IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 166 OF 2001

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| BETWEEN | Chan Wai-leung | Plaintiff |
|  | and |  |
|  | Mo Sheung-wah  Mo Wai-sheung | 1st Defendant  2nd Defendant |

Coram: H H Judge Carlson in Court

Date of Hearing: 8 October 2001

Date of Judgment: 8 October 2001

Present: Ms Phyllis Loh, instructed by Szwina S K Pang & Co., assigned by the Legal Aid Department, for the Plaintiff

1st and 2nd Defendants, did not appear and were not represented

J U D G M E N T

1. From about September 1998 until 8 February 1999 when he resigned, the plaintiff was employed as a container lorry driver by a company called Chit Loon Transportation Trading Limited. The company is operated by the 1st Defendant and the 2nd Defendant, who is his nephew, is also an employee of the company.
2. On 12 March 1999, the plaintiff attended the company’s offices with a view to receiving his back-pay and also in order to collect certain documents without which he could not continue his employment. Those documents included a driving licence which permitted him to drive on the Mainland. A dispute then arose between the plaintiff and the two defendants who then proceeded to assault him. He was punched, he was kicked to the ground and when he was on the ground they continued to assault him by kicking him in the head and on the chest and the abdomen. I shall describe the injuries that he sustained as a result of that assault presently. Suffice it to say for the moment, that the two defendants were arrested and they were prosecuted for the offence of assault occasioning grievous bodily harm and on 15 June 1999 they were convicted of that assault at the Fanling Magistrates’ Court.
3. In July 1999, the plaintiff issued a writ claiming damages for his injuries for pain and suffering and for loss of amenity as well as for loss of earnings and other items of special damage. No defences were forthcoming and judgment has been entered against these defendants on 17 August 2000 and on 17 May of this year with damages to be assessed. This is the hearing of that application.
4. The 2nd Defendant has had no notice of this hearing, so I do not propose to make any award against him.
5. The 1st Defendant has been properly served and the award will therefore be against him alone.
6. Turning to the facts which give rise to this assessment, the plaintiff is now aged 41. He is a married man with two children and for over 12 years now he has driven container lorries. The assault was so severe that he lost consciousness and had to be removed to hospital by ambulance. When he was first seen by the doctors, it appears that those who interpreted the X-ray films overlooked a number of fractured ribs - he was in fact sent home despite his protestations that he was still in considerable pain and discomfort. When he was at home some days later, he in fact fainted and I am satisfied that was as a direct result of the injuries which he sustained. Further and fuller examination revealed that he suffered fractures to the right 6th to 10th ribs and the left 4th, 6th and 7th rib, as well of course as his head injuries; there was bruising and there was also tenderness to his abdomen, which perhaps is not surprising given the nature of the assault that I have just described.
7. He was hospitalised for a total of five days and was treated conservatively. He was given sick leave from the date of the accident until 13 May but he was not able to return to work until July and I am satisfied, now that I have heard him give evidence and describe his condition, that that was an entirely reasonable thing for him to do.
8. There are two main reports before the court, one from a orthopaedic specialist, Doctor Lee Po-chin starting at page 45 of the Trial Bundle and another from a neurologist who has reported on his head injuries, that is Doctor Yu Luk-ling at page 49. There is no question that this was an extremely distressing incident for the plaintiff and I dare say he will carry the emotional distress that attends this sort of incident for many years to come. Fortunately, the medical evidence shows that his physical injuries have now largely resolved themselves and there is no deformity, the ribs have united properly. But he continues to get pain over the chest area and the orthopaedic surgeon has indicated that this pain may be a permanent feature and, of course, that is something that is bound to sound in the assessment of damages for pain and suffering.
9. Given the nature of the attack to his head, it is not at all surprising to read that he now suffers from post‑concussional syndrome; he periodically gets headaches - according to the neurologist, these occur on a few occasions in the course of a month. Fortunately they resolve themselves when he takes fairly basic medication such as Panadol and the neurologist is hopeful that when he gets appropriate treatment and over the passage of the next few months with counselling and so forth that the effects of the head injury will have resolved themselves completely. The plaintiff, perhaps not surprisingly, is not at all confident about that. He feels that this has all affected his capacity as a long-distance lorry driver. Whereas previously before he was assaulted he could drive for long hours, particularly through the night, but he now feels that this brings on headaches and he has got to stop his journey and rest in order that the headache passes before he feels able to go on with his journey. He also has difficulty when he has a task which requires him to concentrate. This is largely related to documents. As a long-distance lorry driver he clearly has to take a cargo manifest and when there are Customs examinations at the border, he feels unable to pour over what can sometimes be detailed documents for any long period of time and generally this has affected his confidence and he feels that if he were to lose his employment he would have difficulty, or at least more difficulty, in finding other employment. I am asked to reflect that in the award of damages that I make and I shall do so in the way that I shall indicate in a moment. So really, that is the size of it: his physical injuries have now resolved themselves leaving this residual chest pain which is said perhaps to be a permanent feature; he does not feel quite as strong as he used to be, but one would hope with the passage of time, and I am confident about this, his physical strength will return given the nature of these particular injuries and given the fact that the fractures have all now properly healed. But there is this worry which remains concerning his head injury, but again the message that I get from the neurologist is that with proper treatment these symptoms will largely resolve themselves.
10. And so it is against that background that I now turn to the quantum of this claim. Miss Loh who has presented the case, if I may say so, extremely helpfully, has tried to assist by putting in what she says are proper comparables in terms of pain and suffering and loss of amenity but unfortunately, as so often happens, one can have difficulty in coming across a case that is quite right and many of the cases that she has drawn to my attention are now over 13 years old and so with the incidence of inflation it is a little difficult to place any great reliance on them, and so I take the view that I am going to have to do my best with this.
11. I have come to the conclusion that this case is certainly not worth anything like the $280,000 that Miss Loh has contended for. Whilst these were unpleasant injuries, there has effectively been full recovery with the prospect of the residual symptoms resolving themselves in the next few months, although as I say, there will be continued and it may be permanent chest pain. Miss Loh has also contended for an additional award of $100,000 for loss of earning capacity. I do not quite know what she means by that. I think what she was saying was that he is vulnerable in the labour market because if he were to lose his employment he might have difficulty in getting other employment or have more difficulty or at least take longer in getting other employment.
12. I think the best way to do this is to reflect that concern in a more global way in my assessment of pain and suffering and loss of amenity and under this head I am satisfied that the proper award is one of $180,000.
13. To that, one must add the special damages. There is a claim for loss of earnings. $25,000 is what he was earning and I am satisfied that that is what he would have continued to earn. He is now employed and earning that amount but he was unable to go back to work for five months and I take that that is a reasonable amount of time off given what happened to him. And so the award here is $25,000 multiplied by five months less just over $2,600 for what he was able to earn before he resumed full employment, so the award for loss of earnings is $122,388.

