# DCPI 2229/2017

[2021] HKDC 890

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 2229 OF 2017

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BETWEEN

MA CHING WANG, a minor by YUNG MEI YUE, Plaintiff

lawful and natural mother and next friend

and

CHOY YEE LIM 1st Defendant

POON KIN WO 2nd Defendant

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Before: His Honour Judge Andrew Li in Court

Date of Hearing: 12 July 2021

Date of Decision: 20 August 2021

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DECISION

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1. This is a case management matter raising out of a personal injuries (“PI”) action involving a minor plaintiff.

*BACKGROUND*

1. This is yet another classic case of how a simple PI action resulting from a simple traffic accident would take almost 7 years from the date of the accident and 4 years after the issue of the proceedings before the parties were able to bring the case to trial.

*Chronology of events*

1. In order to put the case in context, I would like to provide a chronology of the relevant events and history of the case hereinbelow.
2. The traffic accident happened on 29 November 2014.
3. On 10 October 2017, the plaintiff issued the general indorsement of claim in this case (“the writ”). On the same date, the plaintiff issued and filed the notice to insurer; the certificate by minor’s solicitor; and the mother’s consent to act as his next friend (“the Next Friend”).
4. On 26 October 2017, the 1st and 2nd defendants’ solicitors (“Ds’ solicitors”) filed the notice to act.
5. 4 April 2018 was the first scheduled checklist review (“CLR”) hearing date (“the 1st CLR”).
6. On 22 March 2018, by a joint letter, the parties requested the court to adjourn the 1st CLR. The reasons given by the parties at the time were that the writ had not been served on the defendants and the plaintiff’s solicitors were in the course of taking “detailed instructions” from the plaintiff in order to prepare the statement of claim (“SOC”) and statement of damages (“SOD”). They anticipated that the plaintiff would be able to file and serve the SOC and SOD in mid or late June 2018. The parties jointly asked the court to adjourn the 1st CLR to a date in August 2018. The court adjourned the 1st CLR to 9 October 2018 (“the 2nd CLR”) accordingly.
7. On 27 September 2018, Ds’ solicitors filed and served the acknowledgement of service.
8. On 28 September 2018, by a consent summons, the parties asked to adjourn the 2nd CLR scheduled on 9 October 2018 with no particular reasons given. Interlocutory judgment on liability was entered by consent against the defendants, leaving damages to be assessed on that occasion. The plaintiff also asked the SOD to be filed within 28 days from the date of that consent summons, ie on or before 6 November 2018.
9. On 4 October 2018, Master Michelle Soong made an order in accordance with the agreement reached by the parties, including interlocutory judgment on liability being entered against the defendants with damages to be assessed. A very reasonable and generous timetable was given to the parties in accordance with their requests to, *inter alia*, file and serve the respective lists of documents; serve and exchange the witness statements as to quantum; agree on the matters in respect of evidence on quantum; arrange mediation; and prepare a composite bundle of medical records to be agreed between the parties. The 2nd CLR was vacated and adjourned to 7 May 2019 (“the 3rd CLR”) as requested by the parties.
10. On 15 April 2019, the plaintiff filed and served the SOD. This was more than 5 months out of time as specified under the Order of Master Michelle Soong dated 4 October 2018, with no explanation provided by the plaintiff on the cause of delay or non-compliance.
11. On 7 May 2019, at the 3rd CLR, Master Michelle Soong gave an unless order for the defendants to file their mediation certificate and further extensions of time for the plaintiff to file and serve his witness statement for the assessment, amongst other directions. The parties also agreed to arrange a joint medical examination by their respective appointed psychiatrists within 10 weeks from that order[[1]](#footnote-1). The CLR was further adjourned to 9 January 2020 (“the 4th CLR”).
12. By 20 December 2019, the parties still failed to comply with the previous directions which had been agreed amongst themselves. They asked for further extension of time in order to comply with those rather simple and straightforward directions. Again, no reasons or explanations were given. They asked for a further adjournment of the 4th CLR.
13. On 8 January 2020, Master Catharine Cheng gave an order for parties to comply with the outstanding directions upon the parties’ request. Amongst other things, the parties were not able to lodge the joint psychiatric report from their appointed psychiatrists dated 27 December 2019 until 3 January 2020. They still could not agree the simple issue of whether the joint psychiatric report could be adduced without oral evidence and asked that issue to be determined at the next CLR hearing. The 4th CLR was therefore adjourned to 26 November 2020 (“the 5th CLR”) for leave to set down for trial.
14. On 8 May 2020, the plaintiff filed her revised statement of damages (“RSD”), which was 2.5 months out of time in accordance with § 4 of Master Catherine Cheng’s Order dated 8 January 2020. Again, no explanation was given or application for leave to file the document out of time was made.
15. On 20 November 2020, Master Matthew Leung made another order pursuant to yet another joint application filed by the parties. This included the requests for extension of time for the defendants to file and serve the Answer; extension of time for the parties to agree on the contents of the assessment bundle; extension of time for the parties to file and serve the respective certificate as to time estimate for the assessment of damages, etc. The 5th CLR fixed on 26 November 2020 was once again further adjourned to 31 March 2021 (“the 6th CLR”) for case management directions or for leave to set down.
16. On 26 November 2020, 1st and 2nd defendants filed their Answer to the RSD (“the Answer”). The Answer was supposed to be filed on or before 19 March 2020. However, due to the unexplained delay of the plaintiff in filing the RSD, the Answer in turn was filed late by the defendants. There was supposed to be filed within 28 days from the date of the plaintiff’s filing of the RSD. That was not done. It was somehow filed more than 6.5 months after the RSD. Again, no explanation was offered to the court and/or any application made to file and serve it out of time during that period[[2]](#footnote-2).
17. On 2 December 2020, a memorandum of notification of an application for legal aid on behalf of the plaintiff was filed by a senior legal aid counsel from the Legal Aid Department. It shows the plaintiff had applied for legal aid for the first time, which was more than 3 years since the writ was issued by her solicitors. This is despite of the reminder which had been given by Master Catherine Cheng on 8 January 2020 to ask the plaintiff’s solicitors to advise the client to apply for legal aid as early as possible. As the plaintiff is a minor and was a passenger of a vehicle driven by his mother who was not responsible for causing the accident, there is no reason why he is not entitled to legal aid at all. However, the late application for legal aid in this case has further delayed this already much unnecessary protracted case.
18. On 10 March 2021, the plaintiff filed her time estimate for the assessment of damages.
19. On 11 March 2021, a legal aid certificate was issued in favour of the plaintiff in the name of the Next Friend.
20. On 23 March 2021, the defendants filed their certificate of time estimate for the assessment of damages.
21. On 30 March 2021, Master Matthew Leung made another order. Again, this order was made pursuant to another joint application of the parties by way of consent summons to ask for, *inter alia*, leave for the plaintiff to set down the action for assessment of damages on the running list not to be warned before 13 June 2021 with an estimated length of 2 days. This joint application was made one week before the adjourned 6th CLR, again trying to vacate it with no good reasons or explanations at all.
22. On 28 May 2021, the plaintiff filed the application to set a case down for assessment of damages.
23. On 7 July 2021, the case was placed on the warned list and the parties were informed that the assessment of damages would take place before a judge commencing in the week of 12 July 2021.
24. On 8 July 2021, the parties were informed by the listing office that the case was warned for assessment commencing on 12 July 2021 before me.

