# DCPI140/2001

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 140 OF 2001

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BETWEEN

## LAU TSZ WAN Plaintiff

### and

CALTEX OIL HONG KONG LIMITED 1st Defendant

SHUI CHEONG HONG, LIMITED 2nd Defendant

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Coram : Her Honour Judge H.C. Wong in Court

Dates of Hearing : 10th to 11th, 14th to 15th June 2004 and 16th September 2004

Date of Handing down Judgment : 8th December 2004

Parties: Mr. Victor Gidwani instructed by Messrs. Ince & Co. for the Plaintiff.

Miss Janine Cheung instructed by Messrs. Tsang, Chan & Wong for the 1st and 2nd Defendants.

JUDGMENT

1. In this action the Plaintiff claims against the Defendant for damages incurred for personal injuries sustained in a slip and fall accident that took place on 24th April 1998 at the entrance ‘run-in’ of the Caltex Petrol Station at Shops G17 to G20, Ground Floor, Tai On Building, 57-87 Shau Kei Wan Road, Hong Kong (‘the said petrol station’). The 1st Defendant was the registered owner of Shops G17 to G20 on the Ground Floor of the said Tai On Building. The 2nd Defendant was an operator of the said petrol station.

2. Shop G17 to G20 on the Ground Floor of Tai On Building where the said Caltex Petrol Station is situated at the corner of Tai Hong Street and Hong Cheung Street. The said petrol station had two sloped ‘run-ins’. One on Tai Hong Street for vehicular ingress whilst the other on Hong Cheung Street for vehicular egress. Like most petrol stations in residential areas in Hong Kong the ‘run-ins’ to and from the said petrol station are also part of the public pavement of Tai Hong Street and Hong Cheung Street.

3. At 5.45 p.m. on 24 April 1999 the Plaintiff Madam Lau Tsz Wan went to Tai On Building after work to pick up her laundry. She walked by the said petrol station on her way home in Lei King Wan. While Madam Lau was passing the entrance ‘run-in’ of the said petrol station, she slipped and fell. As a result of the fall, Madam Lau sustained a fracture of the neck of her right femur. She was hospitalized for nearly a month and was discharged from hospital on 20 May 1998. She had an operation of closed reduction and hip screw fixation. When she was discharged, she walked with two crutches.

Liability

4. It is the Plaintiff’s case that she fell at the Tai On Street ‘run-in’ of the petrol station and suffered injury as a result of the existence of petrol or other oily substance which escaped from the said petrol station onto the surface of the said ‘run-in’. She claimed therefore that the accident was caused by the negligence and/or the breach of duty as occupier of the petrol station on the part of the 1st and 2nd Defendants or their servants or agents. The Plaintiff further claims the 1st and 2nd Defendants being the operators and owner of the petrol station was keeping the petrol and other oily substances at the petrol station, this was a non-natural use of the land upon which it was erected. Therefore she claims they are both liable to her for the escape of the petrol or other oily substance. Because of the 1st and 2nd Defendants’ failure to ensure that petrol or other oily substances would not escape from the said petrol station, they have thereby maintained a public nuisance which caused the accident.

5. It was the Plaintiff’s evidence that after the fall, she noticed petrol and other oily substances on the wet surface of the ‘run-in’ in the form of an extraordinary shiny sheen of surface on the ‘run-in’. She further claimed that the right side of her body landed on the ground and the right side of her clothing and her right hand was stained with grease and slippery substance, which were in black colour. Her clothes were disposed of while she was in hospital. The black substance on her right elbow was removed in the hospital after it was detected by the Plaintiff’s friend Miss Lee Fung Lan who is a registered nurse working at the Hospital Authority during a visit to the Plaintiff on the day after the accident. It was Miss Lee’s evidence that she tried to clean the brownish stain with a wet towel but failed to get the stain off. She then used ‘Hibiscrub’ but that also failed to remove the stain. Then she asked for some acetone, a colourless powerful chemical solvent, generally use by hospital for removal of residue of bandage and grease or oily stains. The application of acetone removed the brownish stain at the Plaintiff’s right elbow. It was Miss Lee’s understanding that the Plaintiff did not have an opportunity to clean her body since her admission until Miss Lee visited her and helped to clean her at the hospital on 25April 1998.

