IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 28 OF 2004

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# BETWEEN

# NG KA HO (an infant) by her mother

and next friend, KONG SIO FAN Plaintiff

and

## YEUNG KWOK LEUNG Defendant

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Coram : Deputy District Judge P. Li in Court

Dates of Hearing : 28/2/2005, 1/3/2005 to 4/3/2005

Date of Handing Down of Judgment : 4/5/2005

JUDGMENT

1. This is an assessment of damages in respect of a claim brought by the Plaintiff for personal injuries as a result of a traffic accident. The accident occurred on 21st October 1998 at 5:20pm along an unnamed road from Ting Kok Road towards Tai Wo Road, Tai Po. Interlocutory Judgment was entered by consent of the parties on 21st November 2000 with damages to be assessed. This is the assessment of damages.
2. At the time of the accident, the Plaintiff was crossing the road at a zebra crossing. The defendant, who was driving a light goods vehicle (GD 9270), failed to stop and knocked down the Plaintiff. The Plaintiff was taken to Alice Ho Miu Ling Nethersole Hospital (AHNH).

### Physical injuries and treatment

1. The Plaintiff sustained head injury without loss of consciousness. He also had right knee pain and laceration near the right eyebrow. There was no fracture. The laceration was sutured. He was treated with analgesic and discharged on the same day.
2. On the following day (22nd October 1998), the Plaintiff was re-admitted to the Neurosurgery Unit of Prince of Wales Hospital (PWH) because of dizziness and vomiting. X-ray of the skull, face, chest and abdomen revealed no fracture. Computerized Tomography Scan of the brain detected no intracranial haemorrhage or fracture of the skull vault or base. The symptoms resolved spontaneously within two days. He was discharged. He followed up in the Neurosurgery and Paediatrics Units until 23rd December 1999. He was then discharged from the outpatient unit.
3. On 27 January 2003, Dr. Pierre Lam assessed the Plaintiff to have half to one percent impairment of the whole person.
4. There is no dispute between the parties as to the physical injuries and treatment given to the Plaintiff as stated above.

### Disputed psychiatric condition

1. In December 2000, the Plaintiff was first referred to the Department of Psychiatry, AHNH, by a general practitioner for assessment and management of strange behaviour. The main complaint from the Plaintiff was poor memory. Subsequent neuropsychological tests revealed no evidence of significant memory problem. There was no post-traumatic amnesia. Dr. Lum concluded that the main clinical problems were the lack of normal reciprocal social interaction and communication. These problems persisted from his childhood even before the traffic accident. The diagnosis was ‘Pervasive Developmental Disorder Unspecified’. Intensive social skills training and assertiveness training were recommended.
2. A clinical psychologist at Tai Po Hospital assessed the Plaintiff in February 2001. The mother reported that the Plaintiff had abnormal behaviour such as self-muttering, social withdrawal and giggling. There was increased level of irritability and temper tantrums. The clinical psychologist recommended the Plaintiff to attend Assertiveness Training Group.
3. On 27th April 2002, the Plaintiff was assessed by a speech therapist at the Yau Ma Tei Specialist Clinic. The finding was that the presenting speech and language performance of the Plaintiff was at a functional level for communication. However, memory problem and behavioural changes were the main concern.
4. Dr. Edmund Woo, neurologist, examined the Plaintiff on 25 March 2002. Dr. Woo found that the Plaintiff was afraid of crossing a road by himself. There was no recurrent intrusive thought and no nightmare of the accident. Dr. Woo opined that there was mild post-concussional syndrome with residual giddiness and subjective memory loss. The latter accounted for a 1% impairment of the whole person. Given that there was no clinical evidence of any parenchymal brain damage or cognitive dysfunction, Dr. Woo also concluded that the deterioration of academic results was not due to organic brain damage sustained at the accident in 1998. Further, Dr. Woo opined that the residual deficits should not impose any limitation on his employment potential in future.
5. The main dispute was whether the Plaintiff had onset of obsessive and compulsive symptoms (OCD) caused by the accident. Dr. Wong Chung Kwong opined that the OCD was caused by the accident. Dr. Chung See Yuen disagreed. Dr. Chung opined that there were early signs of obsessive or stereotypic behaviour.