*Last minute settlement of the case*

1. On 9 July 2021, the parties by a joint letter informed the court that, subject to the court’s approval, the parties had reached a full and final settlement of the matter by way of without prejudice negotiations on 8 July 2021. The parties therefore asked the court to vacate the assessment of damages hearing which was supposed to start on the following Monday, ie 12 July 2021 (with 14 July 2021 reserved). In the same letter, the parties informed the court that the plaintiff’s solicitors shall make an application for approval for settlement pursuant to Order 80, rule 11 of the Rules of the District Court (“RDC”) in due course and would seek the court’s directions on the matter.
2. I refused the application to vacate the hearing as the date reserved for the assessment was a “milestone date” under Order 25, rule 3 of the RDC. While the parties might have been able to reach a last minute settlement for the case prior to the assessment, I would like to find out why a simple running down case like the present one would take almost 7 years since the date of accident and 4 years since the issue of the writ to reach a final conclusion.
3. As this case involves an infant plaintiff’s settlement, after consulting the parties’ diaries, I adjourned the Order 80, rule 11 application to another judge in September 2021 to hear that application. Hence, my decision here is not concerned with the settlement agreement reached by the parties at all. I have not looked at the papers on that matter.
4. I am more interested to find out the cause(s) of the unexplained delays and the repeated joint applications to adjourn the CLR hearings in this case. By doing so, I would like to see how such delays can be prevented and how the case management system can be improved in similar PI cases in the District Court in future.