6. It is therefore the Plaintiff’s case that it was the dark greasy substance that caused the Plaintiff to slip and fall. As she was walking along the ‘run-in’ of the petrol station just before the accident, it is her case that the Defendants were liable for her accident.

The Defence Case

7. It is the Defendants’ case that the Plaintiff has failed to plead a breach of common law duty of care and in any event the Plaintiff has conceded the pavement was not owned by the 1st and 2nd Defendants. Neither did the Plaintiff plead that the 1st and 2nd Defendants were the occupiers of the pavement area where the fall occurred. She pleaded that the area was unleased and unallocated government land, a point that the Defendants do not dispute.

8. The Defendants further submitted that it is incumbent on the Plaintiff to prove that the Plaintiff’s fall was caused by the Defendants’ petrol products or the escape of some slippery substances from the 1st and 2nd Defendants’ petrol station. According to the Plaintiff’s pleaded case on the negligence, liability under Rylands v. Fletcher and public nuisance, Miss Wong, Counsel for the Defendants, submitted that the Plaintiff has to prove the escape of the petroleum or oily substances from the station. Miss Wong further submitted that it would be wrong to assume as a matter of course because the Plaintiff happened to slip and fall near a petrol station that she must have slipped on something that have escaped from the petrol station. Miss Wong further submitted that as the Plaintiff failed to give positive evidence on the circumstances and the cause of the fall other than she slipped and fell at the run-in of the petrol station, there is no evidence of escape from the Plaintiff. In other words, the evidence was merely circumstantial. The Plaintiff relied solely on the presence of the brownish stain on her right elbow.

Findings

9. It is not disputed that on the north end of the petrol station facing the harbour, the ‘run-out’ area along Hong Cheung Street, taxis and other commercial vehicles are allowed to make use of the open space outside the petrol station for washing and cleaning purposes and services relating to the maintenance of their vehicles. The photographs exhibited in the bundle showed that the boundary of the petrol station on Tai On Street met up with the pavement and it sloped down to meet the vehicular road surface of Tai On Street while the drains for the drainage of waste water from the petrol station were located on the inside round the perimeter of the petrol station. Beyond the drains, within the boundary of the said petrol station adjourning the ‘run-in’ there was a strip of flat surface that ran from the north to the south corners of the petrol station at Tai On Street with Hong Cheung Street to the north. The sloped ‘run-in’ that ran slowly down to meet the vehicular access of the road began just outside the wall boundary of Tai On Building at the entrance of the petrol station. It was the Plaintiff’s evidence that on the day of the accident she was walking on the flat area on top of the ‘run-in’, this means she must be walking along the inside of the boundary of the petrol station next to the drains. She marked the spot where she fell on the exhibited photos. She said because the ground was flat on this area and it had been raining that afternoon, she had wanted to keep her feet dry and had therefore avoided the sloped ‘run-in’. Exhibited in the bundle is an architect plan of Tai On Building (p. 26 of bundle C). The plan marked out the area of the road and pavement paved by the owner; this included the upper part of Tai Hong Street, Hong Cheung Street, and round the corner to the top of Tai On Street on the eastern end. While the pavement on Tai On Street, Shau Kei Wan Road round to the bottom end of Tai Hong Street was paved by the government at the owner’s costs. It therefore indicates that the Tai Hong Street pavement and the ‘run-in’ were maintained by the owner. The owner on the architect plan probably means the owner of the building at the time of construction and its assigns. If this plan of Tai On Building is correct and the pavement was constructed by the owner of the building, the periodical replacement and maintenance of the pavement would be undertaken by the owner, not the Highways Department. It follows therefore the duty of maintenance of the ‘run-in’ and ‘run-out’ lies not on the Highways Department. Further, the owner of the petrol station was the 1st Defendant.