### Evidence of the mother of Plaintiff

1. The mother of Plaintiff, Madam Kong Sio Fan, gave evidence in the trial as follows:
   1. The Plaintiff was normal all along in development. His interpersonal skill is more or less the same throughout. He took initiative to make friends. He had joined Boy Scout activities. He had 7 to 8 friends/classmates in late primary school years. She disagreed that the Plaintiff had communication problem. She did not feel any problem in this respect albeit that she mentioned the problem to Dr. Wong (recorded in paragraph 12 of Dr. Wong’s report dated 8 May 2002). She however admitted that the Plaintiff could only communicate meaningfully at the age of three to four.
   2. When the Plaintiff was about one year old, he had incidents of getting up in the middle of the night watching TV. The Plaintiff ignored her until she turned off the TV and carried him back to bed. This occurred about once a month. This kind of behaviour disappeared subsequently.
   3. The Plaintiff developed great interest in cartoon figure— Doraemon—when he was in Primary 4 to 5. He watched the tape recordings repeatedly for over an hour each day. She sometimes stopped him. The Plaintiff would not insist albeit showing signs of dismay.
   4. The Plaintiff was also fond of KMB model buses. He often observed buses through windows at home. He sometimes stopped and looked at buses while in the street. She made some models with paper cards for him. The Plaintiff did not ask for more models. He also insisted to place his model bus in the front part of the shelf.
   5. The Plaintiff started to have the habit of putting his shoes back to a designated place in a cabinet when he was in Primary 4. That was probably due to the instruction and training from her. He also insisted that his things, model buses and Doraemon tapes to be put back at designated places.
   6. About 6 months after the accident to the time the Plaintiff was promoted to secondary school, the Plaintiff displayed the following behaviour:

i) He started to wash his hands repeatedly with liquid soap for ten odd times a day. Each time for about 10 to 15 minutes. This situation lasted for about a year. He currently washed hands 3 to 4 times a day.

ii) He started to take showers for over an hour. She had to ask him to come out from the bathroom. Currently, he still took 30 minutes for a shower. He laughed while taking showers. She found that he was still dirty after long showers.

1. The Plaintiff started shutting all doors forcibly. It seemed that he was not aware of the problem. He still slammed doors currently.
2. He checked his school bag meticulously for 15 minutes before going to bed. He was angry if his books were folded or wrinkled. This behaviour persisted for a few months.
3. He started scratching his head using both hands for 20 minutes over ten times a day. She tried to control him. He could shorten the scratching to 10 minutes and about 6 times a day.
4. He had phobia of height. He even refused to take lift with transparent walls.
5. The Plaintiff started saying the same thing or asked the same question repeatedly.
6. The Plaintiff smiled to himself from time to time.
   1. Around 2002-2003, the Plaintiff started hitting walls and kicking tables for no reason. This occurred about 3 times a month. After taking medication from the psychiatrist, the situation improved.
   2. According to Madam Kong, the Plaintiff had no interpersonal problem when he was young or in the primary school. He was willing to help others and shared toys with others. After promoting to secondary school, he was often teased and bullied by classmates. He was afraid to attend school. His secondary schoolmates teased him and took advantage of him.
   3. The Plaintiff was still afraid of going out by himself although he could manage taking KCR and MTR on his own. He had nightmares about the accident in the first one and half years after the accident. He still suffered from headache and dizziness. However, this mainly occurred when he was studying.
   4. She agreed that nearly all the symptoms started more or less around the time when the Plaintiff was promoted to secondary school. The emotional problems started about 2 years after the accident. The Plaintiff felt she was nagging after him. The Plaintiff only responded to her questions but seldom initiated any conversation.
   5. Her husband deserted the family around late 1999. Before that her husband often scolded her and displayed temper tantrums at home.
   6. She had not mentioned the behavioural problems with Dr. Lum and Dr. Woo as they were not psychologists. However, she did mention the behavioural problems to a clinical psychologist.

