# DCPI 3621/2019

[2021] HKDC 948

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO. 3621 OF 2019

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BETWEEN

HU WAN Plaintiff

and

SANWO INTERNATIONAL

COMPANY LIMITED Defendant

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##### Before: His Honour Judge Andrew Li in Chambers (Open to public)

Date of Hearing: 27 July 2021

Date of Decision: 11 August 2021

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DECISION

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*INTRODUCTION*

1. This is an application of the plaintiff by way of summons to vary the costs order *nisi* made by me in the assessment of damages on 26 February 2021 (“the Judgment”). The plaintiff now asks for enhanced interest and costs on an indemnity basis, based on a sanctioned offer made by her on 5 May 2020. The last day of which the defendant could have accepted the sanctioned offer without leave was on 2 June 2020.

*BACKGROUND*

1. In brief, the plaintiff sustained a work-related accident on 31 January 2016. The writ was issued by the plaintiff on 14 August 2018. On 14 September 2018, interlocutory judgment was entered against the defendant with damages to be assessed.
2. The assessment of damages took place on 9 and 10 November 2020 before me. On 26 February 2021, I handed down the Judgment in favour of the plaintiff in the sum of HK$991,160 (net of EC payment) plus interest.
3. As to be expected in any personal injury (“PI”) action, prior to the assessment of damages hearing, the parties had been engaged in active settlement negotiations with exchanges of offers and counter-offers. Unsurprisingly, sanctioned offers and sanctioned payments were made by the parties during the process of negotiations. Obviously, the Court was not aware of such negotiations taking place behind the scene as should be the case.
4. The following table gives a brief summary of the without prejudice/sanctioned offers/sanctioned payments made by the parties prior to the assessment of damages which was prepared by the plaintiff’s counsel:-

|  |  |
| --- | --- |
| 12 December 2016 | The defendant’s loss adjustors made a global settlement offer of HK$360,000 (inclusive of employees’ compensation’s (“EC”) payment) |
| 5 January 2017 | The defendant’s loss adjustors increased the global offer to HK$420,000 (inclusive of EC payment) |
| 31 October 2017 | The defendant’s loss adjustors increased the global offer to HK$500,000 (inclusive of EC payment) |
| 7 September 2018 | The defendant made the 1st sanctioned payment of HK$220,000 on top of EC payment |
| 9 October 2018 | The defendant made the 2nd sanctioned payment of HK$50,000, increasing the offer to HK$270,000 on top of EC payment |
| 7 November 2018 | The defendant made the 3rd sanctioned payment of HK$70,000, increasing the offer to HK$340,000 on top of EC payment |
| 12 December 2018 | The defendant made the 4th sanctioned payment of HK$70,000, increasing the offer to HK$410,000 on top of EC payment |
| 4 October 2019 | The defendant’s solicitors wrote to the plaintiff’s solicitors, reopening the sanctioned payment of HK$410,000 for the plaintiff’s acceptance but with no order as to costs after 9 January 2019 |
| 5 May 2020 | The plaintiff made the 1st sanctioned offer of HK$500,000 |
| 23 June 2020 | The plaintiff made the 2nd sanctioned offer of HK$415,000 |

1. Besides the above dates, the following dates and events are also material in the context of this case:-

|  |  |
| --- | --- |
| 30 April 2019 | The joint orthopaedic experts’ report have been made available to the parties |
| 9 July 2019 | The plaintiff filed her witness statement in accordance with the Order of Master Grace Chan dated 28 January 2019. The parties should have exchanged their respective witness statements in April 2019. However, due to the defendant’s failure to exchange its witness statement and despite the repeated reminders for it to do so, the plaintiff filed her witness statement first |
| 2 October 2019 | The defendant filed the 1st witness statement of Miss Dream Hui, purportedly trying provide 2 comparable workers’ wages. This witness statement was filed 6 months late with no explanations |
| 6 April 2020 | The defendant made request for extensive discovery on the plaintiff’s bank statements entries by letter |
| 17 April 2020 | Mediation took place but was unsuccessful |
| 11 May 2020 | The defendant sought particulars of 17 transactions of the discovered bank statements provided by the plaintiff |
| 15 June 2020 | Leave to set down was granted by Her Honour Judge Levy and the case was put on the running list not to be warned for assessment of damages before 31 October 2020 |
| 7 August 2020 | The specific discovery exercise was completed as confirmed by the defendant’s letter |

1. From the above tables, it can be seen that the defendant had made a total of 4 sanctioned payments between 7 September 2018 and 12 December 2018. Effectively, the defendant was offering a sum of HK$410,000 on top of the EC payment which had already been paid to the plaintiff in the sum of HK$282,500.24 in full and final settlement of the case.
2. It is also clear that the plaintiff had made 2 separate sanctioned offers in the sum of HK$500,000 and HK$415,000 respectively.
3. It is further not in dispute that this Court had awarded damages to the plaintiff more than the 1st sanctioned offer she had made to the defendant. In fact, it was almost double of that amount if the element of interest were to be taken into account.