10. Since the 1st Defendant was the supplier of petrol and petroleum products to its dealer the 2nd Defendant under the dealership agreement, the 1st Defendant had a duty to ensure that the 2nd Defendant would maintain and operate the petrol station in a safe manner and in accordance with proper procedure. It is also incumbent on the 2nd Defendant to make sure that the petrol station including the ‘run-in’ and ‘run-out’ areas were well maintained and cleaned regularly. Under the dealership agreement, Caltex imposed on its dealer the 2nd Defendant certain procedures that the 2nd Defendant had to follow. These included regular cleaning and other operational procedures. Furthermore, the 1st Defendant Caltex would pay periodic visits and inspect all Caltex petrol stations including this one to ensure proper operation and maintenance of the petrol station had been undertaken. While under the dealership agreement, the 2nd Defendant agreed to indemnify the 1st Defendant for all damages and losses sustained due to the 2nd Defendant’s failure to maintain the operation in accordance with the agreement. The 2nd Defendant’s witnesses claimed that the petrol station was well maintained. They denied the said petrol station had any leakages, spillages or escape of petrol or oil from it.

11. The location marked by the Plaintiff where the Plaintiff fell referred to above, according to the plan and the photographs marked by the Plaintiff, was clearly on the outside of the drains round the perimeter of the station. However, it is on a spot between the north and south ends of the station along Tai Hong Street, as can be seen from the photographs in the agreed bundle, it is within the boundary of the said petrol station (see ‘X’ marks on page 43, 44 and 45 of the agreed bundle A and the sketch plan on the page 46 of the agreed bundle A). It is also the Plaintiff’s evidence that it is an area which is just inside the perimeter of the said petrol station. Consequently, the area belonged to the said petrol station and should be maintained by the Defendants. Based on the photographs shown in the bundle and the sketch plan on page 46 of the agreed bundle A, it is unlikely that the location where the Plaintiff fell would be polluted by leakages of oil and grease from within the petrol station. Any spillages, leakages or escape from inside the petrol station would have been caught and drained into the perimeter drains. I accept the evidence from the 1st and 2nd Defendants that so far as the comprehensive safety system adopted for the station imposed by Caltex is concerned, the staff of the 2nd Defendant would have cleaned up any oil drips or spills from the pumps during the general operation of the petrol station within areas of and around the pumps. I also accept that the station is under strict regulation of weekly comprehensive cleaning. On the other hand, since the location where the Plaintiff slipped and fell was immediately outside the perimeter drains, it is possible and likely that the staff at this station may not have taken sufficient regard to this area. It is also likely and possible that the staff of this station may not have taken sufficient care so far as the ‘run-in’ and ‘run-out’ areas of the station are concerned. Particularly when vehicles entering the station, lubrication oil from the engines could have been deposited while waiting to enter into the said petrol station. The photographs in the agreed bundle showed stationary vehicles waiting to enter into the said petrol station at the ‘run-in’ area. It is highly possible that while waiting to enter into the petrol station, customers could have left behind drops of engine lubrication oil on the ‘run-in’ area. The oil could well have been dropped outside the perimeter drains of the said petrol station. Given further that it had been raining on the afternoon of the 24th April 1998, it is therefore possible that the staff of this station might not have cleaned the ‘run-in’ area as regularly and diligently as they should have.

12. As to suggestion raised by the Defence that the spillages on the ‘run-in’ may have come from hawkers hawking fried food next to the said petrol station, the hawkers, according to the witnesses for the Defence, often pushed their carts onto the ‘run-out’ area where a tap with running fresh water could be found. The Defence suggested the oil spilt or leaked could have come from the hawkers while pushing their carts along the pavement. There is also a suggestion that the hawkers could have been hawking right outside the petrol station close to the ‘run-in’ area on Tai Hong Street. Since there was evidence that it had been raining that afternoon it is unlikely for hawkers to have stayed hawking outside the ‘run-in’ area exposed to the rain or blocking the entrance to the petrol station that afternoon. It is also the defence evidence that the ‘run-out’ area had been used by taxis and other commercial vehicles and the petrol station allowed these commercial vehicles to use the area to clean up their vehicles. The Defence also submitted that it is impossible for the 2nd Defendant to stop these vehicles using the public area. The fresh water tap belonged to the petrol station. It is not disputed that these commercial vehicles are often customers of the petrol station. It is likely that the petrol station welcomed commercial vehicles to use that area because they might have been filling up at the petrol station. It is also within the knowledge of the 2nd Defendant that other users of the fresh water tap included not just drivers of commercial vehicles but also hawkers. It is therefore the duty of the 2nd Defendant to make sure that the use of the fresh water tap is restricted. If it allowed customers and non-customers to use that area then it should make sure that the grease, oil, dirt or garbage left behind by users of the area should be cleaned up so as not to cause any loss or damage to pedestrians and visitors to the petrol station.

