## DCPI 2723/2018

[2020] HKDC 357

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 2723 OF 2018

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##### BETWEEN

LIU WEIGUANG Plaintiff

and

LI KENG KO 1st Defendant

ALPHA BUILDING CONSTRUCTION 2nd Defendant

LIMITED

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Before: Her Honour Judge Phoebe Man in Chambers (by paper disposal)

Date of Defendants’ Submissions: 31 March 2020

Date of Plaintiff’s Submissions: 24 April 2020

Date of Defendants’ Submissions in reply: 6 May 2020

Date of Defendants’ further Submissions: 15 May 2020

Date of Decision: 29 May 2020

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DECISION

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1. *Application*
2. By a judgment dated 14 January 2020 (the “Judgment”), I ordered the 1st and 2nd defendants to pay damages in the sum of HK$1,331,866.60 to the plaintiff in a personal injuries action. By letter dated 13 March 2020, solicitors for the plaintiff applied to amend paragraphs 71 to 73 of the Judgment.
3. *Background*
4. The plaintiff says that I had omitted to address the plaintiff’s pre-trial loss of earnings & MPF for the period from 20 October 2016 to 14 January 2020. The background is as follows:
   1. I found in paragraph 67 of the Judgment that despite the plaintiff had been prescribed sick leave from 15 September 2015 to 5 May 2019 (43 months and 20 days), I was of the view that by 19 October 2016, the plaintiff would have been able to return to work, albeit in a different area of work.
   2. I also found in paragraph 75 of the Judgment that the plaintiff would need to find alternative employment as he could no longer go back to his pre-accident job as a construction worker and the plaintiff would be able to resume working as a security guard with his residual psychiatric symptoms.
   3. In paragraph 75 of the Judgment I adopted HK$13,094 as the figure of what the plaintiff should be able to earn from the date of trial onwards (emphasis added).
   4. I calculated the plaintiff’s pre-trial loss of earnings & MPF in paragraphs 71 to 73 of the Judgment. However, I had only calculated the loss of income during the sick leave period (15 September 2015 to 19 October 2016) as:

15 September to 31 December 2015 = 108 days

HK$19,345 x 108/365 x 12 months x 1.05 = HK$72,122.4

1 January to 19 October 2016 = 293 days

HK$21,279.5 x 293/365 x 12 months x 1.05= HK$215,231.9

Total = HK$287,354.3

* 1. I did not address the plaintiff’s pre-trial loss of earnings & MPF for the period from 20 October 2016 to 14 January 2020 (the date of the Judgment). The plaintiff says this was an oversight and invited me to amend the Judgment to reflect that “*the plaintiff should at least be awarded the differences of the pre-Accident and the current income for the said period*.”

1. In hindsight, (as admitted by counsel for the plaintiff in his written submissions and not disputed by the defendants’ counsel) the failure to address the pre-trial loss of earnings & MPF for the period from 20 October 2016 to 14 January 2020 (the date of the Judgment) was partly contributed by the fact that:
2. the plaintiff’s case was that he was entitled to sick leave for the entire period from 15 September 2015 to 5 May 2019. He did not put forward any alternative submissions on computation of earnings of alternative employment, in the event that the court is of the view that the plaintiff could have returned to work from a certain date onwards; and
3. the defendants’ case was that despite the accident, the plaintiff could return to his previous employment. They did not put forward any alternative submissions on computation of earnings, in the event that the court is of the view that the plaintiff needed to find alternative employment.

