the same or approximately the same? Secondly, what is meant by “special circumstances”, and do any such circumstances arise in the present case?

The underlying rationale, in my judgment, can only be that the defendant is entitled to recover his costs after the date of payment, subject to “special circumstances”, when he can say that the plaintiff has failed to recover more than was available to him when the payment in was made. This is consistent with the passage from the judgment of Somervell LJ in Findlay v Railway Executive [1950] 2 All ER 969, [1950] WN 570 which I quoted in Everglade Maritime Inc. v Schiffurtsgesellschaft [1993] QB 780, [1993] 3 All ER 748 at 805 of the former report. Costs normally follow the event, with the consequence that-

“Once, therefore, the money has been paid in, the lis between the parties simply is: Is that sum sufficient to cover the damage which has been suffered?” (p.971 of the former report)

But the defendant cannot say this, if the sum awarded is greater than the payment in, however small the excess may be. *Should the established rule be qualified, therefore, by reserving to the court some power to order the plaintiff to pay the defendant’s costs after the date of payment in, where the payment in came close to matching the amount of the award, even though it fell* *short of doing so? I think not*, essentially for four reasons:

* 1. If the plaintiff recovers more than was available to him, then he has succeeded on what became the lis or issue at the trial, as described by Somervell L.J. However small the margin, if he does recover more he cannot be said to have failed;

(2) The advantages of a clear-cut rule outweigh, in my judgment, the consequence of introducing a discretionary element which could lead to uncertainty and give scope for prolonged post-judgment debate.

(3) Mr. Stewart contends for a discretion which would operate only in the defendant’s favour. If the award is the same as, or any less than, the amount of the payment in, then he submits that the defendant should recover his costs, with no room for the exercise of any discretion in the plaintiff’s favour. In my view, this would produce, in the name of justice, a one-sided and unjust result. It could be said that the corollary of the defendants’ ability to recover his costs if the two amounts are equal, is that the plaintiff should be entitled to recover his costs if the award is greater.

(4) A clear-cut rule means that the defendant must not underestimate the plaintiff’s chances of success, by however small an amount, just as the plaintiff must not be over-optimistic about them. This is consistent, in my view, with the policy considerations described by Denning L.J. in Findlay v Railway Executive [1950] 2 All E.R. 969, [1950] WN 570 at 974 of the former report.

*A possible qualification to the strictly arithmetical rule is that there might be scope for the application of some de minimis principle, defined as “trivialities, matters of little moment, of a trifling and a negligible nature”* in Margaronis Navigation Agency Ltd. v Henry W. Peabody & Co. of London Ltd [1965] 2 Q.B. 430, [1964] 3 All ER 333 at 444 of the former report per Sellers L.J. I am inclined to the view that this qualification, if it exists, could only apply in absolute as opposed to relative terms. $10,000 is not negligible, even though it may be a negligible percentage of a multi-million dollar claim. For that reason, I would not hold that a “few thousand dollars” was negligible, even in the present case, and therefore the qualification, if exists, does not operate here.

I come therefore to the second issue. Were there “special circumstances” which enabled the judge to exercise her discretion to deprive the plaintiffs of their costs, and to order them to pay the defendants’ costs (in both cases, after the date of payment in), notwithstanding that they were the successful party?

*It becomes necessary at this stage, in my judgment, to distinguish between two different parts of the order that costs follow the event. The losing party has to pay the successful party his costs, in whatever amount is taxed or agreed, and in addition he has to bear his own. If both parts of the order are reversed, so that the successful party fails to recover his own costs and in addition has to pay those of the losing party, then a double penalty is imposed upon him. This is a penalty because it departs from the usual order and it will usually be unjust.*” (my emphasis)