13. The 2nd Defendant has a duty to see to it that the ‘run-in’ was well maintained and cleaned regularly. The ‘run-in’ to the station is part of the pavement surrounding the building, it is expected that pedestrians would use and share it with vehicles coming into the petrol station, its maintenance as a ‘run-in’ to the petrol station is part of the duty of the 2nd Defendant. I accept the evidence from the Plaintiff and her friend Ms. Lee Fung Lan that there was a greasy dark patch on the right elbow of the Plaintiff after the accident. I also accept the Plaintiff’s evidence that the dirt and grease on her clothes came from the area where she fell and that these came from area around the ‘run-in’ area of the petrol station. I am satisfied that she did slipped and fell because of the grease on or around the ‘run-in’ area.

14. Given the reluctance of the staff inside the petrol station to give assistance to the Plaintiff after the accident, it is not surprising that they have no recollection of the incident two years later when the 1st and 2nd Defendants were informed of the accident. It is also likely that no staff would have recalled the accident because they did not think it was worth reporting or that it had anything to do with them at the time. Since there was no evidence on how the accident occurred from the defence’s witnesses, I have only circumstantial evidence and the Plaintiff’s evidence on what happened to reconstruct how it could have happened. Based on the aforesaid, on a balance of probability, I reached my conclusion taking into account the circumstantial evidence of the grease patch on her right elbow and the Plaintiff’s evidence that her clothes were stained by the grease and dirt from the place where she fell down and the photographs exhibited.

15. The 2nd Defendant is also under a contractual duty with the 1st Defendant to “keep the interior and exterior of the station and the approaches in a clean, safe and tidy condition in accordance with the provisions of the standards manner” (p. 44K of agreed bundle B). Therefore, the 2nd Defendant is clearly liable because it has a duty to maintain the ‘run-in’ as well as the inside of the petrol station to make sure that should cars visiting the petrol station left behind patches of lubricant oil on the ‘run-in’, these should be cleaned as soon as possible so as not to cause danger to pedestrians sharing the pavement with the petrol station customers. It is a foreseeable risk, and is therefore within the liability of the 2nd Defendant. I find the 2nd Defendant owed a common law duty of care for its negligent maintenance to all visitors to the petrol station even though the visitors could have just been passing by the petrol station or to gain access crossing to the other side of the petrol station. This included the Plaintiff who was walking on the flat surface at the top of the slopping ‘run-in’ area along the entrance of the said petrol station.

16. The 1st and 2nd Defendants owed a duty of care under the occupiers’ liability as the occupier of the petrol station, for the 1st Defendant was the owner of the said petrol station at the material time. The 2nd Defendant was the licensee of the 1st Defendant under the dealership agreement. The 1st Defendant owned all the equipment at the said petrol station, and the 2nd Defendant as the dealer and licensee paid a fee for the operation of the said petrol station.

The Law

17. Counsel for the Plaintiff Mr. Gidwani referred to the case of *Ward v. Tesco Stores Ltd.* reported in [1976] 1 WLR 810 Megaw LJ held on page 815 second last line at the bottom of the page:-

“It is for the Plaintiff to show that there has occurred an event which is unusual and which, in the absence of explanation, is more consistent with fault on the part of the defendants than the absence of fault; and to my mind the judge was right in taking that view of the presence of this slippery liquid on the floor of the supermarket in the circumstances of this case: i.e., that the defendants knew or should have known that it was a not uncommon occurrence; and that if it should have happened, and should not be promptly attended to, it created a serious risk that customers would fall and injure themselves. When the plaintiff has established that, the defendants can still escape from liability. They could escape from liability if they could show that the accident must have happened, or even on balance of probability what have been likely to happen, even if there had been in existence a proper and adequate system, in relation to the circumstances, to provide for the safety of the customers. But if the defendants wish to put forward such a case, it is for them to show that, on balance of probability, either by evidence or by influence from the evidence that is given or is not given, this accident would have been at least equally likely to have happened despite a proper system designed to give reasonable protection to customers.”

