IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 134 OF 2001

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| BETWEEN | Anil Jhuremalani | Plaintiff |
|  | And |  |
|  | Rodelio O. Fajada  Michelle’s Bags International Limited (in liquidation) | 1st Defendant  2nd Defendant |

Coram: H H Judge Carlson in Court

Date of Hearing: 9 May 2002

Date of Judgment: 9 May 2002

Present: Mr Anil Jhuremalani, Plaintiff, in person

Mr Rodelio O. Fajada, 1st Defendant, in person, absent

Michelle’s Bags International Limited

(in liquidation), in person, absent

J U D G M E N T

1. This is an assessment of damages for personal injury, pain and suffering and other consequential losses suffered by the plaintiff.

2. Judgment was entered in default of defence against both defendants on 19 October last year, and the matter has now been set down for assessment of damages. There was a complication in the sense that the 2nd defendants are in liquidation, and the plaintiff has subsequently obtained leave of the Court of First Instance to proceed notwithstanding that liquidation, and he has also been in communication with the office of the Official Receiver and they are aware of this matter. This has all resulted, inevitably, in some delay in the matter coming on for hearing.

3. The facts, which I can state very briefly, were that the plaintiff was in the front seat of a saloon car which was driven by the 1st defendant, he being the employee of the 2nd defendants, who were the owners of the car. The 1st defendant drove the vehicle through a red traffic light. There was a collision with another vehicle and as a result the plaintiff has sustained a whiplash-type injury.

4. He has very helpfully, with assistance from, I think, a friend of his who is a solicitor, prepared a statement of damages dated 21 January of this year which he has affirmed to be true.

5. Damages are claimed under a variety of heads. The first claim is for general damages for pain, suffering and loss of amenity, and he claims an award of no less than $400,000. But the most substantial claim, as is so often the case, relates to special damages including loss of earnings, which he puts at over $2.8 million, and in addition to that there is a further claim for future loss of earnings which exceeds $8.5 million.

6. But notwithstanding all of that, the plaintiff has not pursued this, quite sensibly, simply because he has not prepared his case. That is no criticism of him, but the fact is he is unrepresented and he has not sought advice on how to prove such a massive claim. In any event, he understands that the limit of my jurisdiction is $600,000, but having considered the matter further with me in the course of his evidence, he has chosen to abandon that limb of his claim.

7. So the only other matter under special damages which I need to consider are hospital and medical expenses of $6,705 and travelling expenses of $30,400, which I shall return to in a moment.

8. But I start with the claim for general damages for pain and suffering. The matter is well reported on by Dr Lee Po‑chin in a report dated 4 December 2001, and there is also a report from Dr Morell at the Portuguese Clinic in Montreal. His report is dated 30 July 2001, and the position appears to be this: that the plaintiff suffered a whiplash injury; there was soft tissue damage in the way that one so often finds in these type of cases. His complaints are that he has pain in the neck on rotation to the right; there is a feeling of tiredness towards the end of the day; the pain is of a dull, aching character; his sleep at night is disturbed. The way he put it is he has not had one night’s undisturbed sleep since this all took place, now over 4 years ago. He alleviates that pain by taking painkillers as and when needed. The pain gets particularly bad at the end of the day, but then he has a stiffness when he rises in the morning. That tends to resolve itself after he does some exercises.

9. But the most important finding that I need to attend to from Dr Lee is that this is now a permanent condition. He says in the “Comments” part of his report at page 3 that there is no need for further medical or surgical treatment, and that this is basically how it will remain, and so that is an important factor in all of this.

10. The plaintiff’s social life has been affected as well. He played tennis to a very high standard; he indicated to me he was one of Hong Kong’s leading amateurs. He is a member of a well-known social and recreation club. He represented the club in the A team. He used to play tennis three times a week; no doubt source of great pleasure. He is now restricted to playing tennis once a week, or sometimes once a fortnight, and he plays in the more modest C team, so that is a restriction. He used to also participate in the sport of Thai boxing. He was much fitter as a result of the physical exercise that was entailed in playing tennis frequently and with Thai boxing. As a result, he has put on weight and the pleasure of life has been affected by that.

11. Looking at the matter broadly, of course, this is a case where no surgical procedure was required. He did not have to undergo a painful operation or anything of that sort, but there is pain and it is persistent. The situation is now permanent and, although, of course, one learns to work around one’s disabilities and manage somehow, this is obviously a matter of some seriousness.

12. I take the view that the proper award for pain and suffering and loss of amenity is one of $200,000. In addition, I turn to the items for special damage, hospital and medical expenses. In round terms, they are $4,000 for Dr Lee’s report, I have seen the invoice for that; the doctor’s fee note; and there is also a fee note from the Canadian hospital, and that makes up a total of $6,705, and so that will be added to it. Travelling expenses are a little unusual. These come to $30,400, being the cost of travel: two return journeys from Hong Kong to Montreal. The plaintiff says that he did that because he is a resident of Canada. As a result, he can enjoy the generous National Health treatment that is available to him there free of charge. He says that at that stage, when he decided to go for that treatment in Canada, he was not aware how serious his condition was. He did not know how much he was going to have to spend for medical treatment, and he thought it was safer to do that. Very properly, he has admitted that in fact, although he took those two trips to Canada for this medical treatment, half of that can fairly be attributed to the time he was engaged in Montreal dealing with his office work in Montreal, he being an estate agent in Hong Kong and in that city.

13. So the question still remains: should I allow this item now quantified at $15,200, or should I say no, he could have been treated in Hong Kong? It really is a matter of reasonableness. I take the view that in the circumstances where, of course, he had the benefit of free medical treatment in Canada, and really the item is modest, that I should also allow that, and so the damages will be $200,000 for general damages. To that, I will add interest at 2 per cent from the date of the accident until today, so interest will be applied at that rate, 2 per cent per annum. Hospital and medical expenses, $6,705 and $15,200; those two must be added together, and there will be interest on those items at half the judgment rate from the date of the writ until today; and then on both general damages and special damages, there will be interest at the judgment rate from today until payment; and the plaintiff must have his costs of the assessment. He, I think, has already had his costs on the judgment on liability.

Ian Carlson

District Court Judge