## DCPI 2242/2013

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 2242 OF 2013

-------------------------

BETWEEN

IRVING MATTHEW WILLIAM

(suing by his father and next friend

IRVING WILLIAM SAMUEL) 1st Plaintiff

WONG YUI SHAN VANNESS（黃蕊珊） 2nd Plaintiff

and

MAN CHUN YEUNG（文鎮揚） 1st Defendant

MAN GREGORY CHING KWAN（文正堃） 2nd Defendant

-------------------------

Before: Deputy District Judge Lawrence Hui in Chambers (Open to Public)

Date of Hearing: 24 June 2016

Date of Decision: 11 July 2016

-------------------------

DECISION

-------------------------

*INTRODUCTION*

1. This is an application by the defendants to vary the costs order *nisi* in my judgment dated 23 March 2016. The defendants’ inter-parte summons and supporting affirmation were both dated 5 April 2016, but they were filed on 6 April 2016.
2. The plaintiffs were legally represented at trial. However, on 20 June 2016, the plaintiffs served a Notice of Intention of Party to Act in Person in place of Solicitors. The said Notice was dated 14 May 2016.
3. I have carefully considered the submissions, legal principles and unique factual background before I came to these reasons for variation of the costs order.

*BACKGROUND*

1. This was a personal injury case. For details, please refer to my judgment dated 23 March 2016 (“the Judgment”).
2. Originally, in the re-revised statement of damages dated 14 April 2015, the plaintiffs claimed against both defendants for HK$948,192.03 plus interest. However, just before the trial started, the damages claimed by the plaintiffs decreased to HK$511,063 plus interest.
3. On the other hand, the defendants denied liability, and alternatively alleged contributory negligence, in their defence dated 7 January 2014. Nevertheless, just before the trial started, counsel for the defendants fairly (and rightly in my view) informed the court that the defendants would admit full liability and would only dispute quantum.
4. After a full-blown trial, I entered judgment for the plaintiffs. On 23 March 2016, I handed down my judgment awarding HK$180,000 to the 1st plaintiff (whom I called him as Matthew), HK$30,000 to the 2nd plaintiff, and HK$7,761 as special damages to the 1st plaintiff’s father. These awards amounted to HK$217,761 plus interest.
5. In relation to interests, I ordered that:-
6. Interest on general damage shall run at the rate of 2% per annum from the date of writ (29 October 2013) until the date of judgment (23 March 2016); and
7. Interest on special damages shall run at half judgment rate from the date of the accident (16 April 2013) until the date of judgment (23 March 2016).
8. I also made an order nisi as to costs requiring the 1st and 2nd defendants to pay the plaintiffs’ costs of the action with certificate for counsel (“the Order Nisi”).
9. On 6April 2016, the 1st and 2nd defendants through their solicitor took out an inter-parte summons dated 5 April 2016 (“the Summons”), applying to this court for a variation of the Order Nisi (“the Present Application”) and praying for:-

“(1) Upon having considered the Notice of Sanctioned Payment for the sum of HK$320,000 made by the 1st and 2nd Defendants on the 8th day of December 2014 ("the Sanctioned Payment”) and served on the 1st and 2nd Plaintiffs on the 9th day of December 2014, the orders for interest in paragraph 106 and 107 and the order for costs in paragraph 108 of the Judgment dated 23rd day of March 2016 (“the Judgment”) be varied to the following extents and effects:-