### Evidence of Dr. Wong Chung Kwong

1. Dr. Wong Chung-kwong examined the Plaintiff on 12 March 2002. In his report dated 8 May 2002, Dr. Wong found that the Plaintiff initially suffered from ‘Post-traumatic Stress Disorder’ which had spontaneous recovery. The Plaintiff only had residual anxiety symptoms when crossing roads and taking transport.
2. Dr. Wong agreed that the Plaintiff showed some features of ‘Pervasive Developmental Disorders Not Otherwise Specified’ (PDD). He found that the main problems of the Plaintiff were insufficient interpersonal skills and lacked social empathy. There was also a delayed development milestone in speech. There were problems communicating with peers.
3. Dr. Wong diagnosed that the Plaintiff was suffering from obsessive and compulsive symptoms (OCD). These symptoms (see paragraph 12(f)) had their onset after the accident. They included frequent washing hands, frequent scratching head, checking school bag, closing doors with great force, long showers, phobia of height. Dr. Wong opined that these symptoms would not have occurred without the accident. These symptoms caused distraction. The drop in academic performance with no objective evidence of memory deterioration was probably the result of the distraction by OCD. The symptoms also compromised the relationship between the Plaintiff and his peers. The Plaintiff felt inferior and became self-absorbed from time to time. He was restricted in social contact.
4. Without the accident, Dr. Wong anticipated that the Plaintiff would acquire maturity and become more socially capable even with PDD symptoms. He would be independent and able to acquire a trade. The prognosis would even be better with treatment and training by professionals. With OCD, the Plaintiff would only be capable of simple white-collar job such as office messenger. Otherwise, he could have been able to attain one grade higher as clerk or secretary.
5. Dr. Wong recommended intensive treatment program for 18 months involving clinical psychologist and child psychiatrist to tackle the OCD.
6. Dr. Wong disagreed with the finding of Dr. Chung that the Plaintiff had obsession symptoms before the accident (see paragraph 12(b) to (e)). He also disagreed that the post-accident symptoms (see paragraph 12(f)) were natural progression of PDD. His reasons are as follows:
   1. The Plaintiff only presented mild PDD symptoms all along. Avoidance of eye contact was important but not conclusive. If the symptoms had been so severe as described by Dr. Chung, the Plaintiff would be diagnosed as Asperger Disorder.
   2. The Plaintiff had wide daily repertoire of activities which is inconsistent with PDD. Patients of PDD would usually have restricted daily repertoire. Dr. Wong however accepted that the Plaintiff was restricted in social contact.
   3. Dr. Wong stressed that obsession must be conscious, recurrent and intrusive. There should be resistance to engage in the behaviour and mounting anxiety arising from internal struggle. This might manifest in signs of anger. Dr. Wong however found that the Plaintiff showed no reaction to suppress the obsession.
   4. As to the ‘obsessive/ stereotypic behaviour identified by Dr. Chung (see paragraph 20(a) below), Dr. Wong had the following comments:

i) The Plaintiff was oblivious to Madam Kong’s presence while watching TV in the middle of the night. This was more consistent with sleepwalking phenomenon. The frequency of this behaviour indicated that it was not obsession.

ii) It was understandable that the Plaintiff liked watching Doraemon daily. It was not obsession as he did not insist.

iii) It was not obsession that the Plaintiff liked looking at buses. He was also interested in a wide range of other activities. He did not concentrate on buses only. Had it been obsession, the Plaintiff would have stayed at bus terminus.

iv) It was normal that a child would be conscientious in putting things at exact positions.

v) Had there been obsessive symptoms before the accident, these symptoms would likely be aggravated by the accident. However, it was not the case.

* 1. The Plaintiff had deterioration in his inter-personal skill after the accident.
  2. The father’s desertion was an alleviating factor as the father and son relationship was poor all along. This should not be a contributory factor to the development of OCD.
  3. Given the intelligence and general development of the Plaintiff, coupled with the caring attitude of the mother, promotion to secondary school should not be a major stress for the Plaintiff.