*DISCUSSION*

*Applicable principles*

1. The applicable principles of law are not in dispute. They can be briefly summarised in the following paragraphs.
2. Order 22 rule 24 of the Rules of the District Court, Cap 336H (“RDC”) reads:

“(1) This rule applies where—

1. a defendant is held liable for more than the proposals contained in a plaintiff’s sanctioned offer; or
2. the judgment against a defendant is more advantageous to the plaintiff than the proposals contained in a plaintiff’s sanctioned offer.

(2) The Court may order interest on the whole or part of any sum of money (excluding interest) awarded to the plaintiff at a rate not exceeding 10% above judgment rate for some or all of the period after the latest date on which the defendant could have accepted the offer without requiring the leave of the Court.

(3) The Court may also order that the plaintiff is entitled to—

1. his costs on the indemnity basis after the latest date on which the defendant could have accepted the offer without requiring the leave of the Court; and
2. interest on those costs at a rate not exceeding 10% above judgment rate.[[1]](#footnote-1)

(4) Where this rule applies, the Court shall make the orders referred to in paragraphs (2) and (3) unless it considers it unjust to do so.

(5) In considering whether it would be unjust to make the orders referred to in paragraphs (2) and (3), the Court shall take into account all the circumstances of the case including—

1. the terms of any sanctioned offer;
2. the stage in the proceedings at which any sanctioned offer was made;
3. the information available to the parties at the time when the sanctioned offer was made; and
4. the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated.

(6) The power of the Court under this rule is in addition to any other power it may have to award interest.”

1. These rules are designed to provide important incentives to encourage the plaintiff to make, and the defendant to accept, settlement offers at appropriate levels as early as possible. Such an incentive would be deprived of effect unless the non-acceptance of an offer, which subsequently proves to have been a sufficient offer, ordinarily will advantage the plaintiff in the manner foreseen in the rules: See *Hong Kong Civil Procedure 2021 Vol 1*, §22/24/1.
2. Order 22 rule 24(5) of the RDC stipulates that matters that the Court would take into account in determining what it considers to be “unjust”. The Court will take into account all the circumstances of the case including rule 24(5)(a)-(d).
3. In *Arnold Robert Limited v Glorious Motors Limited* [2019] HKCFI 91 at §12, it was held that for a circumstance to be taken into account as relevant in considering whether it is unjust to make such orders: (a) it ought to relate to the reasonableness or otherwise of the defendant’s non-acceptance of the sanctioned offer; or (b) it suggests that, while the continuation of the proceedings is primarily due to the non-acceptance of the sanctioned offer, costs are incurred or increased thereafter due to any unreasonable conduct of the plaintiff.
4. Mr Ramanathan SC for the defendant (who did not appear at the original assessment of damages hearing) acknowledges that once Order 22 rule 24 is engaged, after taking into account of all the circumstances of the case, unless the Court considers it unjust to do so, it will order enhanced interest and/or indemnity costs. Hence, Order 22 rule 24 is aimed at genuine offers to settle and not some “tactical ploy” for the purpose of advancing a claim under its umbrella thereafter: see *Gill Ajmer Singh v Wah Hing Scaffolding Engineering Ltd and Another* [2014] 1 HKC 495, 13 November 2013; (Deputy Judge R Lai). It is further submitted by Mr Ramanathan SC that it is not automatic that a plaintiff will be entitled to indemnity costs just because he has made an Order 22 rule 24 sanctioned offer and receives a judgment which is better than the defendant’s offer. Costs are, as always, remain in the general discretion of the Court.
5. In undertaking this evaluation exercise, the Court is entitled to and should assess the conduct of the defendant over the course of the litigation and the reasonableness or otherwise of the defendant’s non-acceptance of the plaintiff’s sanctioned offer: see *Wah Lun International Development Limited v Lau Chiu Shing* [2021] HKCFI 1976, 8 July 2021, Deputy High Court Judge William Wong SC.
6. I have no problem in accepting the above submissions made by the defendant’s counsel.