1. As such, the issue of awarding partial loss of earnings for the period from 20 October 2016 onwards was not raised by either party and did not come to the court’s attention during trial.
2. Naturally, the defendants object to any amendment to include a further sum being included as part of the damages. The defendants’ objections are as follows:
   1. The court has not made an express finding on the plaintiff’s claim for loss of earnings from 20 October 2016 to 14 January 2020.
   2. Although the court found that the plaintiff could no longer work at construction sites, the court was of the view (at paragraph 63 of the Judgment) that “the plaintiff is physically able to handle his previous job as a construction worker”. Thus the plaintiff’s job options are not confined to security guard or sedentary jobs.
   3. The future loss of earnings was calculated on the basis that the plaintiff would earn HK$13,094 as a security guard (based on the evidence that the plaintiff worked as a security guard from March 2019 to October 2019). It does not mean that his next best alternative employment is security guard. If the plaintiff admits that he can work as a security guard, he must be able to do a lot more in reality.
   4. The plaintiff carries the burden of proof of his loss of earnings. If the plaintiff malingers, such that the court is unable to ascertain his next best alternative employment, the plaintiff cannot complain that the court is unable to make any findings.
   5. There is a lack of information of the salary of the plaintiff’s next best alternative employment from 20 October 2016 to 14 January 2020, be it security guard or another job.
   6. The court will have to re-write a substantial part of the Judgment and should refrain from doing so.
3. *Amendment of Judgment – Applicable Legal Principles*
4. The court has power to amend or correct clerical errors or errors arising from accidental slip omission[[1]](#footnote-1) without an appeal (the “slip rule”). Apart from the slip rule, the court has inherent jurisdiction, before sealing of an order or judgment to vary its own orders so as to carry out its own meaning and to make its meaning plain[[2]](#footnote-2).
5. There are English authorities on the principles as to how the jurisdiction is to be exercised, for instance, *Re Harrison's Settlement[[3]](#footnote-3)*; *Stewart v Engel[[4]](#footnote-4)* ; and *Noga v Abacha[[5]](#footnote-5)*. In Hong Kong, the exercise of the jurisdiction was discussed in some detail by the Court of Appeal in *Sun Jianqiang v Trans-Island Limousine Service Ltd*[[6]](#footnote-6). Woo VP reviewed the English authorities and adopted the holding in *Noga*:

“*25.  "In Noga, the holding in the headnote summarises Rix LJ's view on the subject, as follows:*

*'The court's jurisdiction to reconsider its judgment before its order had been perfected could only be exercised in a case which raised considerations, in the interests of justice, which were out of ordinary, extraordinary or exceptional. An exceptional case did not have to be uniquely special, and 'strong reasons' was perhaps an acceptable alternative to 'exceptional circumstances'. It would necessarily be in an exceptional case that strong reasons were shown for reconsideration. In the instant case, there were no such reasons. It was a case where it was said that the judge had got it wrong, on points which had been argued. The appeal process would be subverted if the application were granted. There were, of course, cases where an error of fact or law might be too plain for argument, and it was better that the error was corrected without imposing on the parties the need for an appeal. It was wrong, however, for a judge to be treated to an exposition such as would be presented to a court of appeal. If in such circumstances a judge should be tempted to open up reconsideration of his judgment, an appeal would not be avoided: it would be made inevitable. Every case would become subject to an unending process of reconsideration, followed by appeal, both on the issue of reconsideration and on the merits.*

1. HHJ Marlene Ng (as she then was) in *Chan Wai Yin v Wong Sau Ping Ada & Ors[[7]](#footnote-7)* reviewed a number of authorities and set out the relevant principles:

*“22. The English Court of Appeal accepted the existence of the reconsideration jurisdiction in Re Barrell Enterprises, but Russell LJ delivering the judgment of the court said at p.636 that “[when] oral judgments have been given, either in a court of the first instance or on appeal, the successful party ought save in the most exceptional circumstances to be able to assume that the judgment is a valid and effective one. The cases to which we were referred in which judgments in civil courts have been varied after delivery (apart from the correction of slips) were all cases in which some most unusual element was present” ...*

1. *Stewart v Engel [2000] 3 All ER 518, a case after the introduction of the Civil Procedure Rules, held that a judge’s power to reconsider his conclusion and in effect reverse his own decision before completion of the formal recording of his decision existed before the introduction of the Civil Procedure Rules and there was nothing in the new code abrogating it.*
2. *Sir Christopher Slade who gave the leading judgment of the majority held that such jurisdiction (which he referred to succinctly as the Barrell jurisdiction), if very cautiously and sparingly exercised, served a useful purpose (pp.523-524), a view echoed by Roch LJ at p.540.*
3. *Sir Christopher Slade adopted the helpful examples of cases where the Barrell jurisdiction might justifiably be invoked before the order in question was drawn up given by Neuberger J in Re Blenheim Leisure (Restaurants) Ltd (No 3) (1999) Times, 9 November :*