1. That the 1st and 2nd Defendants do pay to the 1st and 2nd Plaintiffs interest on the general damages awarded at the rate of 2% per annum from the date of writ until 6January 2015, being the latest date on which the Sanctioned Payment could have been accepted without requiring the leave of the Court (“the said Date”), only;
2. That the 1st and 2nd Defendants do pay to the 1st and 2nd Plaintiffs interest on the special damages awarded at half of the judgment *(sic. rate)* from the date of the Accident until the said Date only;
3. That no interest on general damages or special damages shall be payable by the Defendants to the Plaintiffs under Section 49 of the District Court Ordinance after the said Date, namely, from 7 January 2015;
4. That the 1st and 2nd Defendants do pay the 1st and 2nd Plaintiffs costs of this action, with certificate for counsel, up to the said Date, on a party-to-party basis, to be taxed if not agreed;
5. That the 1st and 2nd Plaintiffs do pay the 1st and 2nd Defendants all costs incurred by the 1st and 2nd Defendants in this action, with certificate for counsel, after the said Date, namely, from 7 January 2015, on an indemnity basis, to be taxed if not agreed;
6. That the 1st and 2nd Plaintiffs do pay the 1st and 2nd Defendants interest on the costs referred to in Paragraph 1(v) hereinabove at the rate of 10% above judgment rate; and
7. That the costs to be agreed or assessed to be (a) payable by the 1st and 2nd Defendants to the 1st and 2nd Plaintiffs under 1(iv) of the Summons; and (b) payable by the 1st and 2nd Plaintiffs to the 1st and 2nd Defendants under Paragraph 1(v) of the summons; be set off against each other;
8. Out of the Sanctioned Payment in the sum of HK$320,000 already paid into Court and any interest accrued thereon (“The Sanctioned Payment Plus Accrued Interest”), a sum of HK$217,761 (being the total amount of damages awarded to the 1st and 2nd Plaintiffs) together with all interest payable by the 1st and 2nd Defendants to the 1st and 2nd Plaintiffs under Paragraphs 1(i) and (ii) hereinabove shall be kept in Court (“the Money to be Kept in Court”) and to be dealt with in accordance with Paragraph 4 hereinabove after agreement or assessment of the costs and interest on costs payable under Paragraph 1(iv), 1(v) and 1(vi) hereinabove;
9. The balance of the Sanctioned Payment Plus Accrued Interest, after deducting the Money to be Kept in Court, shall be paid out to the 1st and 2nd Defendants through their solicitors;
10. In the event that the amount of costs and the amount of interest on costs agreed or assessed to be payable by the 1st and 2nd Plaintiffs to the 1st and 2nd Defendants under Paragraphs 1(v) and (vi) hereinabove is in excess of the amount of costs agreed or assessed to be payable by the 1st and 2nd Defendants to the 1st and 2nd Plaintiffs under Paragraph 1(iv) hereinabove, the excess amount of costs and/or interest on costs payable by the 1st and 2nd Plaintiffs to the 1st and 2nd Defendants shall be paid to the 1st and 2nd Defendants out of the Money to be Kept in Court; and
11. Costs of this application be to the 1st and 2nd Defendants to be taxed if not agreed on an indemnity basis with Certificate for Counsel (Paragraph 5 of the Summons).”
12. In the Present Application, the plaintiffs did not appear in court. Defence counsel Mr Lee confirmed to me that the Summons, the supporting affirmation, the skeleton argument and case laws were served on the plaintiffs’ then solicitors on record. I trust that the plaintiffs are fully aware of the Present Application.
13. Before the hearing of the Present Application started, the plaintiffs’ names were called twice both inside the court and outside the court at 9:45 am and 10:05 am. After confirming that they were not present in court, and upon the application of Mr Lee to hear the Summons in the absence of the plaintiffs, I proceeded with the hearing without the plaintiffs.

*REASONS FOR THE DEFENDANTS’ APPLICATION*

1. The defendants, through their handling solicitor Fu Mau Ping’s affirmation (“the Affirmation”), provided the following to support the Present Application:-
2. In this action, the 1st and 2nd plaintiffs have all along been represented by solicitors, namely, Messrs WT Law Offices (“WTLO”).
3. On 8 December 2014, the 1st and the 2nd defendants made a sanctioned payment by paying HK$320,000 into court in settlement of the whole of the 1st and 2nd plaintiffs’ claim (“the Sanctioned Payment”). A copy of the Notice of Sanctioned Payment was served on WTLO on 9 December 2014.
4. WTLO, on behalf of the 1st and 2nd plaintiffs, by a letter dated 17 December 2014, rejected the Sanctioned Payment, and demanded the 1st and 2nd defendants to pay a sum of HK$580,000 as damages to have the claims settled.
5. The latest date on which the Sanctioned Payment could have been accepted by the 1st and 2nd plaintiffs without requiring leave of the court was 6 January 2015. However, the Sanctioned Payment was never accepted by the 1st and 2nd plaintiffs.
6. After the trial of the action, the 1st and 2nd plaintiffs were awarded damages (totaling HK$217,761 plus interest). The award was below the Sanctioned Payment of HK$320,000. The plaintiffs have failed to do better than the Sanctioned Payment.
7. In the present case, the defendants offered the Sanctioned Payment within two months after the commencement of the action. The offered sum for settlement exceeded the judgment sum of HK$217,761 allowed by this court by HK$102,239 (ie HK$320,000 minus HK$217,761). The difference cannot be regarded as insignificant.
8. The plaintiffs had been legally represented until the completion of the trial. They should have been well advised of the possible legal consequences should they fail to obtain a judgment beating the Sanctioned Payment.