### Evidence of Dr. Chung See Yuen

1. According to Dr. Chung, the Plaintiff’s current condition should mainly be due to the PDD. The accident was only a minor factor aggravating his condition. The gist of Dr. Chung’s evidence is as follows:
   1. The Plaintiff had delayed language development. He had difficulties in expressing ideas and emotions. This problem persisted until the clinical assessment in 2003.
   2. The Plaintiff avoided eye contact which was a definite sign of impairment in social skill. There were repetitive and stereotypic behaviour since he was young. This included (a)‘middle-of-the-night’ TV watching incidents, (b) great interest in Doraemon, (c) fond of KMB buses and (d) putting shoes in a particular manner.
   3. Dr. Chung disagreed that the Plaintiff was sleepwalking during the ‘middle-of-the-night’ TV watching incidents. Dr. Chung opined that sleepwalking would not manifest repeatedly in the same kind of behaviour. It seldom lasted for 45 minutes as the Plaintiff did. In fact, there were only a total of 12 to 15 incidents, it was not a severe symptom.
   4. Dr. Chung opined that the interest in watching Doraemon persisted from Primary 1 to Primary 3. The Plaintiff watched the same tape over and over again. It was unusual and should be regarded as stereotypic behaviour.
   5. Dr. Chung also found it unusual that the Plaintiff was fond of KMB buses only. This behaviour continued until Primary 3. The Plaintiff looked at buses through the windows from home everyday for 10 to 15 minutes. The Plaintiff could not explain why.
   6. Dr. Chung thought that mere putting shoes back to the same position was not problematic as a single event. However, when this conduct occurred together with other unusual behaviour, he opined that there should be some problem with the Plaintiff.
   7. Dr. Chung agreed that the Plaintiff suffered from PDD. There were moderate severe symptoms. When the social environment became more complicated, the problem would become worse.
   8. Dr. Chung pointed out that a child should be able to explain his behaviour but the Plaintiff could not. He was 16 and had normal intelligence. He should have simple insight about his problem. Probably he did not want others to know why. Dr. Chung summarized this in paragraphs 29 to 34 of his report dated 22/7/03.
   9. With language problem and stereotypic behaviour, Dr. Chung believed that the Plaintiff would encounter more problems when he grew older and attended secondary school as the demand on social skills was higher. The PDD would affect his interpersonal skill, time management and enjoyment of social activities. Stress would also aggravate the condition. Dr. Chung identified pressure from study in the secondary school and parental discord as the two other major sources of stress. Dr. Chung noted that the parental discord led Madam Kong to consult a medical social worker in 2001.
   10. As set out in paragraph 38.3 of the report, Dr. Chung opined that: ‘*Ka-ho has displayed stereotypic behaviour prior to the accident. Patient with this disorder may present with different stereotypic behaviour with time. Some stereotypic behaviour may improve like putting his shoes in a particular manner. New stereotypic behaviour may develop to substitute the old ones. Spending a long time in the toilet is another form of presentation of the disorder and is not a new type of symptoms. Symptoms of inappropriate laughter, neglect his manner and self care, irritability, few friends, low self esteem, bullied by others, people do not like to mix with him, impaired concentration are common symptoms of teenagers with pervasive developmental disorder.*’ Dr. Chung concluded that the group of symptoms was not caused by the accident.
   11. Dr. Chung pointed out that the academic result of the Plaintiff in Primary 6, i.e. after the accident, was more or less the same as Primary 5. This demonstrated that the accident was not the major factor affecting the Plaintiff’s condition. Normally, the effect of the accident should have tailed off within a year.
   12. Dr. Chung disagreed with Dr. Wong that there was OCD after the accident. The reasons are:

i) The taking of long baths was not obsession. He pointed out that there was no intrusive thought to take a bath. There was no anxiety or distress and the Plaintiff did not consider the behaviour inappropriate. According to the mother, the Plaintiff was still dirty after taking a bath. The Plaintiff could not think of any reason for the behaviour.

ii) For typical OCD, the patient would repeat the washing even after a bath. He knew he was clean but could not stop the behaviour. The patient was under tension. He knew the behaviour was not normal but could not stop it.

iii) The Plaintiff could not give detailed account of his symptoms. All these indicated that the behaviour was not typical OCD but part of the features of PDD.

iv) For similar reasons, Dr. Chung opined that other symptoms such as scratching head, checking schoolbag, meticulous with books, slamming doors and self-muttering were not typical OCD. These symptoms were part of the features of PDD.