*“…… a plain mistake on the part of the court; a failure of the parties to draw the court’s attention to a fact or point of law that was plainly relevant; or discovery of new facts subsequent to the judgment being given. Another good reason was if the applicant could argue that he was taken by surprise by a particular application from which the court ruled adversely to him and that he did not have a fair opportunity to consider.”*

*…*

*28*. *In Noga v Abacha, Rix LJ held that the Barrell jurisdiction could only be exercised in a case which raised considerations, in the interests of justice, which were out of the ordinary, extraordinary or exceptional. An exceptional case did not have to be uniquely special, and “strong reasons” was perhaps an acceptable alternative to “exceptional circumstances”. It would necessarily be in an exceptional case that strong reasons were shown for reconsideration. The Harrison case and Stewart v Engel were cited with approval and Rix LJ specifically disagreed with the concept that the discretion was a wide open one, unrestricted by the requirement of exceptional circumstances (pp.525-526).*

*…*

*30*. *Rix LJ considered the appeal process would be subverted if the application to reconsider the judgment was granted. He accepted there were, of course, cases where an error of fact or law might be too plain for argument, and it was better that the error was corrected without imposing on the parties the need for an appeal. “It is, in my judgment, wrong for a judge to be treated to an exposition such as would be presented to a court of appeal. If in such circumstances a judge should be tempted to open up reconsideration of his judgment, an appeal would not be avoided, it would be made inevitable. Every case would become subject to an unending process of reconsideration, followed by appeal, both on the issue of reconsideration and on the merits.” (p.528)*

*31. The above principles have been applied in two local authorities. Deputy High Court Judge Carlson in Bill Chao Keh Lung v Don Xia alias Xiaodong HCA9289/2000 (unreported, 3rd October 2002) …*

*…*

*The learned judge held as follows:*

*“16. Unless there is something which clearly amounts to an oversight or error of the type that I have just cured, the court should be slow in going back over the arguments and, in effect, ruling on something which is not expressly apparent in the judgment. Save for what are intended to be “exceptional circumstances” or for “strong reason”, whichever label one cares to attach to it, I should not go back over the argument. Ultimately a judgment, right or wrong, must stand on its merits and the appropriate forum for that discussion is the Court of Appeal.*

*17. I do not intend to embark on what would amount to an unseemly exercise in self-justification. The judgment is there for examination as a whole and in the event of an appeal the Court of Appeal will have to deal with any shortcomings that it is said to contain. I therefore decline to go further than I already have.”*