*THIS COURT’S DIRECTIONS*

1. Prior to the Present Application, I had directed that the 1st and 2nd defendants do file with the court and serve on the 1st and 2nd plaintiffs written submissions 7 days before the hearing, and that the 1st and 2nd plaintiffs do file and serve submissions in reply 3 days before the hearing. The plaintiffs so far have not submitted to the court any written submissions in relation to the Present Application, perhaps, because they are acting in person.

*LEGAL PRINCIPLES*

1. The 1st and 2nd defendants, in gist, relied upon Order 22, rule 23 of the Rules of the District Court (Cap 336H, Sub Leg) (“the RDC”), in making their application. The applicable parts of the rule are as follows:-

“23. Costs consequences where plaintiff fails to do better than sanctioned offer or sanctioned payment

1. This rule applies where a plaintiff-
2. fails to obtain a judgment better than the sanctioned payment; or
3. fails to obtain a judgment that is more advantageous than a defendant’s sanctioned offer.
4. The Court may by order disallow all or part of any interest otherwise payable under section 49 of the Ordinance on the whole or part of any sum of money awarded to the plaintiff for some or all of the period after the latest date on which the payment or offer could have been accepted without requiring the leave of the Court.
5. 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.
6. The Court may also order that the defendant is entitled to-
7. his costs on the indemnity basis after the latest date on which the plaintiff could have accepted the payment or offer without requiring the leave of the Court; and
8. interest on the costs referred to in paragraph (3) or subparagraph (a) at a rate not exceeding 10% above judgment rate.
9. Where this rule applies, the Court shall make the orders referred to in paragraphs (2), (3) and (4) unless it considers it unjust to do so.
10. In considering whether it would be unjust to make the orders referred to in paragraphs (2), (3) and (4), the Court shall take into account all the circumstances of the case including-
11. the terms of any sanctioned payment or sanctioned offer;
12. the stage in the proceedings at which any sanctioned payment or sanctioned offer was made;
13. the information available to the parties at the time when the sanctioned payment or sanctioned offer was made; and
14. the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the payment or offer to be made or evaluated.
15. The power of the Court under this rule is in addition to any other power it may have to award or disallow interest.”
16. Order 22, rule 23(5) of the RDC provides that the court shall make the orders as stipulated in rule 23(2) to rule 23(4). The court shall only exercise its discretion not to make those orders when it considers it unjust to do so. In the Present Application, the 1st and 2nd defendants are seeking orders, inter alia, pursuant to rule 23(2), rule 23(3) and rule 23(4).
17. Order 22, rule 23(6) of the RDC states that in considering whether it would be unjust to make the orders concerned, the court shall take into account all the circumstances of the case including the four factors specified therein.
18. The mechanism under Order 22 of the RDC aims to encourage the parties concerned to take positive action to settle the case as soon as possible. The parties should avoid incurring unnecessary and expensive legal costs, and prevent the inconvenience, anxiety and distress of having to undergo legal proceedings.

*INTEREST AND COSTS UP TO 6 JANUARY 2015 (PARAGRAPHS 1(i), (ii) AND (iv) OF THE SUMMONS)*

1. As the Sanctioned Payment had been made more than 28 days before the commencement of trial in this case, the plaintiffs could have accepted the Sanctioned Payment without leave of the court within 28 days after the payment was made (see Order 22, rule 15(1) of the RDC). The last day on which the Sanctioned Payment could have been accepted without requiring leave would be 6 January 2015 in this case.
2. The defendants do not dispute that they should be liable for interest on the award, and also the plaintiffs’ costs with certificate for counsel on a party-to-party basis, up to and inclusive of 6 January 2015.
3. Therefore, this court makes an order in terms of Paragraphs 1(i), (ii) and (iv) of the Summons.