*This Court’s findings*

1. *Whether Order 22 rule 24 engages?*
2. In my judgment, there can be no dispute that the plaintiff’s 1st and 2nd sanctioned offers are valid offers and that the defendant was found liable to pay more damages than those contained in both of the sanctioned offers. Hence, in my judgment, Order 22 rule 24 is engaged. This is not a matter which is disputed by the defendant.
3. Order 22 rule 24(4) provides that where rule 24 applies, the Court shall make the orders referred to in rule 24(2) (ie enhanced interest) and rule 24(3) (ie indemnity costs) unless “it considers it unjust to do so”.
4. Given the award made by this Court at the assessment of damages (at HK$991,160 plus interest) is more than double than the plaintiff’s 1st sanctioned offer at HK$500,000 (which is inclusive of interest) or the 2nd sanctioned offer at HK$415,000 (which is also inclusive of interest), I find it surprising that the defendant would choose to oppose the present application.
5. *Whether there is any injustice caused to the defendant?*
6. In the defendant’s solicitor’s affirmation filed in support of the opposition to the plaintiff’s present application, it has been stated that the 2nd sanctioned offer made by the plaintiff on 23 June 2020 at HK$415,000, which was merely HK$5,000 more than the last sanctioned payment made by the defendant on 12 December 2018 (and was re-opened by letter on 4 October 2019 but with no order as to costs after 9 January 2019), was a tactical move/ploy made by the plaintiff.
7. Mr Ramanathan SC in his written submission stated that all along the defendant had acted reasonably in making the 4th sanctioned payment and had not in any way dragged its feet in trying to achieve an amicable settlement of the claim without having to resort to trial.
8. He submitted that when the joint orthopaedic experts’ report was made available to the parties on 30 April 2019, the defendant had reconsidered its position and sought advice as to whether the sanctioned payment needed to be topped-up. Hence, according to the defendant, the lapsed sanctioned payment made in December 2018 was revived on 4 October 2019 “in a genuine attempt” to effect a settlement with the plaintiff. The sanctioned payment was made in the light of the joint orthopaedic experts’ evidence which concluded that the plaintiff could return to her pre-accident work which is something the plaintiff has all along disagreed with.
9. With respect, I cannot agree with the defendant’s submission that the plaintiff’s 2nd sanctioned offer at HK$415,000 was a “tactical move/ploy”. In my view, one must not lose sight of the fact that this case had been unnecessary prolonged by the late filing of the defendant’s witness statement without explanation. Further, it has not been helped by the extensive discovery exercise undertaken by the defendant on the plaintiff’s bank account records between April and August 2020. After the unsuccessful mediation which took place on 17 April 2020, this whole prolonged litigation process must have caused enormous stress and anxiety on the plaintiff. This is something which has been verified by the plaintiff in her affirmation filed in support of the present application. Hence, I am not surprised that she was willing to make the 1st sanctioned offer at HK$500,000 in May 2020. After receiving absolutely no response from the defendant at all, she then reduced that sanctioned offer to HK$415,000 in the hope that the defendant would settle that amount without her having to pay any costs of the defendant since the last sanctioned payment was made by it in December 2018. With respect, I do not accept the claim that this bears “all the hallmarks of a purely tactical move/step” as alleged by the defendant in its solicitor’s affirmation.
10. As explained by the plaintiff in her affirmation, after the joint orthopaedic experts’ report was made available on 30 April 2019, she obtained written advice from her legal aid assigned counsel in June 2019. She was advised that the defendant’s offer at HK$410,000 (net of EC payment) was unreasonable and too low. She was advised not to accept it.
11. I further accept her explanation that the unexplained delay of the defendant in exchanging the witness statement and the late specific discovery requests made against her on her bank statement details had all caused unnecessary stress and pressure on her. According to the Order of Master Grace Chan on 28 January 2019, the parties were supposed to exchange the respective witness statements on or before 25 April 2019. While the plaintiff’s witness statement was ready to be exchanged on that day, the defendant’s solicitors had, by letter dated 24 April 2019, asked for time extension to exchange its witness statement.
12. After a couple of reminders, the plaintiff did not wait for the defendant and filed her witness statement on 9 July 2019. In breach of Master Grace Chan’s Order, the defendant only served the witness statement of Ms Dream Hui on 2 October 2019, without any good explanation and with an unacceptable delay of 6 months.
13. As I have found in the Judgment, the information in relation to the purported comparable workers’ would be earnings provided by Ms Hui in her witness statement was extremely unhelpful if not misleading.
14. However, only 2 days after they had belatedly filed the witness statement of Ms Dream Hui, the defendant’s solicitors re-opened the offer of HK$410,000 on 4 October 2019, which is inclusive of interest but with no order as to costs after 9 January 2019, the last day which the plaintiff could have accepted the last sanctioned payment made in Court on 12 December 2018.