18. I find that the 2nd Defendant have failed to show that it had provided reasonable protection to pedestrians sharing the pavement used by the 2nd Defendant as a ‘run-in’ to the petrol station that the flat area next to the drains was cleaned regularly. The evidence of Mr. Lau the station manager was that waste water from the station would have drained into the perimeter drains round the station and that the ‘run-in’ area was part of the pavement and therefore outside the premises of the petrol station and consequently is not a concern of the 2nd Defendant. Whether the ‘run-in’ area is safe, cleaned or maintained regularly or not the 2nd Defendant did not seem to care. The 2nd Defendant seemed to consider that it is an area that should be maintained by the Highways Department. I have made a finding above in para. 13 that the ‘run-in’ should be maintained by the 2nd Defendant. The 2nd Defendant is therefore liable even if the grease or oil deposit was on the ‘run-in’ pavement area outside the boundary of the said petrol station.

**Quantum**

Injuries sustained by the Plaintiff

19. According to the medical report of Dr. Au Tat Shun Thomas, the Medical and Health Officer at the Accident & Emergency Department of Pamela Youde Nethersole Eastern Hospital, dated 28 July 1998 (page 147 of the agreed bundle A), he examined the Plaintiff at the Accident & Emergency Department of Pamela Youde Nethersole Eastern Hospital at 1810 hours on 24 April 1998. His findings were:-

1. Severe tenderness over right hip joint with impaired range of movement;

2. X-ray of right hip showed facture at neck of right femur.

According to the second medical report, a report of Dr. Ko Yuen from the Department of Orthopaedics & Traumatology at the Pamela Youde Nethersole Eastern Hospital dated 4 August 1998, Dr. Ko reported that the Plaintiff was admitted on 24 April 1998 into the hospital and on admission the Plaintiff complained of right hip pain and difficulty in walking. Her X-ray showed undisplaced facture of the neck of right femur. The Plaintiff’s fracture was treated on the next day 25 April 1998 with closed reduction and hip screw fixation. There was a chance of avascular necrosis of the femoral head. The Plaintiff was transferred to Tung Wah East Hospital for rehabilitation on 29 April 1998 and trained for partial weight bearing walking. She was discharged on 20 May 1998 as the progress of her recovery was satisfactory. After discharge, the Plaintiff was put on outpatient treatments at the Department of Orthopaedics and she received physiotherapy at the Pamela Youde Nethersole Eastern Hospital from 4 June 1998 to 8 December 1998. The Plaintiff was readmitted into Pamela Youde Nethersole Eastern Hospital between 14 October and 19 October 1998 for the removal of the fixation screw from her right hip. According to the medical report of Dr. Joshua Ko, the Chief of Service, Department of Orthopaedics & Traumatology of the Pamela Youde Nethersole Eastern Hospital of 26 February 2001, during follow-up of the serial radiological assessment healing of fracture and no signs of avascular necrosis was found (p. 153 of bundle). His opinion that the Plaintiff had shown no evidence of avascular necrosis of the femoral head was shared by Dr. Arthur Yau whose report can be seen on page 155 of bundle A. Dr. Chun Siu Yeung has also written a medical report on 8 August 2000 (page 158 of bundle A). Dr. Chun reported that the Plaintiff complained that she suffered from: stiffness of right hip, unable to squat down fully, pain at right hip, intermittent pins and needles after sitting for long time or at the start of walking. She was able to continue walking for 30 minutes; but she had pain at the right knee and ankle. Dr. Chun found the Plaintiff was walking normally with no limp, and she could walk on tiptoes and on heels. She could also stand on one leg with the same stability. He also found no Trendelengburg sign, and she could only squat half way down. He found no swelling or deformity at the right hip, and no local tenderness (page 162 of bundle A). Dr. Chun further found the facture had united. There was residual hip pain and residual stiffness at the right hip. He found no wasting of muscle of the right thigh but wasting of muscle of the right leg. He concluded that with persistent swimming and hip exercise the residual stiffness at the right hip may improve to some extend without other treatment. He assessed Madam Lau’s condition belonged to a mild impairment of hip category, which is 5% impairment of the lower extremity or equivalent to 2% impairment of the whole person. According to Dr. Chun’s calculation, Madam Lau’s 5% impairment of the lower extremity is equalled to 4% loss of earning capacity. He further found that she is capable of returning to work as an insurance agent from an orthopaedic point of view. The Defendant has adduced no expert medical evidence.

