IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 181 OF 2002

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| BETWEEN | Wong Siu Shan | Plaintiff |
|  | and |  |
|  | Tsang Hin Sum | Defendant |

Coram: H H Judge Lok in Court

Date of Hearing: 18 December 2002

Date of Judgment: 18 December 2002

Present: Mr Joseph Tsang, of Messrs Tsangs, for the Plaintiff

Defendant, in person (absent)

J U D G M E N T

1. On 26 March 2001, the Plaintiff was assaulted by the Defendant with a knife and sustained injuries in the head, arm and leg. Upon admission to hospital, it was found that a deep laceration, 8 cm in length, was present over the vertex. The laceration was sutured and the Plaintiff was treated conservatively. He was hospitalised for 2 days. The Plaintiff therefore brought the present action against the Defendant to claim for damages arising from the aforesaid assault.
2. On 9 July 2002, interlocutory judgment was entered against the Defendant for default of notice of intention to defend, and this is the assessment of the Plaintiff’s damages.
3. The Plaintiff himself testified in the hearing. After listening to his evidence, I have no reason to doubt the truthfulness of his testimony. So far as the medical evidence is concerned, hearsay notice has been served on the Defendant prior to the hearing. Hence, the Plaintiff just relies on the contents of the medical reports without calling the doctors.
4. According to the Plaintiff and the Plaintiff’s medical expert who is a specialist in neurology, Dr Yu Yuk-ling, the Plaintiff suffered post-concussional syndrome including headaches, dizziness, fatigue, irritability, difficulty in concentrating and performing mental tasks, impairment of memory, insomnia, and reduced tolerance to stress and emotional excitement. Dr Yu is of the opinion that the syndrome is partly physical due to the disturbance of the brain functions and partly psychological in reaction to the consequences of the incident. Further, Dr Yu is of the view that the aforesaid disability suffered by the Plaintiff is permanent and he also assesses the Plaintiff to have suffered a 3 per cent permanent impairment as a result of the assault.

Pain, Suffering and Loss of Amenities (PSLA)

1. In Cheng Lai-kwan v Nan Fung Textile Limited [1998] 2 HKLRD 729, the court awarded $150,000 for PSLA for a plaintiff who (1) had sustained only physical injuries to her forehead from which she had made a full recovery; (2) might have suffered 2 per cent disability for post-concussional syndrome; (3) was able to resume her work after a sick leave period of about 4½ months. Mr Tsang, solicitor for the Plaintiff, argues that the physical injury suffered by the Plaintiff in the present case, which was a deep laceration 8 cm in length, was much more serious than the victim in the Cheng case and so a higher award should be made.
2. In Hau Kwok-fong v The Kowloon Motor Bus Company (1933) Limited & Others, unreported, HCPI 101 of 97 (decision of Pang J on 4 March 1999), the matters taken into account by the court in assessing the award for PSLA included one operation for the fixation of fracture of the right lower jawbone, 4 days’ hospitalisation, 13 days’ sick leave, residual discomfort and another operation to have the implants removed. The plaintiff had also confirmed in his evidence in court that such symptoms no longer existed save and except a certain degree of numbness in the chin and on the left side of his body. The court awarded $180,000 for PSLA.
3. After referring to these cases and taking into account the post-concussional syndrome and the physical injury suffered by the Plaintiff as a result of the assault, I award $180,000 for PSLA in the present case.

Loss of Pre-Trial Income

1. The Plaintiff was a sole proprietor selling marine delicacies. Based on the income earned by the Plaintiff from 1 to 26 March 2001, I agree that the Plaintiff could have earned a net profit of $6,284 a month on average but for the incident. After the assault, the Plaintiff always suffered from post-concussional syndrome including headaches and fatigue, and he always had to close down his shop earlier than the scheduled time. As a result, he suffered the loss of income as particularised in page 7 of the Statement of Damages. I agree that it is an accurate assessment and I therefore make an award of $45,193 for pre-trial loss of income.