* 1. Dr. Chung agreed that the current treatment received by the Plaintiff should be sufficient. The Plaintiff would not need additional treatment by private practitioner.

#### Analysis of the evidence

1. There was no dispute as to the qualification and experience of both expert psychiatrists. I accept that both of them are well qualified to give evidence in this case. Both of them found that the Plaintiff presented some behaviour which was important to their respective conclusions. These included two groups:
   1. During the childhood of the Plaintiff before the accident:

i) When the Plaintiff was about 1 to 2 years old, he had incidents of ‘middle-of-the-night’ TV watching.

ii) When the Plaintiff was in primary 3, he had great interest in watching cartoon—Doraemon.

1. He was very fond of model KMB buses.
2. He was insistent in putting his shoes and other objects at a particular place and manner.
   1. About 6 months after the accident and around the time the Plaintiff was promoted to secondary school, he displayed behaviour including:

i) Taking long baths for 30 minutes to an hour each time

ii) Smiling to himself, asking the same question repeatedly and self-muttering,

1. Repeated hand washing,
2. Slamming doors and kicking at furniture without obvious reasons,
3. Scratching head repeatedly for some minutes,
4. Checking school bags meticulously,
5. Phobia of height
6. Dr. Wong opined that the group of behaviour under paragraph 20(b) occurred only after the accident. He diagnosed them as symptoms of OCD caused by the accident. It was not the natural progression of PDD.
7. Dr. Chung opined that the group of behaviour under paragraph 20(b) was not obsessive as it did not result in anxiety and intrusive thought in the Plaintiff. This group of behaviour was the natural progression of PDD when the Plaintiff grew up. There was a higher demand in social skill in the secondary school. There was parental discord around that time. Both situations created additional stress to the Plaintiff. Dr. Chung opined that the accident only aggravated the condition of the Plaintiff. It was not the main cause of the condition. His reasons are in paragraph 19(l) above.
8. In fact, Dr. Wong agreed that in an individual suffering from obsession, there should be intrusive thought, resistance to engage in the obsessive behaviour and mounting anxiety arising from internal struggle. There should also be signs of anger.
9. According to Madam Kong, the mother of Plaintiff, the OCD manifested itself about six months after the accident and around the time when the Plaintiff was promoted to secondary school. Madam Kong detected no apparent stress or anxiety on the part of the Plaintiff when she discouraged or tried to control the behaviour. The Plaintiff demonstrated very little intrusive thought about this behaviour. It seemed that the Plaintiff had controlled the behaviour within tolerable limit. This evidence was consistent with the findings of both experts. In Dr. Wong’s report, there was no positive finding of anxiety or stress due to OCD. In paragraph 28 of his report, Dr. Wong pointed out that the Plaintiff ‘*was not depressed or anxious in his mood*’. Likewise, in paragraph 46.1 of his report, Dr. Chung found that the Plaintiff had no intrusive thought and suffered no marked anxiety or distress. According to Dr. Chung, the Plaintiff gave no reasons for his behaviour. Given that the Plaintiff was of normal intelligence and 16 by the time of the assessment, he should have some insight of his behaviour. Dr. Chung found this phenomenon was not typical in individuals affected by OCD. Having considered the above, I accept Dr. Chung’s opinion that the Plaintiff’s mental state indicated that he was not suffering from typical OCD.
10. According to Dr. Wong the behaviour under paragraph 20(a) was not obsessive behaviour. His reasons are summarised in paragraph 18(a) to (d) above. Dr. Chung opined that the group of behaviour under paragraph 20(a) was stereotypic behaviour. It was common in PDD.
11. I had carefully considered the evidence from Madam Kong. I agreed that the group of behaviour which occurred before the accident (see paragraph 20(a)) was not normal. There was no recollection from Madam Kong that the Plaintiff demonstrated anxiety when the behaviour was discouraged. On the contrary, the Plaintiff complied with the demand of Madam Kong and his behaviour was under control. I agreed with Dr. Chung’s conclusion that this group of behaviour was stereotypic. Dr. Chung opined that this kind of behaviour often manifested in individuals suffering from PDD. It was consistent with the later manifestation of the group of behaviour under paragraph 20(b).
12. Both experts opined that the Plaintiff suffered from mild residual symptoms of Post Traumatic Stress Disorder. According to Madam Kong, there was no significant decline of academic result after the accident which occurred during the first term of primary 5. The academic results of the Plaintiff in primary 5 and 6 were more or less the same. The Plaintiff was assigned to the secondary school which was his first choice. This demonstrated that the accident had minimal effect on the Plaintiff. I agree with Dr. Chung that the academic result was a good indicator that the Plaintiff had not been affected by the accident.
13. The Plaintiff had early signs of communication problem. He had delayed language development milestone. Both experts found that he had problems in social skill and communication with peers. Madam Kong detected that the Plaintiff was bullied by classmates even in primary school. Classmates took advantage of him. The situation deteriorated after the Plaintiff entered secondary school. I accept Dr. Chung’s explanation that an individual suffering from PDD would have more problems when the social environment became more complex. This occurred when the Plaintiff grew up and entered secondary school. I accept that this affected the Plaintiff’s interpersonal relationship and caused stress. This was also consistent with Madam Kong’s observation that the Plaintiff became progressively irritable and had emotional problems about 2 years after the accident.
14. There were obvious sources of additional stress to the Plaintiff since the accident. One of which was parental discord. The father of the Plaintiff eventually deserted the family. While Dr. Wong opined that the desertion of the father should be a relief as there was poor father-son relationship, I accept Dr. Chung’s analysis that any parental discord would cause stress. In fact, Madam Kong confirmed that before his husband deserted them, he often had temper tantrums at home. This must have created stress in the Plaintiff. The other source was the increase in demand of social skill and pressure from study in the secondary school. This was consistent with Madam Kong’s observation that the Plaintiff spent most weekends at home studying and had few friends.
15. Having considered the above, I accept Dr. Chung’s analysis that the existing condition of the Plaintiff was a progression of the Plaintiff’s PDD. It was aggravated by the accident and other stress.