1. The law in the UK have developed since *Re Barrell Enterprises*. In *Re L and B (Reversal of Judgment)[[8]](#footnote-8)*, the English Supreme Court recognised that it has long been the law that a judge is entitled to reverse his decision at any time before his/her order is drawn up and perfected[[9]](#footnote-9). Lady Hale SCJ looked into the line of cases on how a judge ought to exercise the power to change his/her mind and held that the limitation imposed by Russell LJ in *Re Barrell Enterprises[[10]](#footnote-10)* is no longer the correct approach*.* Lady Hale drew support from the dissenting judgment of Clarke LJ in *Stewart v Engel[[11]](#footnote-11)*, who thought that the overall objective of enabling the court to deal with cases justly should be the starting point, and the court was not bound to look for exceptional circumstances[[12]](#footnote-12). Rix LJ in the case of *Compagnie Noga D’Importation et D’Exportation SA v Abacha[[13]](#footnote-13)* provided a caveat to the “exceptional circumstances” test: “*Provided that the formula of “exceptional circumstances” is not turned into a straightjacket of its own, and the interests of justice and its constituents as laid down in the overriding principle are held closely to mind, I do not think that the proper balance will be lost*.”[[14]](#footnote-14) Gibson LJ in *Robinson v Fernsby* [2003] EWCA Civ 1820 commented: “… *circumstances may arise in which it is necessary for the judge to have the courage to recall his order. If … the judge realises that he has made an error, how can he be true to his judicial oath other than by correcting that error so long as it lies within his power to do so? No doubt that will happen only in exceptional circumstances, but I have serious misgivings about elevating that correct description of the circumstances when that occurs as exceptional into some sort of criterion for what is required…*” .
2. At the end of the analysis, Lady Hale held that the court was “*not bound by Re Barrell Enterprises or by any of the previous cases to hold that there is any such limitation upon the acknowledged jurisdiction of the judge to revisit his own decision at any time up until his resulting order is perfected*…*his overriding objective must be to deal with the case justly. A relevant factor must be whether any party has acted upon the decision to his detriment…A carefully considered change of mind can be sufficient. Every case is going to depend upon its particular circumstances*[[15]](#footnote-15)”.
3. Thus it seems that the UK has moved away from the “*exceptional circumstances*” test and prefers a test of “*dealing with the case justly*”. However, the Hong Kong Court of Appeal decision of *Sun Jianqiang* is still good law and I am bound by it. There may be good arguments for the Hong Kong position to mirror the UK position set out in *Re L and B (Reversal of Judgment)*, especially when the cases relied upon in *Sun Jianqiang* are the ones discussed in *Re L and B (Reversal of Judgment)*. However, counsel for both sides have not referred to either of these cases and given that I consider the failure to include the relevant calculation to be a clear mistake and omission (as explained below), I do not consider it necessary in the present case to reconcile the position.
4. *Disposition*
5. By reason of the following, I will exercise my power to amend the Judgment:
   1. Pre-trial loss of earnings includes loss of ability of work due to the injury. This loss includes a total loss (where a plaintiff is granted sick leave and is absent from work) or a partial loss (where a plaintiff’s ability to return to his pre-accident employment has been affected by the injury and could only find alternative employment at a lower rate of earnings)[[16]](#footnote-16). In only calculating the loss of income during the sick leave period (15 September 2015 to 19 October 2016) there was a clear omission on my part to include in the calculation the pre-trial loss of earnings & MPF for the period from 20 October 2016 to 14 January 2020 (the date of the Judgment). There was no reason (contrary to the defendants’ suggestion) for not including the period from 20 October 2016 to 14 January 2020 in the calculation of pre-trial loss of earnings.
   2. The plaintiff had all along in his opening submissions and closing submissions claimed pre-trial loss of earnings for the whole period of the sick leave granted (15 September 2015 to 5 May 2019) plus up to the date of the trial. It is therefore not the case that the plaintiff is only claiming for the said period in hindsight.
   3. In the defendant’s opening and closing submissions, their position is that the plaintiff could have resumed his pre-accident job from 20 October 2016, and hence any pre-trial loss of income would only be calculated up to 19 October 2016. There was no submission on what would be the position in the event that the Court holds that the plaintiff would be able to work but in an alternative job.
   4. The plaintiff had put forward evidence at trial that he had planned to change jobs to a security guard in May 2016. If the defendants had wished to challenge this piece of evidence and say that the plaintiff was capable of working at a job that is “a better alternative”, they would need to put forward evidence. They had not done so at trial. The Court is entitled to rely on the available evidence to reach a conclusion on what alternative job the plaintiff was able to take up from 20 October 2016 onwards.
   5. In providing for the pre-trial loss of earnings & MPF for the period from 20 October 2016 to 14 January 2020, there is no “reconsideration” or “changing of one’s mind”. It is simply to provide for an essential part of the calculation which had unfortunately been omitted. I do not consider this to be in any way “subverting the appeal process”.
6. *Calculation of Pre-Trial Loss of Earnings & MPF for the period from 20 October 2016 to 14 January 2020*
7. Mr Cheung (counsel for the plaintiff) urges the court to make use of the statistics from the Census and Statistics Department (the “CSD”) to calculate the pre-trial loss of earnings.
8. Mr Cheung adopted the court’s finding in §72-73 of the Judgment that as at October 2016, the plaintiff, but for the accident, could have earned a daily wage of HK$999.3 and a monthly salary of HK$21,279.5 as a construction worker. Mr Cheung then produced, as a new authority, the Average Daily Wages of Workers Engaged in Public Sector Construction Projects as reported by main contractors for January 2020 from CSD, which shows that the average daily wage has decreased to HK$985.1. This he says shows a decrease of about 1.4% in the average daily wage between October 2016 and January 2020. Accordingly, in January 2020, but for the Accident, P could have earned a monthly salary of HK$21,279.5 x 98.6 %= HK$20,981.59.
9. Mr Cheung then adopted HK$21,130.55 (being the average of HK$21,279.5 and HK$20,981.59) as the monthly earnings as a construction worker from October 2016 to January 2020.
10. On the other hand, the CSD figures show that the average monthly salary of a security guard in September 2016 is HK$12,068. By 2019, the figure is HK$13,094. Mr Cheung then adopted HK$12,581 (being the average of HK$12,068 and HK$13,094) as the monthly earnings as a security guard from 20 October 2016 to 14 January 2020.
11. There are 1181 days between 20 October 2016 to 14 January 2020. The pre-trial loss of earnings & MPF between 20 October 2016 to 14 January 2020 is thus: (HK$21,130.55 - HK$12,581) x 1181/365 x

12 months x 1.05 = HK$348,554.61.