1. I fully agree with what Evans LJ had said and in particular his observation on the point that it would usually be unjust to order a successful claimant to pay the costs of the losing party. But this is precisely what Mr. Chan has asked me to do in this case. I also agree with Evans LJ that the de minimis qualification can only apply in absolute as opposed to relative terms. This is because financial limits on the civil jurisdiction of our local District Court normally range from $50,000 to $1,000,000 and it would be highly artificial to say that a gain of an extra few thousands dollars may worth the fight in the case of a $50,000 claim but not in the case of a $1,000,000 claim. In any event, I am not inclined to hold that a few thousand dollars is negligible, even in the present case, and therefore the de minimis qualification, if it exists, does not operate here.
2. And if I understand Mr. Chan’s submissions correctly, his main argument is that the legal position under the Civil Justice Reform (CJR) is different. Money is no longer the sole governing criterion. In these days where both sides are expected to conduct themselves in reasonable way and to achieve settlement where possible, it would be right to penalize a successful claimant for failing to accept a sanctioned payment which falls short of the actual award by a narrow margin. In this connection, Mr. Chan argues that the sanctioned payment was beaten by so *de minimis* a margin that it cannot be regarded as better than the sanctioned payment. He further submits that if the Court were to look at the case broadly then it would come to the view that it is unreasonable for the Plaintiff to pursue his claim to trial after receipt of notice of sanctioned payment of $450,000.
3. In support of his argument, Mr. Chan refers me to the following passages from the judgment of Ward LJ in *Carver v BAA plc* [2008] 3 All ER 911 at 921 e-j:-

“[30] None the less, the court must give effect to the new rule and if that has introduced a change in practice, so be it. Are the concepts of bettering a Pt 36 payment and obtaining a judgment more advantageous than the Pt 36 offer synonymous? Posed in that way, perhaps they are. But in the context of the new Pt 36 where money claims and non-money claims are to be treated in the same way, ‘more advantageous’ is, as Rix LJ observed in the course of argument, ‘an open-textured’ phrase. It permits a more wide-ranging review of all the facts and circumstances of the case in deciding whether the judgment, which is the fruit of the litigation, was worth the fight.

[31] The answer must, in my judgment, take account of the modern approach to litigation. The Civil Procedure Rules, and Part 36 in particular, encourage both sides to make offers to settle. Compromise is seen as an object worthy of promotion for compromise is better than contest, both for the litigants concerned, for the court and for the administration of justice as a whole. Litigation is time consuming and it comes at a cost, emotional as well as financial. Those are, therefore, appropriate factors to take into account in deciding whether the battle was worth it. Money is not the sole governing criterion.

[32] It follows that Judge Knight was correct in looking at the case broadly. He was entitled to take into account that the extra L51 gained was more than off set by the irrecoverable cost incurred by the claimant in continuing to contest the case for as long as she did. He was entitled to take into account the added stress to her as she waited for the trial and the stress of the trial process itself. No reasonable litigant would have embarked upon this campaign for a gain of L51.”

1. The primary question for me is therefore whether the CJR and in particular the introduction of a new O.22 r.23 to the Rules of District Court has resulted in a change of approach. Neither Mr. Clough nor Mr. Chan is able to refer me to any local decision on the point. But in this connection, despite slight difference in wordings between the English Civil Procedure Rule (CPR) 36.14 and our RDC O.22 r.23, I would readily agree with the English Court of Appeal in *Carver v BAA plc* [see: ibid at 921] that the concepts of bettering a Part 36 payment and obtaining a judgment more advantageous than the Part 36 offer are synonymous. They both permit a more wide-ranging review of all the facts and circumstances of the case in deciding whether the judgment, which is the fruit of the litigation, was worth the fight.
2. But then again, the very fact that the sanctioned payment was beaten by a narrow margin is merely one of the matters which I need to consider and this is by no means the sole governing criterion. Ultimately, I have to look at the matter in the round and decide whether it would be unjust to make the Defendant pay the Plaintiff all his costs. Moreover, as Evans LJ rightly pointed out in *Charm Marine Incorporated v Elborne Mitchell* [ibid. at p.8]:-

“…Where the plaintiff recovers more than the amount of the payment in, the defendant cannot say that the plaintiff has failed to beat it, and claim an order in his favour on that ground. But the Court can say to both parties, where the defendant has made a payment in but without admitting that that sum was due, “You have each tried for a higher or a lower figure, and in practical terms neither of you has succeeded. You should each pay your own costs of the Court time that you have used”.