Pain, Suffering & Loss of Amenities

20. I was referred to three cases by Mr. Gidwani, Counsel for the Plaintiff. The first case, *Lai Kwan Ming v. Lee Yin Hing trading as King Yip Company & Another* HCPI 765 of 2000 (judgment on 11 October 2001 of Deputy High Court Judge Lam). The plaintiff was 47 years of age at the time of the accident in 1997. As the result of the accident falling from height at the work-site, he suffered from a displaced facture right neck of femur. An emergency operation was performed with screws fixation performed on the day of the accident upon admission. He was discharged 3 days later and received outpatient physiotherapy for rehabilitation. The removal of implants was carried out about 2 years later at the patient’s request. He was found with good facture healing and had mild residual pain on walking. The plaintiff was walking unaided about half a year after the injury. He complained of weakness in his right hip after walking for about 10 minutes. He could manage walking slowly for about one hour, but complained of ache in the right hip after standing for about 4 to 5 minutes, more if he stood for over 10 minutes and tightness of right hip in the squatting position and unable to carry weight of over 10 to 20 pounds. The doctor found there was a slight shortening in the neck of the femur but the general alignment was good. He was awarded a sum of $276,000 as PSLA.

21. The second case is *Yeung Hing Lun v. Hao Tong Trading Ltd.* HCPI 132 of 2003 (judgment on 6 February 2004 of Master Allan Leung). The 51 years old transport worker sustained a facture of the left femoral neck and positive Trendelenburg sign. The impairment of weakness in his left hip persisted; a sum of $200,000 was awarded for the plaintiff suffered from a whole person impairment of 8%.

22. The Defendant’s Counsel, Miss Cheung, referred me to two cases. The case of *Yang Yi Chai v. Cheng Kam Shing and Another* HCPI 1788 of 1984 and the case of *Lee Ching Por v. Ban Wu* HCA 1524 of 1990. The Master Jones’ judgment was delivered on 5 October 1990. In the Lee Ching Por’s case the sum of $160,000 was awarded as PSLA. Both cases are over 10 years old. The sum of $160,000 awarded in 1990 would have been increased due to the escalating inflation between 1990 and 1997. Therefore, one cannot expect the sum of $160,000 as PSLA awarded in 1990 to remain the same in 2004.

23. I find the authority referred to me by Mr. Gidwani on the quantum of PSLA to be more relevant to the present case. However, I do not find the condition of the Plaintiff to be as serious as the plaintiffs in the case of Lai Kwan Ming and the case of Yeung Hing Lun. In the case of Yeung Hing Lun, the plaintiff suffered from 8% impairment of the whole person. In the case of Lai Kwan Ming, the plaintiff suffered from a weak right hip and pain after standing for 4 to 5 minutes, and he could not walk longer than 10 minutes. The Plaintiff in the present case is assessed by Dr. S.Y. Chun, specialist in Orthopaedic and Traumatology, that she has a 5% impairment of the lower extremity, which is equivalent to 4% loss of earning capacity. Dr. Chun also found that the Plaintiff is capable of returning to work as an insurance agent from an orthopaedic point of view and he found the sick leaves given to be reasonable. As Dr. Chun said in his report, “disability is an alteration of an individual’s capacity to meet personal, physical or occupational demands, or statutory or regulatory requirements because of an impairment. This is a non-medical issue”. It is for the Court to assess the extent the Plaintiff has been affected by the accident after taking into account the loss of amenities suffered by the Plaintiff and the pain suffered at the time and during her recovery. Dr. Chun’s assessment on page 162 is that the Plaintiff suffered from a mild impairment of the hip category of 5% impairment of the lower extremity, equivalent to 2% impairment of the whole person. On the other hand, Madam Lau claimed that she and her husband was planning to have another child before the accident took place and the accident had made that plan impossible at least within 2 years of the accident. I found therefore that the award for PSLA based on the authorities and the evidence before me should be $250,000.