*Inordinate delays with no justification*

1. In my judgment, there is no doubt that there had been unexplained, unjustified and inordinate delays in the prosecution of this case on the part of the plaintiff. Mr Cheung, who represented the plaintiff at the hearing on the instructions of the Director of Legal Aid (“the DLA”), did not dispute that. However, I accept that the delays were not caused by him as he had only been instructed by the DLA in March 2021 to provide the written advice only. He duly provided his written advice to the DLA in May 2021 and finalised the advice in June 2021. He had not heard from the assigned solicitors further until he was suddenly instructed to appear at the assessment hearing on the Friday before the assessment hearing (ie on 9 July 2021). In the circumstances, I find the delays were mainly caused by the plaintiff’s solicitors in prosecuting the case, in particular prior to legal aid was granted to the plaintiff in March 2021.
2. I also find there were delays caused by the defendants in this case. Ms Wong, who appeared on behalf of the defendants at the hearing, accepted that there had been delays on their part, particularly in relation to complying the directions to obtain the joint psychiatric report. Ms Wong, however, submitted that as defendants in the case they played a more “passive” role in that often they were responding to the steps taken by the plaintiff in the proceedings. In this case, Ms Wong pointed out that the only occasion where the defendants had caused substantive delay was in the filing of the Answer when they were waiting for the reply to a specific discovery request made by them which had subsequently been dealt with by the plaintiff. Judging from the history of the proceedings, I accept Ms Wong’s submissions and find that the majority of the delays were not caused by the defendants in this case.

*Unacceptable delays in PI cases in the District Court*

1. For a simple traffic accident case, which involves a minor plaintiff who was travelling as a passenger in a vehicle of which the driver was not at fault, and with liability having been admitted at the early stage of the proceedings by the defendants, there is in my view simply no justifiable reasons why it had taken the plaintiff’s solicitors almost 4 years after the issue of the writ to bring the case to a conclusion.
2. Like many other PI cases in the District Court where the plaintiffs are not on legal aid (which these days comprised the great majority of them), I notice that there has been a common (but unacceptable) practice on the part of solicitors acting for the plaintiff that they would try to adjourn a CLR hearing before a PI master by way of a joint application with the defendants’ solicitors just a few days prior to the scheduled hearing itself. On each occasion, almost inevitably, they would use excuses like not able to file and serve simple documents like list of documents, witness statements, SOD or RSD, even though the directions to file and serve such documents are usually previously agreed by them by way of a consent summons, which would then be made into an order of the court by one of the PI masters. Almost without exception, on each occasion, no explanation was given by the parties as to why those simple directions could not be complied with or dates could not be met. Certainly no leave would be sought from the court for the late or noncompliance of the directions.
3. Worse still, the parties sometime would use the flimsy excuse of not able to agree to the contents of the index or indices to the hearing bundle or assessment bundle as a reason for the adjournment of the CLR.
4. Another common and lamely excuse being used by the parties often is that they are not able to agree to whether the joint medical report or reports can be adduced at trial without calling the makers to give oral evidence when the report itself clearly indicates otherwise. Yet another common excuse used is the failing to file and serve the certificate of time estimates of trial or assessment in accordance with the practice directions when the parties are already in a good position to make a judgement on the length of the trial or assessment.

1. Further, another unacceptable excuse often used by the parties is that the medical experts they have appointed failed to meet the timeline to produce the joint report. Those dates are usually agreed by the parties after consultations with the experts. They would then be incorporated into the order of the court. Sometimes the medical experts would simply ignore the repeated reminders by the solicitors or orders from the court. They simply failed to respond to the requests. However, no directions would be sought from the court as to whether an unless order should be imposed or another expert should be replaced with appropriate costs order made against the defaulting party in such situation.
2. Last but not the least, sometimes the delays are caused by a party’s solicitors in not responding to the requests and/or proposed directions made by their opponent. They simply let the dates or deadlines pass by without doing anything at all. The court usually would not be informed until a few months (sometime over a year) later when the parties just put in another joint application for another new set of dates to comply the directions they had previously agreed or been ordered to do months earlier (without mentioning the defaults). In other words, the defaulting party or solicitors who have repeatedly ignored the opponent’s requests or court’s order could simply get away with such behaviour without any consequences at all.