##### Pain, suffering and loss of amenities

1. The Plaintiff sustained head injury without loss of consciousness. He also had minor injuries at right knee with no fracture. He was treated with suturing and analgesic. He was discharged on the same day. The following day, he developed dizziness and vomiting. He was admitted again to Neurosurgery unit. There was no fracture of the skull. The symptoms subsided spontaneously and the Plaintiff was discharged. Dr. Edmund Woo and Dr. Pierre Lam assessed the Plaintiff to have overall 1% impairment of the whole person. The Plaintiff resumed schooling about ten days after the accident. The Plaintiff complained of loss of memory but there was no clinical evidence of any brain damage or cognitive dysfunction. Both Dr. Wong and Dr. Chung agreed that the Plaintiff suffered from mild symptoms of Post Traumatic Distress Symptoms.
2. The Plaintiff relied on **Tse Lai Yin [2002] HKLRD A19** as a comparable case. In this case, a 13-year-old girl was hit by a collapsed canopy. She sustained superficial injuries and was discharged on the same day. She had frequent nightmares and was afraid of darkness. She sustained impairment in psychological and social functioning. She needed intensive psychotherapy and $500,000 was awarded under PSLA. In my view, the injuries suffered by this girl were more severe than the Plaintiff in our present case.
3. In another case **Yan Kwo Yue [2002] HKLRD A17**, the Plaintiff suffered from moderate degree of PTSD and depressive disorder after an assault in which his head was thrown against a wall. He was awarded PSLA $500,000 being the upper range of the “serious injury” category.
4. The defence referred me to **Mak Hung Yin v Tsang Koon Chung and others HCPI 1038/1997**. The Plaintiff was assaulted and suffers from headaches, insomnia and loss of memory. He was assessed to have 5% impairment of the whole person and was awarded $90,000 under PSLA. In assessing the PSLA, Lugar-Mawson J pointed out that the Plaintiff’s complaints should not be solely attributable to the assault. They were heightened by his drinking habit and addiction prior to the assault.
5. In **Lau Kin Wai v Chan Wai Sang and another [2002] HKLRD (yearbook) 387**, the Plaintiff suffered 2% impairment with fractured right leg. He was awarded PSLA $150,000.
6. In our present case, the Plaintiff suffered from minimal physical injuries with an overall impairment of 1% according to Dr. Woo. In assessing damages under this item, I take into account the categories set out in **Lee Ting Lam v Leung Kam Ming [1980] HKLR 657**. I also bear in mind the upward adjustment approved by the Court of Appeal in **Chan Pui Ki v Leung On and others CACV 263/1995**. While the physical injuries suffered by the Plaintiff should fall short of the “serious injury” category, there were signs of mild PTSD with subjective loss of memory, distressful re-experience of accident, anxiety while crossing roads and occasional nightmares. According to Dr. Chung, the permanent impairment to the whole person due to PTSD and subjective memory loss caused by the accident was 3%. I accept this assessment. In **Chan Pui Ki v Leung On and others CACV 263/1995**, the Court of Appeal recommended the range of $400,000 to $540,000 for the category of “serious injuries”. I note that these categories must be applied flexibly and that the total effect of the injuries must be assessed. As I find above, the accident did aggravate the symptoms of PDD in his case albeit not substantially. Having considered all the circumstances, I assessed the award in PSLA to be $250,000.