1. As Mr Cheung has referred to the Average Daily Wages of Workers Engaged in Public Sector Construction Projects as reported by main contractors for January 2020 from CSD and adopted a monthly salary of HK$20,981.59, he fairly conceded that to be consistent, the court ought to adopt the same figure in the calculation of the post-trial loss of earnings in §77 of the Judgment as well. Hence, §77 ought to be amended to reflect the amended figure as well. The post-trial loss of earnings should thus be: (HK$20,981.59 – HK$13,094) x 12 months x 8.4 x 1.05 = HK$834,822.53. This is a lower figure than previously awarded.
2. One would have thought the above calculations should be relatively non-contentious as the court has repeatedly based its calculations using the statistics from the CSD in personal injuries cases. Mr Ho, counsel for the defendant, however have the following objections:

(i) to adopt the calculations put forward by Mr Cheung would be to allow the defendant to have a second bite of the cherry. His argument runs thus: in the opening and closing submissions filed by Mr Cheung, the plaintiff had refused to rely on CSD data and preferred to rely on the plaintiff’s actual earnings as a security guard from 1 March 2019 to 1 October 2019 in the calculation of pre-trial loss of earnings. In the Judgment, I rejected using the actual earnings and adopted the CSD statistics, as there was no reason put forward by the plaintiff as to why his actual earnings (HK$8,742.9) were so much lower than the CSD statistics of HK$13,094. -- I do not think this is a valid objection. In urging the court to adopt the CSD statistics in the calculations now, Mr Cheung is simply basing his calculations in a way that is consistent with what the court adopted in the Judgment. There is no dispute that the pre-trial loss of earnings for the period from 20 October 2016 to 14 January 2020 (if the Court is of the view that the plaintiff could and should obtain alternative employment) was not canvassed during trial. There can thus no room to argue (as Mr Ho does) that this is “re-opening matters which had been ruled by the court” or “to add new matters to his case”.

(ii) the method of calculations put forward by Mr Cheung is inconsistent with §72-73 of the Judgment. However, Mr Ho had not put forward any calculations for the Court’s consideration.

1. In view of the disputes on the calculation basis, I invited parties to further submit written agreed calculations, failing which parties should attend a hearing before me for arguments.
2. By letter dated 15 May 2020, solicitors for the plaintiff agreed to the defendant’s calculations in their further submissions dated 8 May 2020. In coming to the agreed calculations, I note that the defendant is not taken to have accepted that the Judgment could and should be varied. On that basis, the agreed calculation is as follows:

The plaintiff’s notional earnings from 15 September 2015 to 14 January 2020

* + - 1. The plaintiff’s pre-accident monthly salary was HK$19,345 (§71 of the Judgment).
      2. The statistical tables from the CSD shows that the average daily wages of general labourers in September 2015 was HK$907.40 while the average daily wages of general labourers in January 2020 was HK$985.10. The percentage increase is (HK$985.10 – HK$907.40)/HK$907.40 x 100% = 8.5%.
      3. The plaintiff’s notional monthly earnings as at January 2020 is thus HK$19,345 x (1+8.56%) = HK$21,000.93
      4. The plaintiff’s notional earnings for the entire pre-judgment period (15 September 2015 to 14 January 2020, a total of 52 months) are: (HK$19,345 + HK$21,000.93)/2 x 1.05 x 52 months = HK$1,101,443.94.