Loss of Future Income

1. The average monthly income of the Plaintiff after the incident was $4,708. As the post-concussional syndrome suffered by the Plaintiff is permanent, the Plaintiff is likely to suffer the same loss in this regard in the future. So far as the multiplier is concerned, the Plaintiff is aged 52 now. After referring to the cases cited to by the Plaintiff’s solicitor, including Chan Kam-hoi v Dragages et Travaux Publics [1998] 2 HKLRD 958, Donald Dean Bozarth v Yuen Ping‑chor, unreported, HCA 5814 of 1993 (decision of Master Jones on 11 March 1997), Leung Hing-sum v Yau Lee Construction Company Limited & Others, unreported, HCPI 422 of 2000 (decision of Master M Yuen on 12 October 2001), Lung Kwong-ying v So Sai-lo & Others [2002] 3 HKLRD 185, and taking into account that the work of the Plaintiff in the present case is less labour intensive, I adopt a post-trial multiplier of 8. The Plaintiff’s claim for future loss of income can therefore be assessed as follows: ($6,284 - $4,708) x 12 x 8 = $151,296.

Loss of Earning Capacity

1. The Plaintiff admits in his own testimony, even in the absence of the disability suffered by him as a result of the incident, it would be very difficult for him to obtain other kind of employment in view of his age. In such circumstances, even without the incident, it seems that the present self-employ business is the best kind of job that he can secure for himself. In this regard, the Plaintiff has already obtained full indemnification for his loss in income arising from such business. If, for any reasons, the Plaintiff has to go back to the labour market again, his age rather than his disability is the main factor which affects his prospects of finding a job. In such circumstances, as the court has already allowed the Plaintiff to claim for all the loss of income arising from his self-employ business, and the Plaintiff’s handicap in the labour market is due to his age rather than his disability, I will not make a separate award for loss of earning capacity in the present case.

Other Losses

1. As for the other losses particularised in pages 4 to 6 of the Statement of Damages, I allow the Plaintiff’s claim for all the losses except the following: firstly, in the absence of any evidence to show the qualification of the so-called doctor in China and the exact benefit of his treatment, I disallow the medical expenses and transportation costs arising from such medical treatment in China; secondly, the Plaintiff’s damaged T‑shirt was bought more than 1 year prior to the incident, hence I only allow the Plaintiff to claim for $300 for such damaged item; thirdly, the injuries suffered by the Plaintiff are not particularly serious and so I only allow $3,000 for tonic food expenses; fourthly, the Plaintiff did not calculate the exact quantity of the perished stock, however I accept his evidence that the loss in this regard would at least amount to $40,000, and I therefore so award.

Future Medical Expenses

1. According to Dr Yu, the Plaintiff should receive weekly neurosurgical consultation for 6 weeks and thereafter consultation with his family doctor on a need basis. However, it is obvious that the Plaintiff did not attend the consultation as recommended by Dr Yu, and so I doubt whether such kind of consultation, in view of the permanent nature of the disability, is still necessary. Further, as the Plaintiff is continuing to receive out-patient treatment, there is no particular reason why the Plaintiff has to receive consultation from a private practitioner in this regard. Hence, I disallow the Plaintiff’s claim for this item.

Conclusion

1. Based on the aforesaid, the quantum of the Plaintiff’s claim can be summarised as follows:

General Damages

PSLA: $180,000

Pre-Trial Losses

(a) loss of income: $45,193;

(b) medical expenses: $400;

(c) transportation expenses: $676;

(d) damaged clothing: $300

(e) tonic food expenses: $3,000

(f) rental payment in respect of his shop: $19,956;

(g) perished stock: $40,000

Total: $109,525

Future Loss

Future loss of income, $151,296

Total: $440,821

1. I therefore certify the Plaintiff’s loss in the said amount and I also award interest on PSLA at 2 per cent per annum from the date of the writ to the date of the assessment and on pre-trial losses at half the judgment rate, i.e. 4.0625 per cent per annum, from the date of the assault to the date of assessment.

H H Judge Lok

District Court Judge