##### Loss of earning capacity

1. The Plaintiff calculated the claim under this item on the assumption that the accident was the sole cause of the OCD. In my judgment, the condition of the Plaintiff was a natural progression of his PDD. The accident had only aggravated his condition. Besides, parental discord and stress from secondary schooling affected him also. Given his PDD and without the accident, both experts agreed that the Plaintiff’s earning capacity would be limited to clerical level. I note that Dr. Wong opined that the Plaintiff would have attained one grade lower in earning capacity from clerk or secretary to junior clerk or messenger. The difference is really narrow. I find the approach of Dr. Wong rather speculative. I bear in mind that the Plaintiff had problems in communication and social skill. I also accept Dr. Chung’s analysis that the PDD symptoms would deteriorate when the social environment becomes more complex. It is difficult to project his job prospect in future. Given these circumstances, I adopt the lump sum approach.
2. Having considered the evidence of Dr. Chung, I accept that the accident only aggravated the Plaintiff’s condition. This would certainly make it more difficult for the Plaintiff to compete in the labour market. I therefore give a lump sum of $100,000 under this item.

##### Loss of MPF

1. Given the approach in paragraph 37 and 38, I grant the claim under this item. I assess the loss to be $100,000 x 5% = $5,000.

##### Cost of future treatment

1. While both experts opined that the present treatment of the Plaintiff was sufficient, Dr. Wong proposed an intensive program to improve the Plaintiff’s condition. I have carefully considered the assessment of relevant medical reports. I agree with Dr. Chung that the present treatment was sufficient. I disallow the claim under this item.

##### Tuition fees

1. Given my finding above, the Plaintiff’s academic attainment was mainly limited by his PDD. The Plaintiff needed private tuition in any event. I disallow this item.

##### Special damages

1. I allow the claim on fees for follow up in the sum of $143 as agreed.
2. I allow the claim on travelling expenses in the sum of $1,760. It appears reasonable.
3. I allow the claim on loss of eye-glasses in the sum of $400.
4. As to tonic food, I agree with the defence that the food consumed was not essential to the condition of the Plaintiff. I only allow $2,000 for this item.
5. There being no evidence to support the loss of salary as claimed, I disallow this item.
6. The total award for special damages was $4303.

#### Summary of assessment

PSLA $250,000

Loss of earning capacity $100,000

Loss of MPF $5,000

Special damages $4,303

#### Interest

1. Interest on PSLA and general damages is 2 per cent per annum from date of writ to date of judgment. Interest on special damages at half judgment rate from the date of accident to the date of judgment. Thereafter at judgment rate until full payment.

#### Costs

1. Order nisi for costs to the Plaintiff to be taxed if not agreed. Such order nisi be made absolute 21 days after the date of handing down of this judgment.

( Patrick Li )

Deputy District Judge

Representation:

Mr Geoffrey P CHANG, instructed by M/s. Yip & Partners assigned by DLA, for Plaintiff.

Mr Colin WONG, instructed by M/s. Cheung, Chan & Chung for Defendant.