DCPI 183/2002

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 183 OF 2002

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BETWEEN

YIP CHUN NAM Plaintiff

and

CHAN KANG 1st Defendant

JENNIFER TSANG 2nd Defendant

(also known as TSANG LAU SO)

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Coram : H.H. Judge Wong in Court

Date of Hearing : 26th, 27th & 28th February 2003, 3rd, 4th & 6th March 2003

Date of Handing Down Judgment : 24th March 2003

# JUDGMENT

1. The Plaintiff alleged that the 1st Defendant punched him 3 times on his chest and the 2nd Defendant pulled his necktie during an argument over whether the Plaintiff’s employee had scratched the Defendant’s car parked in the car park of Block 3 Yau Tong Industrial Building. As a result he suffered chest pain, insomnia and got frightened and scared whenever he saw the 1st Defendant.
2. The Defence is one of bare denial.

## THE EVIDENCE

1. The Plaintiff said that in the afternoon of 16/2/01 he met Jimmy Chan, son of the Defendants. Jimmy Chan told him that his foki had scratched Chan’s car. He asked his foki and no one admitted, so he told Chan none of his foki had scratched Chan’s car.
2. At about 7:30 p.m. he went back to the car park as he had to go back to get a bottle of LPG for the fork lift.
3. In the lift lobby of the car park he saw the Defendants with his family including their son Jimmy Chan, daughter, a baby and maid.
4. He heard D1 saying in a loud voice that he had bumped into D1’s car again, how was he to compensate. D1 was very agitated. He also heard from D2 saying that he was just like a tortoise hiding his head inside the shell, bumped into other people’s car and did not admit.
5. D1 then punched him 3 times on his chest. He stepped backwards. D2 went forward and seized his tie. He felt one of his workers supported him. He felt pain at the chest region. He saw one of his foki went to D1 and said it was just a matter of the vehicle being scratched, there was no need to beat up other people.
6. D1 still wanted to dash forward to beat him up. Then D1 took out a pass from his shirt pocket, held it up and said that he was an administrative officer of Kwun Tong Police Station, he knew a lot of police and he could hit anyone as he liked.
7. He told his foki not to talk to him and he went to his car, get his mobile phone and reported the matter to police.
8. He was then taken by ambulance to United Christian Hospital. In the ambulance he saw redness on his chest, felt a bit dizzy and wanted to vomit.
9. In hospital he was found to have tenderness over chest wall.
10. Sun Tim Choy a driver employed by the Plaintiff’s company said that the Defendants’ family came out of the lift lobby. The maid carried the baby.
11. D1 walked towards the Plaintiff and said angrily that the Plaintiff’s worker had bumped into his car. D1 grew agitated and said in a loud voice and pointed finger at the Plaintiff. Then D1 dashed forward and punched the Plaintiff 2-3 times. Plaintiff stepped back and then D2 rushed up and grabbed hold of Plaintiff’s tie. He went up to separate them. D1’s daughter and Law Chi Wah (one of Plaintiff’s worker) also went up to separate them.
12. He told D1 not to hit other people. D1 then took out a card and said he was a supervisor of Kwun Tong Police Station.
13. The Plaintiff then dialed 999.
14. Cheung Muk Kwong was the caretaker. He was in the toilet, he heard it was very noisy outside. He went out to see what happened. He saw D1 arguing with the Plaintiff in a loud voice. He saw D1 rushed up and punched the Plaintiff 2-3 times, then D2 rushed up to pull the Plaintiff’s tie.
15. The Plaintiff’s workers and Defendants’ family members separated them.
16. In the 1st statement he told police he did not see anything. He explained that the Plaintiff and D1 were vice chairman of the Owners Incorporated, they employed him and he wanted to keep his job.
17. He gave another version which he said was the truth because D2 rang him the next day and asked if he saw a man in vest assaulted D1. As he saw Law Chi Wah stood next to D1 but did not assault D1, he thought it was better to tell the truth so he went to Kwun Tong Police Station on his own initiative to tell the truth.
18. He was not a relative of Mrs. Yip (wife of D1).
19. In cross examination he said he saw D1 took out a card and waved and claimed he was the administrative officer of Kwun Tong Police Station.
20. He started his employment as caretaker in 1995. The Plaintiff’s father was the Chairman of the Owners Incorporated but it was Mr. Tsui the man in charge of the Owners Incorporated who employed him.
21. The 1st Defendant said that he had at least 20 years community service. He had known the Plaintiff’s family for a long time i.e. since 1981. They maintained very good relationship. In February 2001 he was the honorary president of the Kwun Tong District Junior Police Call. He attended the inauguration ceremony of the Junior Police Call that day.