*INTEREST AND COSTS FROM 6 JANUARY 2015 (PARAGRAPHS 1(iii), (v) AND (vi) OF THE SUMMONS)*

*Paragraph 1(iii) of the summons*

1. There are no grounds for not making the orders as stipulated in Order 22, rule 23(2) of the RDC. This court shall disallow interest on the award of damages from 7 January 2015 up to the date of judgment, under this rule. Thus, I shall make an order in terms of Paragraph 1(iii) of the Summons.

*Paragraph 1(v) of the summons*

1. For Paragraph 1(v) of the Summons, pursuant to Order 22, rule 23(3) and rule 23(4)(a) of the RDC, I would order that the 1st and 2nd plaintiffs do pay the 1st and 2nd defendants all costs incurred by the 1st and 2nd defendant in this action, with certificate for counsel, from 7 January 2015 to 23 March 2016 (the date of Judgment), on party-to-party basis, to be taxed if not agreed. I decline to order the costs on an indemnity basis, due to the following reasons.
2. In this regard, one shall be mindful of the comment made by Lam J (as he then was) at paragraph 10 of *Golden Eagle International (Group) Ltd v GR Investment Holdings Ltd* [2010] 3 HKLRD 273, that the various powers conferred by Order 22, rule 24 of the Rules of the High Court are not meant to be penal in nature. Rather, they aim to achieve a fairer result for the winning party. The Learned Recorder A Ho SC in *Tim Lee Construction Engineering Co Ltd v Kwong Wah trading as Super King Engineering Co* (HCCT 18/2010, unreported, 28 August 2012) further stated that Lam J’s comment is equally applicable to the powers under Order 22, rule 23 of the Rules of the High Court. I am of the view that the same would apply to Order 22, rule 23 of the RDC which is the replica of the Order under the Rules of the High Court.
3. In the present litigation, the defendants fought tooth and nail until day 1 of the trial. They disputed liability and contested contributory negligence all along. The defendant caused the plaintiffs to prove liability, to negate contributory negligence, and to study and to deal with the 3 witness statements of the defendants filed on 16 June 2015, and other various documents.
4. Undoubtedly the superfluous stance and attitude of the defence turned out to be meaningless, as the defence changed stance and admitted full liability at the eleventh hour (ie only on the first day of trial). Had the defence admitted liability outright at the very beginning of the proceedings, the plaintiffs and the defendants could have proceeded straight to assessment of damages without requiring a trial for both liability and quantum. Had the defence done so, not only the costs of both the plaintiffs and the defendants could have been saved, but the spirit of the Civil Justice Reform would have been adhered to. Hence although the plaintiffs ought, in hindsight, to have accepted the Sanctioned Payment as early as January 2015, the defendants’ conduct (ie failure to admit full liability at an early stage) resulting in escalation of costs was unwarranted.
5. To achieve justice and fairness, and looking from the perspective of the plaintiffs, I need to consider why should the plaintiffs be responsible for the full costs of the defendants on an indemnity basis, including, for instance, the preparation of 3 witness statements for the defence. The answer to this question must be “No”; the plaintiffs should not be “penalized” on an indemnity basis, especially when the defendants did not put forward any cogent basis to justify indemnity costs.
6. The same logic for considering one’s conduct applies even if the defendants continued to contest and deny their liability at trial. This is because I would have (or could have) found the facts against the defendants’ case and been dissatisfied about their credibility and reliability.
7. Thus in exercising my power and discretion under Order 22, rule 23 of the RDC, but in view of Order 22, rule 23(5), I refrain from making a costs order in favour of the defendants on an indemnity basis. I would only allow a costs order in favour of the defendants on a party-to-party basis.

*Paragraph 1(vi) of the summons*

1. I accept that the defendants may be entitled to claim interest on costs, pursuant to Order 22, rule 23(4)(b) of the RDC. But since the defendants are seeking a rate of 10% above judgment rate, I have to consider whether such a rate is reasonable, because this level of rate is not supported by any particular information by the defendants that should have been submitted.
2. The Court of Appeal in *Wong Tang Keung v Lee Wai Engineering Co Ltd (No 2)* [2014] 1 HKLRD 409, Chu JA stated:-

“17. Rule 23(4)(b) mentions a rate which is 10% above judgment rate. Nonetheless, it is merely the ceiling that the court can adopt when making an order for a higher rate. It is not the figure that the court must adopt.