*Future non-compliance of directions made at CLR*

1. In my judgment, none of the above reasons or excuses are acceptable in a simple and straightforward PI case like the present one. The fact that all these matters either could have been agreed or already been agreed by the parties well before the first CLR hearing and, if genuine attempts are made to comply with them, there is simply no reason why they could not be done within the time frame agreed by the parties in their joint applications themselves or ordered by the PI masters.
2. I would like to emphasize that, in a PI case, the court would always allow sufficient time and space for the parties to negotiate for settlements; make effective sanctioned offers or sanctioned payments; and undergoing meaningful and genuine meditation. In other words, using alternative dispute resolutions to achieve settlements without going to trial. The court understands the importance of allowing the parties to do this in PI litigation where majority of the cases can be settled without going to trial. However, what the court is not prepared to do in a simple and straightforward PI claim in the District Court, which often involves a relatively modest amount of damages, is to let it run wild and go unchecked and let the parties dictate their own timetables by seeking repeated adjournments to the CLR hearings without any valid reasons or grounds at all. In my view, this will only lead to the costs becoming disproportionate to the claim itself and will unnecessary prolong the whole litigation process, something which the Civil Justice Reform (“the CJR”) tried to address more than 12 years ago.
3. In the present case, there had been no less than 6 attempts by the parties to adjourn the CLR hearings since the first one scheduled in April 2018 with no special reasons or plausible explanations given by the parties. There appeared to be no real efforts or attempts, particularly on the part of the plaintiff, to try to meet the dates or deadlines or to comply with the directions made in the previous consent summons reached by the parties themselves or orders made by the court. Each time they just took it for granted that the PI masters would grant the joint application automatically without any question. In doing so, they have not only allowed the costs in a simple and straightforward action like the present one to escalate unnecessary (and therefore making it disproportionate to the claim itself), but they have also unnecessary prolonged the length of the case and hence deprived the victim of the accident to obtain his just award for damages within a reasonable time.
4. In my view, such practice is not acceptable and, if allowed to continue to go unchecked, will only undermine the underlying objectives of the CJR and make simple PI actions in the District Court unreasonably expensive and unnecessary prolonged. This will not be in the interest of our society as a whole and certainly undermine the proper administration of justice.
5. In future, in all District Court PI cases, save and except perhaps for the first couple of requests for adjournments by way of joint applications or consent summons, the court will invariably ask the parties to provide detailed written explanations, within a specified time like 7 days, as to the reason(s) of why any of the agreed or ordered directions or dates cannot be met; or if the case is not set down on time, or if either of the parties request for the adjournment of the CLR. The above will be made into standard direction to be given by the PI masters in their orders at the early case management stage of each PI case in the District Court. Only if there are good reasons or explanations for the delays in complying with the previous order made by the court will the PI masters grant the extensions or adjournments requested for. If a party fails to comply with the direction in provide the written explanations, appropriate orders including sanctions on costs, will be made against the defaulting party.
6. If the PI masters are not satisfied there are justifiable grounds for any delays and/or good explanations for the non-compliance with the orders made by the court at the CLR; or if there are repeated attempts to adjourn the CLR by parties’ agreement without good reasons at all, such cases will be referred to the PI Judge for further case management by way of a case management conference (“CMC”), which of course is a “milestone date” that cannot be varied by the parties without “exceptional circumstances” shown: see Order 25, rule 3 of the RDC. At the CMC, the PI judge will try to “fast track” such cases by imposing a strict time table for the parties to follow and, where appropriate, to fix a further CMC and/or pre-trial review and/or trial dates in order to ensure that such cases will be resolved within a reasonable time.
7. Further, where the court finds that there were unexplained or unjustifiable delays in between the adjourned CLR hearings where the parties or one of the parties had taken no action or little action at all, the court will make appropriate sanctions on costs, including not allowing the costs for any period or periods where inordinate and unexplained delays are found to be caused by one of the parties. If the court finds that the delays are caused by the inaction and/or lack of efforts on the part of the parties’ legal representatives to comply with the orders made by the PI masters, then in appropriate cases, the court will request the legal representatives to show cause as to why the costs caused by the delays or non-compliance should not be borne by them personally and on an indemnity basis.
8. By doing the above, it is hoped that simple and straightforward PI cases in the District Court can be resolved within a reasonable time and the costs will be kept within a proportional level to the claim itself.

*Costs caused by the delays in this case*

1. In this case, as admitted by the parties at the hearing, there were delays caused by the parties on both sides. Although I find most of the delays were caused on the part of the plaintiff, I am prepared not to impose any costs order against the plaintiff on this occasion. I will therefore make an order that the costs for the hearing on 12 July 2021 will be in the cause, with certificate for counsel. The plaintiff’s own costs will be taxed in accordance with the Legal Aid Regulations.

( Andrew SY Li )

District Judge

Mr Lincoln Cheung instructed by B. Mak & Co for the plaintiff, assigned by the Director of Legal Aid

Miss Jane Wong of Waller Ma Huang & Yeung for the 1st and the 2nd defendants

1. eventhough it was apparent from day one of this case that the infant plaintiff had suffered from psychiatric injuries as a result of the accident and had been consulting and being treated by a private psychiatrist and hence the need for psychiatric expert evidence must be obvious to both sides at an early stage of the proceedings. [↑](#footnote-ref-1)
2. Ms Wong for the defendants explained at the hearing before me that the delay of filing of the Answer was caused by the specific discovery made by them against the plaintiff on certain related issues and the plaintiff had subsequently complied with those requests. [↑](#footnote-ref-2)