Pre-trial Loss

24. The Plaintiff claims commission paid to her sister because her sister took over her cases while she was on sick leave from the day of the accident up to December 1998. According to the Plaintiff, her actual income after paying her sister the commission earned by her sister on her behalf of $120,000 and deducting expenses, her earnings for this period since the accident was $72,038. The year before the accident her income was $112,220. Therefore comparing her actual income of $72,038 to her earnings the year before the accident, her loss was $40,182. According to her, she paid her sister $120,000 because her sister took over most of her cases while she was on sick leave. I agree her sister should be paid that amount. Since this sum was paid after deduction of all expenses, based on the evidence given, her loss was $40,182 only. I am not satisfied she should get a further $120,000. I awarded the sum of $40,182 to her under this head for this would give her the same income as the year before.

Loss of Earning Capacity

25. All of the Plaintiff’s doctors considered that the Plaintiff could return to her job as an insurance agent. Therefore, I am not persuaded there would be any loss of earning capacity. I therefore make no award under this head.

Special Damages

26. The parties have agreed certain items under this head. They are:-

hospital expenses $2,108

physiotherapy $1,320

out-patient clinic $264

private consultation of Dr. Yau, Dr. Cheng $3,570

nourishing food $1,517

total $8,779

The Plaintiff further claimed alterative treatment for acupuncture: the treatment in the mainland of $5,200 and bonesetter fees $7,250. None of these expenses claimed were supported by the receipts produced. However I am satisfied that for most Chinese persons, the habit of visiting alternative treatments such as bonesetters or acupuncturists are widely accepted. For this reason, I will allow the sum of $3,500 to cover the bonesetter expenses. It is roughly half of the amount claimed by the Plaintiff as bonesetter expenses.

Travelling Expenses

27. The Plaintiff produced no receipts in support of this claim. It is impossible to gage the number of visits that the $8,220 claimed represented and for the distances of the journeys taken. I will allow half of the travelling expenses claimed by the Plaintiff on the basis that it is understandable that she regularly visited the hospital for follow up and physiotherapy treatments after she was discharged, it is expected she would need to take a taxi due to her condition in the early days after her discharge from hospital. The sum allowed therefore is $4,110.

Future Medical Expenses

28. I have seen no evidence in support of this claim. The doctors’ reports did not recommend any future treatments and since there is no evidence to suggest avascular necrosis of the femoral head, there is consequently, nothing to base this claim on. I made no award under this head.

Assistance by the Plaintiff’s husband

29. The Plaintiff claimed her husband was laid off at the end of August 1998 and because he had to look after her due to her condition, he did not actively look for a job until April 1999. Based on these dates, it is apparent that the Plaintiff’s husband did not stop working at the end of April 1998 immediately after the accident. He took a few months off, according to the Plaintiff, to look after her after he was laid off in August. It is difficult to understand why 4 months after the accident when he was laid off he decided then not to look for a job when the need in the 4 months after the accident would have been far greater. However, I accept it is not unreasonable for the Plaintiff’s husband to consider it would be appropriate to look after his wife for a few months before seeking suitable employment again. As he did not look for a job until after her sick leave which expired at the end of December 1999, I would allow a maximum of 4 months of absence from work by the Plaintiff’s husband in order to take care of the Plaintiff and it is:-

$9,850 x 4 = $39,400.

Damages to Clothes and Shoes

30. I allow the sum of $500 claimed by the Plaintiff as damages to her clothes and shoes at the accident although there were no receipts produced in support; the sum of $500 is reasonable.

Summary

31. PSLA $276,000

Special damages 8,779

Agreed items 3,500

Bonesetter 4,110

Travelling expenses 500

Damages to clothes 500

Care and attention by husband 39,400

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$332,789

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Interests

32. Special damages at half judgment rate from date of accident to date of judgment. General damages at 2% p.a. from date of writ to date of judgment; thereafter at judgment rate until full payment.

Costs

33. Cost nisi to the Plaintiff to be taxed if not agreed with certificate for Counsel.

H.C. Wong

District Judge