18. The making of r. 23(2) to (4) is not intended to penalize those litigants who reject settlement offers. Rather, it aims to achieve a fairer result for the party who wishes to avoid the inconvenience, anxiety and distress of having to go through court proceedings by proposing a settlement offer which is more advantageous than the judgment. In relation to the interest rate on costs as set out in r.23(4)(b), it is meant to compensate the party who offers settlement for the costs incurred before judgment. It follows, in the strict sense of the word, that the interest should start to run from the date when the respective expense is incurred. However, this way of computation must be extremely trivial. And the 2nd defendant did not submit information in this regard in the present application, either. Under such circumstances, we are of the view that the principles stated in [19] and [20] of *Golden Eagle International (Group) Ltd v GR Investment Holdings Ltd* [2010] 3 HKLRD 273 can be adopted and award the 2nd defendant interest on costs at 4.5% per annum to run from 26 September 2012.”

1. Since the defendants did not submit any information with regard to the interest on the costs incurred by the defendants, the principles stated in paragraphs 19 of *Golden Eagle International (Group) Ltd v GR Investment Holdings Ltd* [2010] 3 HKLRD 273 and the reasoning of *Wong Tang Keung* should be followed. Therefore, this court awards the defendants interest on costs at 4.5% per annum to run from 7 January 2015 to 23 March 2016, in dealing with Paragraph 1(vi) of the Summons.

*SET OFF OF DEFENDANTS’ COSTS AGAINST PLAINTIFFS’ COSTS & DAMAGES (PARAGRAPHS 1(vii) AND 4 OF THE SUMMONS)*

1. The defendants further invited this court to order the costs payable by the plaintiffs to the defendants be set off against (i) the costs payable by the defendants to the plaintiffs and (ii) the damages receivable by the plaintiffs.
2. Apart from citing a passage in a textbook, namely “Derham on The Law of Set-Off, 4th Ed.” By Rory Derham; the case of *Lau Kwan Hing v The Incorporated Owners of Tak Wah Mansion and Another* (DCPI 1921/2006, unreported, 1 November 2010); and paragraph 62/18/3 of *Hong Kong Civil Procedure 2016*, Mr Lee did not provide any further authorities to support the argument that it is just and equitable for this court to order a set-off.
3. As an analogy, according to *Hong Kong Civil Procedure 2016*, paragraph 18/17/2, a set-off is a monetary cross-claim which is also a defence to the claim made in the action. Traditionally, set-off is divided into legal set-off and equitable set-off. A legal set-off requires both the claim and counterclaim be for liquidated sums which can be ascertained as at the date of the pleading, in which the plaintiff’s claim and the defendant’s claim may be unconnected. Equitable set-off is permissible for unliquidated claims, but requires the cross-claims to be between the same parties and to be sufficiently connected. The cross-claim should flow from the dealings and transactions which gave rise to the subject matter of the claim.
4. In addition, for set-off of costs, Order 62, rule 18(a) of the RDC empowers the taxing master to tax the costs a party is liable to pay, then set off that amount against the amount the party is entitled to be paid (see also *Hong Kong Civil Procedure* *2016*, paragraph 62/18/1). *Hong Kong Civil Procedure 2016*, paragraph 62/18/3 further provides for set-off of debt against costs.
5. Nevertheless, assuming that this court has the power to make the order for set-off, one must not lose sight of the fact that damages and costs are two entirely different concepts. An award of damages is an entitlement of a plaintiff due to the defendant’s fault, which aims to compensate the plaintiff’s loss and injury suffered. Costs are the fees charged by the legal representatives with regard to the services they have provided and expenses they have paid on the client’s behalf.