22. At 6:50 p.m. that day he received a call from his son saying that his car had been scratched by the fork lift of the Plaintiff. He went back and found the bumper of his car scratched.
23. When his family left office to go home at about 7:30 p.m. in the car park he saw 6 to 7 of Plaintiff’s foki drinking alcohol. He saw the Plaintiff holding a beer can and there were empty beer can all over the floor.
24. He was carrying his grand child. He saw the Plaintiff so he said “Ah Lam you’ve scratched my car again”. Then the Plaintiff angrily said words to the effect that which eye of his saw that and that if he needed a pair of spectacles the Plaintiff could give him money to buy a new pair if he did not have money.
25. The Plaintiff used his finger and pointed to his spectacles, nose and face and scolded him with foul language. He thwarted the Plaintiff off and said “don’t use foul language”.
26. He smelt alcohol and told the Plaintiff that he had drunk too much alcohol.
27. The Plaintiff was about to hit him, he handed his grand child to his wife who in turn handed the grand child to the maid.
28. The Plaintiff raised his hand as if to hit him then his wife D2 stood in between them and pushed the Plaintiff away. Then Ng Chi Kuen held the Plaintiff and stepped backwards.
29. Then Plaintiff’s foki held a bottle rushed forward towards him and shouted that he had framed his boss and asked where he belonged (a triad language).
30. He was scared and said “don’t hit me”. He then ran and took out a card from his purse and said he was the chairman of that district’s area committee. He dialed 999. He said he did not hit the Plaintiff.
31. Jennifer Tsang the 2nd Defendant said that at about 7:30 p.m. she and her family were in the car park intending to go home. She saw a group of 7-8 people including the Plaintiff.
32. D1 wanted to greet the Plaintiff and said “Ah Lam your forklift had bumped into my car again”. The Plaintiff then in a very voice said words similar to what D1 recalled.
33. They were standing about 2-3 feet away. The Plaintiff took out his purse as if to take money out and throw it to D1. The Plaintiff also pointed his finger at D1 and D1 thwarted off his hand and told him not to move his hand.
34. The Plaintiff and D1 had heated argument she was scared and took the baby away from D1 and handed to the maid.
35. She told the Plaintiff that previously his workers had damaged her daughter’s new BMW which had been on the road for only 5 days and he did not bear responsibility and made his worker pay.
36. She described that the Plaintiff’s tie was loosen, with the collar button of his shirt undone.
37. The Plaintiff in reply said that the other time they paid money but this time he would not be that stupid. The Plaintiff continued to scold her, put his purse back and pointed his finger against D1 and tried to rush towards D1 raised his hand as if he was about to hit D1, so she moved in between to separate them.
38. As the Plaintiff scolded her and cursed her ancestors she said that the Plaintiff acted just like a tortoise hiding his head inside the shell by not admitting the scratch of their car.
39. When she moved in between the Plaintiff and D1 she pushed the Plaintiff away with both her hands on Plaintiff’s chest.
40. Then she saw a man holding a bottle chasing D1 accusing him that he framed up his boss.
41. She shouted for help and asked that man not to fight. His son Jimmy caught hold of that man. That man told Jimmy not to obstruct him or Jimmy would be beaten up as well. Then Sun Tim Choy stopped and controlled that man. Her daughter supported D1 and she dialed 999.
42. Jimmy Chan, the Defendants’ son, told his father (D1) about his car being scratched. D1 told him it was a minor matter and told him not to pursue the matter.
43. When they went to the car park he saw some 6 to 7 of the Plaintiff’s workers drinking beer because he saw some beer bottle opened and placed on the ground and cartons. D1 greeted the Plaintiff and inquired about the incident i.e. the scratching of his car. He heard the Plaintiff responded angrily asking which of D1’s eye saw it. D1 said it was his son who saw it and told the Plaintiff not to make wrongful accusation.
44. The Plaintiff continued to scold D1 and pointed his finger at D1. They were then about 2 feet apart. D1 thwarted off Plaintiff’s finger. Then Plaintiff said that D1 hit him and tried to rush forward as if he was going to hit D1. At that juncture D2 went forward to intercept and used her hands to block the Plaintiff. Plaintiff had his foki behind him and grabbed hold of him.
45. He then saw Plaintiff’s foki rushing towards D1 with a bottle in each hand. He rushed forward and grabbed hold of the man’s hands and told him not to make any stupid move. That man told him to walk away or he could be hit as well.
46. Then his parents made a report to police.
47. The whole incident lasted for about 3 minutes. He said his father did not punch the Plaintiff nor did his mother pull the Plaintiff’s tie. She only pushed the Plaintiff.