* Medical and miscellaneous related medical expenses - $10,963: I have seen the evidence in respect of that and I accept it.
* Tonic food: I will allow $3,000. I have seen bills for, I think, $2,600, but I accept what he says that he in fact spent $3,000, I believe him.
* Travelling expenses to and from hospital: I round that off to $1,000. I accept his evidence about that.

1. Then there is an element of $8,000 for the cost of future medical treatment. This is the treatment which the neurologist has advised. That has not been spent yet because the plaintiff has not got the money to do that. I accept his evidence that if I were to award this amount he would spend it in that way and I accept the neurologist’s evidence as to the length of treatment and the cost of treatment and that comes to $8,000.
2. And so the special damages come to $145,351 which must be added to the $180,000 in respect of general damages for pain and suffering and loss of amenity.
3. There is a claim for interest and in my view there must be interest: 2 per cent per annum from the date of the writ until today on general damages and at half the judgment rate on pre-trial special damages, and I award that from the date of the assault until today.
4. There will be costs in respect of the whole of the action against the 1st Defendant, with certificate for counsel, to be taxed if not agreed. The plaintiff’s own costs will be taxed in accordance with Legal Aid Regulations.
5. As to the 2nd Defendant, I have made it clear that this award is against the 1st Defendant only, but I am persuaded by what Miss Loh has said that until 16 July of this year costs were incurred, and properly incurred, in trying to serve the 2nd Defendant, and so I will allow the plaintiff his costs

against the 2nd Defendant for the whole of this action until 16 July with Legal Aid taxation.

Ian Carlson

District Court Judge

I/we certify that to the best of my/our ability and skill, the foregoing is a true transcript of the audio recording of the above proceedings.

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Liz Shore

9 October 2001