15. The plaintiff also stated in her affirmation of the extreme exhaustion and pressure brought by the litigation after the unsuccessful mediation on 17 April 2020. By this time, this case had been dragged on for more than 3 years. Due to those pressure and the fact that the plaintiff just wanted to settle the dispute in order to avoid the trial, she instructed her lawyers to make the 1st sanctioned offer of HK$500,000 on 5 May 2020. However, as mentioned by her, the defendant did not make any reply or response to that offer at all. In other words, that sanctioned offer was simply ignored by the defendant. Instead, the defendant went on an elaborate exercise of specific discovery against plaintiff on her bank statements and sought further particulars on 17 separate transactions in her bank statements. At the same time, the plaintiff was not able to resume her work as a salesperson and could only work as clerk as mentioned in the Judgment. Not surprisingly, the lengthy litigation process took its toll and the plaintiff became despair and impatient. Hence, according to her, as a last attempt to settle the case, she had, on 23 June 2020, made the 2nd sanctioned offer in the sum of HK$415,000. She did so of course with the aim to settle the matter without going to trial.
16. In the light of the above facts, I cannot see how by making a sanctioned offer at a substantially reduced amount at HK$415,000 could be said to be a “tactical ploy” or an improper move on the part of the plaintiff or her legal advisors. In my opinion, this is exactly what the Order 22 regime is designed for, ie to facilitate early and reasonable settlement. In my view, making a well conceded offer in order to prompt the other side to settle the case must be within the spirit of the rules to promote settlement. This cannot be described as a “tactical ploy” in the same vein as in the case found by the learned judge in *Gill Ajmer Singh, supra*, cited by the defendant. Of course, in each PI case, like any civil case, it involves tactical moves made by opposing parties. This is what litigation is about. It is an art of compromise. In my view, as long as they are genuine attempts for the parties to achieve settlement without going to trial, I do not see anything wrong with that. In fact, having had the benefit of seeing the plaintiff in person when she gave evidence in court and saw how she reacted towards the lengthy cross-examination undertaken by the defendant’s counsel who represented the defendant at the assessment, I could see that she was a lady of nervous composition and full of anxieties. The fact that she was willing to compromise her claim substantially (which was against her counsel’s advice) should not in my view be treated as something deplorable or labelled as a “tactical ploy”.
17. On the other hand, the defendant, who was armed with all the relevant data as to the more accurate sum which a shopkeeper with similar background/experience as the plaintiff working at the defendant’s shop in Tseung Kwan O was able to make, chose not to disclose those evidence. It also chose not to call Ms Dream Hui to give evidence at the assessment hearing on the purported reason that she had already left the defendant’s employment. No explanation was provided by the defendant as to why she could not be subpoenaed to the Court to give evidence. Nor was there any reason why a more senior officer from the human resources department of the defendant was not arranged to come to give evidence in place of the relatively junior staff who gave evidence on behalf of the defendant at the assessment hearing.
18. In my judgment, the defendant must have been well aware of the risk that, if the plaintiff’s evidence (on her inability to return to her pre-accident employment) were to be accepted by the Court (in contrary to the joint opinion of the orthopaedic experts), the eventual damages awarded by the Court would be much higher than the sanctioned payments made by it or the sanctioned offers made by the plaintiff. After undertaking the rather elaborated specific discovery exercise, the defendant’s legal advisors obviously were contended with taking that risk and proceeded to the assessment. Now that the Court has found the damages was more than double than what the plaintiff had offered to settle the case, it is in my opinion “no use crying over spilled milk”.
19. The defendant in its solicitor’s affirmation also mentioned the fact that it had admitted liability early in the proceedings; made genuine attempts to negotiate; and seeking the advice of counsel to offer or make sanctioned payment. They say these are all sensible and reasonable steps for a defendant to take.
20. I do not dispute with that. However, the fact remains that, after a 2-day assessment hearing, the defendant was found liable to pay more than double of the plaintiff’s sanctioned offer. And there was no appeal to the Judgment. I agree with Mr Wong for the plaintiff that a genuine but wrong assessment of the claim does not make it unjust for the Court to impose the orders set out under Order 22 rule 24.
21. In the context of this case, I find that had the defendant acted reasonably in accepting the plaintiff’s 1st sanctioned offer, this case would have been ended much earlier and a lot of unnecessary costs could have been avoided. The assessment of damages hearing did not need to take place. Given the defendant’s refusal to settle at the much more favourable terms offered to it by the plaintiff back in May 2020, the plaintiff was forced to undergo a stressful trial process which had added to the already heavy emotional and financial burden placed on top of her physical sufferings resulting from the accident.
22. In the abovestated circumstances, I find there is no injustice caused to the defendant in this case at all. As a result, I shall make the following orders.
23. *Enhanced interest on damages*
24. Order 22 rule 24 allows the Court to award enhanced interest at a rate up to 10% above judgment rate. The rationale behind this is to encourage settlement and discourage unreasonable refusal to accept reasonable offers made by the plaintiff.
25. The provision under Order 22 rule 24 is not compensatory. As stated by Hon Au-Yeung J in *Chow How Yeen Margaret & Others v Wex Pharmaceuticals Inc & Anor* (unreported, HCA 537/2013, 5 September 2017) at §33, the power to award interest at an enhanced rate is:

“to redress the element of perceived unfairness, otherwise inherent in the legal process, which arises from the fact that damages, costs (even on an indemnity basis) and statutory interest will not compensate the successful claimant for the inconvenience, anxiety and distress of having resort to and pursue proceedings…”

1. In *Chow How Yeen Margaret, supra,* despite the defendant’s purported reasons to explain why the offer was not accepted there and then, Au-Yeung J found no reason to reduce the enhanced rate and ordered 10% above judgment rate on judgment.
2. The same rate was also adopted in *Grupo Pacifica Incorporada v Worldwide Marine Product Limited & Others* [2018] HKCFI 2584 (unreported, HCA 2640/2014, 22 November 2018).
3. In the PI context, in *Xu Xinhong v Cheung Chu Lau* [2019] HKCFI 1691 where similarly the defendant was held liable for more than the plaintiff’s sanctioned offer, Master J Wong rejected the defendant’s submission that an enhanced interest rate should only apply to PSLA and pre-trial losses. The court adopted 10% above judgment rate as the interest rate on the plaintiff’s damages.
4. In my judgment, the 10% above judgment rate in the non-PI cases cited by Mr Wong involve the defendant of extremely unreasonable behaviour. They do not apply in the present case. With respect to the learned master in *Xu Xinhong, supra*, I do not find there was any good reason to impose the 10% above judgment rate interest in that case.
5. I do not consider that this is an extreme case where 10% above judgment rate interest should be imposed on the damages. Instead, as in line with most of the decided PI cases, I consider that a 2% above judgment rate as enhanced interest on damages is reasonable and the same should run from the date of deadline of accepting the sanctioned offer without leave (ie on 2June 2020 up to the date of Judgment and thereafter at judgment rate).
6. *Indemnity costs and interest on costs*
7. Given the above, I also find that the plaintiff is entitled to costs to be taxed on indemnity basis from 3 June 2020 onwards.
8. As to interest on costs, the Court *may* award at a rate not exceeding 10% above judgement rate. The enhanced interest on costs is meant to compensate the party who offers settlement for the costs incurred before judgment: see Chu JA in *Wong Tang Keung (黃登強) v Lee Wai Engineering Co Ltd (利維工程有限公司) & Anor* [2014] 1 HKLRD 409 at §18.
9. Contrary to the 10% above judgment rate they sought in the summons, the plaintiff now seeks interest at 2% above judgment rate by relying on the following PI cases:-
10. *Au Man Ming v Goldwell Property Management Limited* (unreported, DCPI 636/2010, 28 September 2011) at 1% above judgment rate;
11. *Chan Lap Kwan v Skypy Limited & Anor* (unreported, HCPI 258/2012, 7 September 2016) at 2% above judgment rate;
12. *Maysun Engineering Company Limited v International Education and Academic Exchanges Foundation Company Limited trading as Hong Kong Institute of Technology* [2011] 2 HKLRD 844 at 2% above judgment rate;
13. *Union Glory Finance Inc & Others v Merrill Lynch International Bank Limited & Anor* (unreported, HCA 2494/2013, 13 December 2016) at 2.5% above judgment rate;
14. *Tsang Chiu Yip v Ho Kwok Leung* (unreported, HCPI 305/2013, 8 August 2016) at 3% above judgment rate; and
15. *Xu Xinhong v Cheung Chu Lau* [2019] HKCFI 1691 at 2% above judgment rate.
16. In the circumstances of this case, given the plaintiff’s latest concession, I would award enhanced interest on costs at 2% above judgment rate from 3 June 2020 until date of Judgment and thereafter at the usual judgment rate until payment.
17. *Costs to be taxed at the High Court scale before the case was transferred to the District*
18. This case was commenced in the High Court on 14 August 2018. It was transferred to the District Court under the Order of Master Grace Chan on 3 October 2019. On that occasion, Master Grace Chan ordered the scale of costs of action before the transfer would be at the discretion of the District Court.
19. The case was formally transferred to the District Court on 7 November 2019.
20. In this case, I find that the plaintiff is entitled to costs to be taxed at the High Court scale prior to the date of transfer on 7 November 2019. The eventual award of HK$991,160 plus interest demonstrates that it was reasonable for the plaintiff to commence this action in the High Court which then had a jurisdiction of any cases of over HK$1,000,000. The increase of the civil jurisdiction to HK$3,000,000 in the District Court took place in December 2018.
21. *Enhanced interest on future loss*
22. In the plaintiff’s summons, Mr Wong also seeks enhanced interest of 10% above judgment rate for her loss of future earnings.
23. I agree with Mr Ramanathan SC’s submission that, in normal PI cases, no interest is ever awarded for loss of future earnings. I do not really see the rationale behind the claim of 10% above interest rate for the future loss of earnings. I agree with the defendant that whatever award the Court has made under this head, the plaintiff will be receiving this lump sum “in advance” and there is no logical reason why she is entitled to claim enhanced interest for something that she is receiving for the future. The other factor to be taken into account in this case of course is the fact that the plaintiff is on legal aid. Hence, she did not have to put up any costs on account to personally finance this action. She is therefore not deprived of any money of her own in funding the litigation during the interim period. Hence, I do not agree that enhanced interest for future loss of earnings should be awarded.
24. *Costs of this application*
25. Mr Wong for the plaintiff asks costs of and incidental to the application to be awarded on an indemnity basis. I see no reason in doing that. I find the defendant was reasonable in their opposing of the present application and it had successfully argued that the enhanced interest should be reduced to 2% instead of the 10% enhanced interest the plaintiff was seeking for under the summons. In the circumstances, I consider that the costs of this application should be taxed on the usual party and party basis instead.