1. Although I have considerable sympathy with the Defendants, there must be proper grounds upon which I can exercise my discretion to order the Plaintiff to pay the Defendants’ costs. But then again, I am satisfied that the circumstances of this case give rise to special circumstances justifying departure from the usual rule that a successful claimant is entitled to recover all his costs from the losing party. In the end, as Swinton Thomas LJ said in *Charm Marine Incorporated v Elborne Mitchell* [ibid. at p.12]:-

“…orders for costs are blunt instruments, and a court, having considered the principles and the authorities can do no more than attempt to reach a result which does broad justice as between the parties. In this case, I have concluded that that result can best be achieved by ordering that the Defendants pay the Plaintiffs costs to the date of payment into court, and that each party should bear its own costs thereafter.”

*Conclusion*

1. Accordingly, the costs order *nisi* here is varied to the extent that I shall order the Defendants to pay the Plaintiff costs to the date of sanctioned payment, such costs to be taxed if not agreed, and that each party should bear its own costs thereafter. That being the case, the Defendant’s application for an order to set off their costs against that of the Plaintiff is dismissed. So is the Defendants’ application to retain part of the moneys now in Court as security for their costs incurred after the date of the sanctioned payment.
2. In the course of the hearing, I have asked Mr. Clough to explain why the Judgment sealed on 9th March 2010 was not drawn up in accordance with what I have ordered. And yet, no satisfactory explanation was forthcoming. The Defendants have no alternative but to take an application to amend the Judgment. Also, I agree with Mr. Chan that the Court has inherent jurisdiction to alter the record of its order, so as to make it conformable with the order actually pronounced [see: *Hong Kong Civil Procedure 2010* Vol. 1 para. 42/1/9]. I can therefore see no reason why the Plaintiff should not be penalized on costs. Since both parties are in agreement that there should be Certificate for Counsel, I have globally assessed the Defendants’ costs of and occasioned by the application for amendment of the Judgment at $15,000. Accordingly, there will be an order for costs against the Plaintiff in the sum of $15,000.
3. As the Plaintiff was wrong to insist on his calculation of interest on past losses without first giving credit for the sum of $181,500 already paid by the 2nd Defendant, it would not be fair for me to order the Defendants to bear all the Plaintiff’s costs incurred in contesting applications (2) and (3) [see: paragraph 3 above]. Considering all the circumstances and in particular the time spent on dealing with the issues of calculation of interest and amendment of the Judgment, I shall make an order that the Defendants do pay one half of the Plaintiff’s costs of and occasioned by the Defendants’ Summons with Certificate for Counsel, such costs to be taxed and if not agreed. And there be a set off of the Defendants’ costs in the sum of $15,000.
4. I further order that the body of the Judgment sealed on 9th March 2010 be amended to read as follows:-

“IT IS THIS DAY ADJUDGED that the Defendants do pay the Plaintiff the sum of HK$618,561.00 (with credit be given to the employees’ compensation in the sum of HK$207,464 already received by the Plaintiff) together with interest on the sum of (i) HK$150,000 at the rate of 2% per annum from the date of Writ (25th day of August 2008) to the date hereof; and (ii) HK$261,097 at half judgment rate from the date of accident (6th day of November 2006) to the date hereof and thereafter on the said sums of HK$150,000 and HK$261,097 at judgment rate until payment.

IT IS THIS DAY FURTHER ADJUDGED that on an order nisi basis, the Defendants do pay the Plaintiff his costs of this action, to be taxed on the District Court scale if not agreed.”

# (Edward Shum)

# Deputy District Judge

Legal Representation:

Mr. Neal Clough, instructed by Messrs. B. Mak & Co., for the Plaintiff.

Mr. Samuel Chan, instructed by Messrs. Clyde & Co., for the 1st and 2nd Defendants