The plaintiff’s expected pre-trial earnings for the period from 16 October 2016 to 14 January 2020

1. Based on Table 8 of the Quarterly Report of Wage and Payroll Statistics (December 2016), the average monthly salary of a male security guard was HK$12,275.00
2. Based on Table 8 of the Quarterly Report of Wage and Payroll Statistics (December 2019), the average monthly salary of a male security guard was HK$13,844.00.
3. The average salary of a male security guard between the period 16 October 2016 to 14 January 2020 is (HK$12,275 + HK$13,844) /2 = HK$13,095.50.
4. The expected pre-trial earnings as a security guard is thus: HK$13,095.50 x 1.05 x (38) = HK$533,415.28

Pre-Trial Loss of earnings

The plaintiff’s pre - trial loss of earnings is thus the plaintiff’s notional earnings from 15 September 2015 to 14 January 2020 minus what he could have earned as a security guard from 16 October 2016 to 14 January 2020, *i.e.* HK$1,101,443.94 – HK$533,415.28 = **HK$568,028.66**.

1. *Amendments to be made to the Judgment*
2. Based on the above analysis and calculations, I will amend the Judgment as follows:

*F1. Paragraph 72 of the Judgment*

1. Paragraph 72 of the Judgment should be amended to read as follows, with underlining to show the amendments made:

“Parties also differ as to whether the CPI index or the Statistical Tables of Average Daily Wages of Workers Engaged in Public Sector Construction Projects as Reported by Main Contractor (the “Tables”) should be adopted for measuring the increase in salary as a result of inflation. I agree with the plaintiff’s submission that the Tables are more appropriate in measuring the increase in salary than the CPI which reflects consumer price changes on households. The Tables show an increase of about 8.5% between September 2015 (HK$907.4) and January 2020 (HK$985.1).

*F2. Paragraph 73 of the Judgment*

1. Paragraph 73 of the Judgment should be amended to read as follows, with underlining to show the amendments made:

“Thus, the plaintiff’s pre-trial loss of earnings & MPF from 15 September 2015 to 14 January 2020 are calculated as follows:

The plaintiff’s notional earnings from 15 September 2015 to 14 January 2020

* + - * 1. The plaintiff’s pre-accident monthly salary was HK$19,345 (§71 of the Judgment).
        2. The average daily wages of general labourers in September 2015 was HK$907.40. The average daily wages of general labourers in January 2020 was HK$985.10. The percentage increase is (HK$985.10 – HK$907.40)/HK$907.40 x 100% = 8.5%.
        3. The plaintiff’s notional monthly earnings as at January 2020 is HK$19,345 x (1+8.56%) = HK$21,000.93
        4. The plaintiff’s notional earnings for the entire pre-judgment period (15 September 2015 to 14 January 2020, a total of 52 months) are: (HK$19,345 + HK$21,000.93)/2 x 1.05 x 52 months = HK$1,101,443.94.

The plaintiff’s expected pre-trial earnings for the period from 16 October 2016 to 14 January 2020

1. Based on Table 8 of the Quarterly Report of Wage and Payroll Statistics (December 2016), the average monthly salary of a male security guard was HK$12,275.00.
2. Based on Table 8 of the Quarterly Report of Wage and Payroll Statistics (December 2019), the average monthly salary of a male security guard was HK$13,844.00.
3. The average salary of a male security guard between the period 16 October 2016 to 14 January 2020 is (HK$12,275 + HK$13,844) /2 = HK$13,095.50.
4. The expected pre-trial earnings as a security guard is thus: HK$13,095.50 x 1.05 x (38) = HK$533,415.28

Pre-Trial Loss of earnings

The plaintiff’s pre- trial loss of earnings is thus the plaintiff’s notional earnings from 15 September 2015 to 14 January 2020 minus what he could have earned as a security guard from 16 October 2016 to 14 January 2020, i.e. HK$1,101,443.94 – HK$533,415.28 = **HK$568,028.66**.”

*F3. Calculation of Post-Trial Loss of Earnings & MPF*

1. As the above calculation for pre-judgment loss of earnings was based on the updated figures, it was agreed between the parties that to be consistent, the calculation of post-trial loss of income would need to adopt the updated figures in Table 8 of the Quarterly Report of Wage and Payroll Statistics (December 2019) and the average daily wages of general labourers in January 2020 as well. The updated calculation of the post-trial loss of income is thus: (HK$21,000.93 – HK$13,844) x 12 months x 8.4 x 1.05 = **HK$757,489.47**.