DID D1 PUNCH THE PLAINTIFF AND DID D2 PULL THE PLAINTIFF’S TIE

1. I have carefully considered all the evidence. I do not find the evidence from the Defendants and Jimmy Chan convincing.
2. Had D1 told Jimmy Chan that it was a minor matter and not to pursue then why would he bring up this matter when he saw the Plaintiff?
3. D1 said he saw the Plaintiff holding a can of beer and all over the floor in the car park were empty beer cans but D2 and Jimmy Chan said there were beer bottles. Had Plaintiff a can beer can in his hand D2 and Jimmy Chan could have noticed yet that was never mentioned in their evidence.
4. D2 and Jimmy Chan said the Plaintiff took out his purse but D1 did not mention that in his evidence.
5. The Defendants said his foki held a bottle while Jimmy Chan said that man held a bottle in each of his hands.
6. The incident lasted only a short time it was unlikely that D2 could have told Plaintiff that the last time her daughter’s new BMW which had been on the road only for 5 days being scratched. Further D1 and Jimmy Chan did not give evidence about that.
7. They were members of the family, they must have talked about this incident. The discrepancies in their evidence could only mean that they agreed on what to say generally, but not the details.
8. On the other hand, I accept the Plaintiff’s evidence. Had he not been punched or his tie had not been pulled he would not have complained about chest wall pain and pain during neck movement. When examined in hospital shortly after the incident he was found to have mild swelling and mild bruise in the chest region and he was diagnosed to have blunt chest injury which was consistent of being hit on the chest.
9. Further the caretaker was an independent witness. Both D1 and Plaintiff were vice chairman of the Owners Incorporated, he was eager to keep his job and said he did not see what happened. He went to tell the police what happened on his own volition after D2 telephoned him and asked if he saw the man in brown vest assaulted D1. He knew what D2 said was not true so he went to police station to tell police what he actually saw.
10. So on balance I find that the Defendants had jointly assaulted the Plaintiff and as a result he suffered slight injury on his chest region.