*CONCLUSION*

1. In conclusion, based on the above, I would make the following order.
2. The order on interest made by this Court in the Judgment on 26 February 2021 be varied as follows:-
3. On the PSLA award, there be interest at 2% from the date of issue of writ of summons to 2 June 2020 and since 3 June 2020 at 2% above judgment rate until the date of judgment, and thereafter at judgment rate; and
4. On the loss of pre-trial earnings and special damages, there be interest at half of the judgment rate from the date of accident to 2 June 202 and since 3 June 2020 at 2% above judgment rate until the date of judgment, and thereafter at judgment rate.
5. The order *nisi* on costs made by this Court on 26 February 2021 be varied as follows:-
6. The defendant shall pay the plaintiff’s costs of the action (with certificate for counsel) on a party and party basis up to 2 June 2020, and from 3 June 2020 on an indemnity basis, to be taxed if not agreed;
7. The plaintiff’s costs of the action be taxed at the High Court scale before its transfer to the District Court on 7 November 2019, and at the District Court scale thereafter;
8. The defendant shall pay to the plaintiff interest on the plaintiff’s costs incurred after 2 June 2020 at the rate of 2% above judgment rate and since 3 June 2020 up to the date of Judgment, and thereafter at the judgment rate; and
9. The plaintiff’s own costs of this action be taxed in accordance with the Legal Aid Regulations.
10. Costs of this application with certificate for counsel be paid by the defendant to the plaintiff on a party and party basis, to be taxed if not agreed. The plaintiff’s own costs be taxed in accordance with the Legal Aid Regulations.
11. It remains for me to thank counsel on both sides for their helpful submissions in this application.

( Andrew SY Li )

District Judge

Mr Simon Wong, instructed by Ng & Co, assigned by the Director of Legal Aid, for the plaintiff

Mr Kumar Ramanathan SC, instructed by Leung & Lau, Solicitors LLP, for the defendant

1. Cut-off date in this case: 2 June 2020 [↑](#footnote-ref-1)