*Paragraph 1(vii) of the summons*

1. As to the application for the costs payable to the plaintiffs be set off against the costs payable to the defendants, this court has reservation in making such an order. While the plaintiffs had on 17 December 2014 counter-offered the defendants HK$580,000 as damages to have the claims settled, and later decreased its claim to HK$511,063 on day 1 of the trial, it is doubtful as to the reasonableness of the defendants’ spending of no less than HK$650,000, which was well larger than the plaintiffs’ offer and claim, to proceed with trial. Furthermore, these two sets of costs are yet to be quantified.
2. Mr Lee during his oral submissions complained that the plaintiffs had failed to state their Hong Kong residential addresses in their witness statements, and that the defendants only learned about the plaintiffs’ intention of relocating to Australia in cross-examination. Since the plaintiffs’ family may no longer reside in Hong Kong, Mr. Lee submitted that the defendants’ costs award may become fruitless.
3. However, I disagree. The defendants could have rectified this failure at a much earlier stage. The defendants’ solicitors could have written to the plaintiffs’ then solicitors, to inquire about, inter alia, the addresses of the plaintiffs, and in turn to apply for security for costs to safeguard the defendants’ position.
4. Moreover, an order for set-off in the Present Application would unpractically bind subsequent taxation proceedings for costs. This is particularly so, as the 1st and 2nd plaintiffs are now acting in person, where they might be separately represented at a later stage. Disputes as to the apportionment for payment of costs may arise among the 1st plaintiff, the 2nd plaintiff, the 1st defendant and the 2nd defendant in the future. As I am not assisted by the plaintiffs’ views in the Present Application, it seems unfair to order a blanket set-off order making the plaintiffs jointly and severally liable for the defendants’ costs at this pre-mature stage. In any event, a taxing master is empowered to order a set-off after the taxation of costs, pursuant to Order 62, rule 18(a) of the RDC.
5. In view of the uncertainty at present, I do not allow the costs payable by the defendants to the plaintiffs to be set off against the costs payable by the plaintiffs to the defendants.

*Paragraph 4 of the summons*

1. The damages awarded to a minor is an entitlement and shall be protected. In particular, in this case, Matthew’s (the 1st plaintiff) entitlements shall be more voraciously protected with him being a minor. That was why this court has accordingly directed his award be paid into court and invested pursuant to Order 80, rule 12 of the RDC. While one may argue that Matthew’s parents would use part of the damages they obtained to settle the costs incurred by the defendants, it would be highly unfair to deprive Matthew of his entitlement to the award of damages, without the benefit of legal arguments from the plaintiffs, and without an enquiry regarding the misconduct, if any, of Matthew’s father and the next friend (see *Hong Kong Civil Procedure 2016*, paragraph 80/2/9).
2. Therefore, I do not allow the costs payable by the 1st plaintiff to the defendants be set off against the damages received by Matthew.

*WHETHER THE PLAINTIFFS’ AWARDS ARE TO BE KEPT IN COURT? (PARAGRAPHS 2 AND 3 OF THE SUMMONS)*

1. The Sanctioned Payment Plus Accrued Interest is in excess of the amount of the award plus any interest payable to the plaintiffs. As such, the excess sanctioned payment would normally be paid out and refunded to the defendants, pursuant to Order 22A, rule 1 of the RDC.
2. As to the amount of the award of damages plus interest payable to the plaintiffs, Mr Lee submitted that the whole sum should be retained in court pending further enforcement applications by the defendants.
3. For Matthew’s HK$180,000 award of damages, I have in the Judgment ordered such an award be paid into court. However, the defendants now ask for that award be held in court, and not be paid out, ie requesting for a “hold-up order”, because the defendants wish to pursue against it for their costs.
4. Although the defendants concern that they may obtain an empty judgment in costs, I find that it may not be necessary to make a supplementary “hold-up order”. This is because in my previous Judgment, I have already ordered that Matthew’s award shall not be released until Matthew reaches majority, pursuant to Order 80, rule 12 of the RDC (see paragraph 103 of the Judgment), which will not occur until many years from now.
5. In these circumstances, if the defendants were really to put their hands on Matthew’s award for their costs, they are at least secured for the upcoming years, as by then the defendants and the plaintiffs would have completed taxation on costs, apportionment of liability on costs (if any) between the plaintiffs, and set-off of costs vis-à-vis the award between the plaintiffs and the defendants.
6. After careful consideration of defence counsel’s submissions, my decision in paragraph 103 of the Judgment is maintained, that the HK$180,000 awarded to Matthew be paid into court and invested pursuant to Order 80 rule 12 of the RDC. This sum of money shall be retained in court until Matthew reaches the age of majority.
7. Nevertheless, for the $30,000 awarded to the 2nd plaintiff and $7,761 awarded to Matthew’s father, I agree with Mr Lee that these two sums shall be retained in court. This is to avoid the defendants becoming empty-handed, and in achieving fairness to the defence regarding the defendants’ costs award. Henceforth, I order that the excess sanctioned payment be paid out and returned to the defendants.