*F4. Paragraph 75 of the Judgment*

1. Paragraph 75 of the Judgment should thus be amended to read as follows, with underlining to show the amendments made:

“The plaintiff worked as a security guard from March 2019 to 1 October 2019 and his average monthly income was HK$8,742.93. I do not agree this figure should be adopted as the plaintiff’s monthly earnings as a security guard. Based on Table 8 of the Quarterly Report of Wage and Payroll Statistics (December 2019), the average monthly salary of a male security guard was HK$13,844.00. I already found the plaintiff to be physically fit for a job as a security guard. I also found that the plaintiff would be able to resume working as a security guard with his residual psychiatric symptoms. No explanation was given on why the plaintiff would fail to achieve the average income of a security guard. I would therefore adopt HK$13,844 as the figure of what the plaintiff should be able to earn from the date of trial onwards.”

*F5. Paragraph 77 of the Judgment*

1. Paragraph 77 of the Judgment should be amended to read as follows, with underlining to show the amendments made:

“Consequently, the plaintiff’s post-trial loss of income is:

(HK$21,000.93 – HK$13,844) x 12 months x 8.4 x 1.05 = HK$757,489.47.

*F6. Paragraph 81 of the Judgment*

1. The Summary under paragraph 81 should be consequentially amended to read as follows, with underlining to show the amendments made:

*“Summary*

|  |  |  |
| --- | --- | --- |
|  |  | HK$ |
|  | PSLA | 250,000.00 |
|  | Pre-trial loss of earnings | 568,028.66 |
|  | Future loss of earnings | 757,489.47 |
|  | Loss of earning capacity | 20,000.00 |
|  | Future Medical Expenses | 8,000.00 |
|  | Special damages | 23,205.00 |
|  | Total |  |
|  |  |  |
|  | Less: |  |
|  | Employees’ Compensation | (123,046.00) |
|  |  | 1,503,677.13” |

*F7. Paragraph 82 of the Judgment*

1. Paragraph 82 of the Judgment should be consequentially amended to read as follows, with underlining to show the amendments made:

“I therefore order the 1st and 2nd defendants to pay damages in the sum of HK$1,503,677.13 to the plaintiff.”

1. *Costs*
2. As noted above, the plaintiff’s position at trial was that the plaintiff would be entitled to the full period of sick leave granted, and put forward no alternative submissions on computation of earnings of alternative employment, in the event that the court is of the view that the plaintiff could have returned to work from a certain date onwards. On the other hand, the defendant’s position at trial was that the plaintiff could have resumed his pre-accident job from 20 October 2016, and hence any pre-trial loss of income would only be calculated up to 19 October 2016. There was no submission from either party on what would be the position in the event that the Court holds that the plaintiff would be able to work but in an alternative job. It was partly the lack of submissions by both parties for the possibility of alternative employment that led to the omission.
3. As such, I consider that both parties have contributed to the need for this application for amendment. Taking into account the background and the result, I make an order *nisi* that there be no order as to costs to this application. The plaintiff’s own costs be taxed in accordance with the Legal Aid Regulations.

( Phoebe Man )

District Judge

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

Leon Ho, instructed by Au & Associates, for the 1st and 2nd defendants

1. Order 20 Rule 11 of the *Rules of the District Court* [↑](#footnote-ref-1)
2. §20/11/1, *Hong Kong Civil Procedure 2020* [↑](#footnote-ref-2)
3. [1955] Ch 260 [↑](#footnote-ref-3)
4. [2000] 1 WLR 2268 [↑](#footnote-ref-4)
5. [2001] 3 All ER 513 [↑](#footnote-ref-5)
6. [2004] 1 HKC 533 [↑](#footnote-ref-6)
7. DCEC 97/2004 (*unrep*. 24 November 2006) [↑](#footnote-ref-7)
8. [2013] 2 FLR 859 [↑](#footnote-ref-8)
9. At §16 [↑](#footnote-ref-9)
10. [1973] 1 WLR 19 at 23-24 [↑](#footnote-ref-10)
11. [2000] 1 WLR 2268 [↑](#footnote-ref-11)
12. At §24 [↑](#footnote-ref-12)
13. [2001] 3 All ER 513 [↑](#footnote-ref-13)
14. At §43 [↑](#footnote-ref-14)
15. At §27 [↑](#footnote-ref-15)
16. §[1005] to [1050], *Butterworths Hong Kong Personal Injury Service* [↑](#footnote-ref-16)