## DAMAGES

1. The Plaintiff is the chief executive officer of his family owned company. From the tax return he earned $1,725,000 for the year 1/4/00 to 31/3/01.
2. He suffered only mild swelling on the chest because of 3 punches at best from the 1st Defendant. On 16/2/01 after the incident he was admitted to the United Christian Hospital for observation and was discharged on 18/2/01 with 4 days sick leave.
3. On 20/2/01 he attended the United Christian Hospital complaining of chest pain. He was given analgesic and granted sick leave for 2 days.
4. In Kwun Tong Jockey Club Clinic on 23/2/01 at night he complained of chest wall pain, he was given 2 days sick leave on 23 and 24/2/01. On 25/2/01 at the same clinic he was diagnosed to have chest wall contusion and was given sick leave from 25th (which was on Sunday) to 28/2/01. Analgesic was prescribed. The total medical charges amounted to $74.
5. From 1/3/01 to 26/3/01 he attended Dr. Ernest Kwong for 5 times complaining of chest wall pain and was given sick leave for the whole month except 18th and 25th.
6. From 10/4/01 to 19/3/02 he attended the same doctor 6 times this time complaining of insomnia.
7. On 8/5/02 he attended Dr. K Singer a psychiatrist for insomnia.
8. On 16, 17 and 18/11/02 he again attended Dr. Ernest Kwong complaining of insomnia.
9. On 3/3/01 and 12/4/01 he attended a hospital in She Kou Shenzhen to consult Chinese herbalist for his anxiety and sleep problem.
10. He complained of getting nervous and could not sleep whenever he saw the 1st Defendant.
11. He claimed $50,463 for purchase of bird’s nest for nourishment and tonic food.
12. He also claimed 41 days sick leave in the amount of $325,400.63, travelling expenses and $150,000 for pain and suffering and loss of amenities for “mild bruising and swelling over lower sternum and chest wall contusion”.
13. To sum up his injury, up to 25/2/01, was that he had chest wall contusion because the D1 had punched him 3 times on the chest on 16/2/01. Although there was no evidence adduced, from my experience as judge hearing many doctors’ evidence at trials concerning bruises caused by being in contact with blunt objects, the injury would heal and bruises could disappear within 14 days. He was prescribed with only analgesics. It shows that the injury was minor.
14. He agreed that he only told Dr. Kwong about chest wall pain and the doctor gave him the medical certificate and a recommendation for sick leave. No medication was prescribed. He went to the same doctor at the expiration of his sick leave and obtained another medical certificate. He is a well educated man and very well off and physically fit. I doubt if he had continuously been having chest wall pain he would not go for a thorough check up.
15. He started complaining about insomnia on 10/4/01. Again he agreed that he told the doctor that he could not sleep and the medical certificate was given. Had he been so scared of the 1st Defendant it would not take him almost 2 months before he developed insomnia.
16. The 1st Defendant was his neighbour who like him was well off and had devoted a lot of time in community work. They sat in the meetings of the Owners Incorporated. To say that he got frightened and could not sleep and could not concentrate at work is a gross exaggeration. Dr Singer a psychiatrist only certified that he suffered insomnia. Dr Singer did not say the cause of his insomnia.
17. Dr. Chung See Yuen in his 8 pages report repeated what the Plaintiff told him for 7½ pages. Even Dr. Chung opined that his mental problems are mild.
18. To complete his exaggeration he claimed $50,463 for purchase of（燕盞）bird’s nest (very good quality bird’s nest) as tonic food. From the receipts he had discount as he had VIP card. He could only have VIP card because he was a constant buyer.
19. I find that he is a malingerer.
20. For PSLA in Chung Man Yan and another v Sihon Co. Ltd. HCA No. PI 117 of 1995 the Plaintiff suffered only minor injuries. There was one swelling and a number of minor abrasion and had the experience of being under a collapsing balcony which had been terrifying, a sum of $12,500 was awarded in August, 1996.
21. In Hong Kong Macao Hydrofoil Co. Ltd. v Ng Chau Wai and Yeung Ying and others 1984 AJ Folio 209 $15,000 was awarded under PSLA for bruising, fractured nose and post concussional syndrome.
22. The injuries in those 2 case are for more serious than the injuries the Plaintiff suffered. Taking into consideration inflation I award $17,500.00 under PSLA.
23. I disallow all claims for medical treatment and travelling expenses after 28/2/01 as I find that the Plaintiff is a malingerer. I also disallow the claim for tonic food.
24. I allow 12 days sick leave i.e. from 17th to 28th February 2001 in view of the fact that he was recovering from the chest wall contusion.
25. He earned $1,725,00 from 1/4/00 to 31/3/01. So for sick leave I award $(16/365 x 1,725,000) = $75,616.
26. He spent up to 25/2/01 $74 for medical expenses and $120 for travelling expenses.
27. I assess the damages the Plaintiff suffered to be $93,310 calculation of which is as follows :-
28. PSLA - $17,500
29. Medical expenses - $74
30. Travelling expenses - $120
31. Sick Leave - $75,616
32. I consider the Defendants are joint tort feasors in the assault.
33. In the premises there be judgment for the Plaintiff in the sum of $93,310.00 with interests as to $17,500 at 2% p.a. from date of writ to date of judgment and $75,810.00 at 4.0465% p.a. from 16/2/01 to date of judgment and thereafter at judgment rate until payment.
34. Order nisi : Costs against both Defendants. Certificate for Counsel.

(W. Wong)

District Judge

Mr. Stephen Wong instructed by Messrs. Bobby Tse & Co. for Plaintiff.

Mr. Michael K.W. Liu instructed by Messrs. P.C. Woo & Co. for the 1st and 2nd Defendants.