*COSTS OF THE PRESENT APPLICATION (PARAGRAPH 5 OF THE SUMMONS)*

1. Since the defendants are the over-all winners of the Summons in the general sense, they should be entitled to costs, again on a party-to-party basis, with certificate for counsel, to be borne by the plaintiffs. I refrain from using an indemnity basis for the same reasons above.

*CONCLUSION AND ORDER*

1. This court orders that the Order Nisi be varied to the following extent and effect and that the prayers in the Summons be modified as follows[[1]](#footnote-1):-
2. The 1st and 2nd defendants do pay to the 1st and 2nd plaintiffs interest on the general damages awarded at the rate of 2% per annum from the date of writ (ie 29 October 2013) until 6January 2015[[2]](#footnote-2);
3. The 1st and 2nd defendants do pay to the 1st and 2nd plaintiffs interest on the special damages awarded at half of the judgment rate from the date of the accident (ie 16 April 2013) until 6January 2015[[3]](#footnote-3);
4. No interest on general damages or special damages shall be payable by the defendants to the plaintiffs under Section 49 of the District Court Ordinance from 7 January 2015[[4]](#footnote-4);
5. The 1st and 2nd defendants do pay to the 1st and 2nd plaintiffs costs of this action, with certificate for counsel, up to 6 January 2015, on a party-to-party basis, to be taxed if not agreed[[5]](#footnote-5);
6. The 1st and 2nd plaintiffs do pay to the 1st and 2nd defendants costs incurred by the 1st and 2nd defendants in this action, with certificate for counsel, from 7 January 2015 to 23 March 2016, on a party-to-party basis, to be taxed if not agreed[[6]](#footnote-6);
7. The 1st and 2nd plaintiffs do pay to the 1st and 2nd defendants interest on the costs referred to in (e) hereinabove at the rate of 4.5% per annum[[7]](#footnote-7);
8. Out of the Sanctioned Payment in the sum of $320,000 already paid into court and any interest accrued thereon (“the Sanctioned Payment Plus Accrued Interest”), a sum of HK$37,761 (being the total amount of damages awarded to the 2nd plaintiff and the 1st plaintiff’s father) together with all interest payable by the 1st and 2nd defendants to the 1st and 2nd plaintiffs under paragraphs (a) and (b) hereinabove be kept in court (“the Money to be kept in court”), until further enforcement applications by the defendants, if any[[8]](#footnote-8);
9. After deducting the Money to be Kept in court and HK$180,000 previously awarded to Matthew from the Sanctioned Payment Plus Accrued Interest, such balance shall be paid out to the 1st and 2nd defendants through their solicitors[[9]](#footnote-9); and
10. Costs of this Summons be to the defendants to be paid by the plaintiffs, to be taxed if not agreed, on a party-to-party basis, with certificate for counsel[[10]](#footnote-10).
11. It only remains for me to thank Mr. Lee Tung Ming counsel for his able and forceful submissions.

( Lawrence Hui )

Deputy District Judge

The 1st and 2nd plaintiffs were not represented and did not appear

Mr Lee Tung Ming, instructed by Rene Hout & Co, for the 1st and 2nd defendants

1. For the avoidance of doubt, paragraphs 1 (vii) and 4 of the Summons are not allowed [↑](#footnote-ref-1)
2. Corresponds to paragraph 1(i) of the Summons [↑](#footnote-ref-2)
3. Corresponds to paragraph 1(ii) of the Summons [↑](#footnote-ref-3)
4. Corresponds to paragraph 1(iii) of the Summons [↑](#footnote-ref-4)
5. Corresponds to paragraph 1(iv) of the Summons [↑](#footnote-ref-5)
6. Corresponds to paragraph 1(v) of the Summons, with modifications [↑](#footnote-ref-6)
7. Corresponds to paragraph 1(vi) of the Summons, with modifications [↑](#footnote-ref-7)
8. Corresponds to paragraph 2 of the Summons, with modifications [↑](#footnote-ref-8)
9. Corresponds to paragraph 3 of the Summons, with modifications [↑](#footnote-ref-9)
10. Corresponds to paragraph 5 of the Summons, with modifications [↑](#footnote-ref-10)