## DCPI 248/2006

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 248 OF 2006

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BETWEEN

SZE KA CHOY (史家財) Plaintiff

and

CHAN ON CHEUNG (陳安祥) Defendant

\_\_\_\_\_\_\_\_\_\_\_\_

Coram: Deputy District Judge W.C. Li in Court

Date of Trial: 29th December 2006

Date of Handing Down Judgment: 5th January 2007

**JUDGMENT**

1. The Plaintiff was assaulted by the Defendant on 28 February 2004 at the pavement of No. 33-37 Tai Nan Street, Mongkok, Kowloon, Hong Kong, and he claimed damages for the injuries received as a consequence of the assault. The Defendant was convicted at the District Court of Wounding, contrary to Sec. 19 of the Offences Against The Person Ordinance, Cap. 212, on 12 November 2004. Judgment in default of Defence against the Defendant was entered in favour of the Plaintiff on 24 July 2004. The trial today was for assessment of damages.
2. The Plaintiff ‘s right eye was totally blinded by the impact of a punch that was delivered by the Defendant on the Plaintiff’s face in the assault. Dr. Amy Wong Lee of the Hong Kong Eye Hospital in her medical report dated 16 September 2005 found that the Plaintiff’s right eye had suffered a 100% functional limitation in its vision. The Plaintiff was a transportation worker before the assault and from the wages record and the bank ledgers showing payment of his salary by his employer, the Plaintiff earned on average $8,040.00 per month, i.e. including year end double pay. He was aged 59 at the time of the assault.
3. On Special Damages, the Plaintiff had incurred $4,000.00 on medical expenses and $3,000.00 in traveling expenses. Medical receipts were produced and I would allow these claims in full. I also allow the Plaintiff’s claim for $2,000.00 for tonic food.
4. On Pre-Trial Loss of Earnings, the Plaintiff had been granted sick from 28 February 2004 to 14 April 2005. He received a total of $380,000.00 in relation to his Workman Compensation payment. At his age of almost 60 and with the loss of his right eye, he had not been able to find work after he recovered from his injury. It was 2 years and 10 months since the assault. On Pre-trial loss, I would allow the Plaintiff’s claim of HK$273,360.00 ($8,040 x 34 months).
5. On Future Loss of Earnings, the Plaintiff is now 62 years old. He was 59 at the time of the incident and was a fit and able person doing transportation work. I would adopt a multiplier of 3. I would therefore allow the Plaintiff’s claim for HK$289,440.00 ($8,040 x 3 x 12).
6. On Pain, Suffering and Loss of Amenities (“PSLA”), the total loss of one eye was within the serious category and following *Lai Ka Wai v Lo Tak Cheung & others (HCPI No. 1227/1995)* a sum of $450,000.00 should be awarded.
7. Credit of HK$380,000.00 received by the Plaintiff for Employee’s Compensation (“EC”) would be given in the final computation.
8. To summarise on the total award, the Plaintiff would receive $9,000.00 for special damages, pre-trial loss assessed at $273,360.00, future loss of earnings assessed at HK$289,440.00, and PSLA assessed at HK$450,000.00. The total award would come up to HK$1,021,800.00. After deduction for EC of $380,000.00 received, the total award would be HK$641,800.00.
9. Judgment is therefore entered in favour of the Plaintiff against the Defendant in the sum of HK$641,800.00. Interest is ordered at 2% p.a. for the PSLA award of HK$450,000.00 from the date of the service of the writ to the date of handing down of this judgment. Interest is also ordered at half judgment rate on the pre-trial loss of earnings and special damages ($9,000 + $273,360 = $282,360.00) from the date of the assault on 28 February 2004 to the date of handing down of this judgment. Interest at judgment rate would be payable by the Defendant to the Plaintiff on the judgment award from the date of handing down to the date of full satisfaction of the judgment award. I also order the Defendant to pay the Plaintiff’s costs of this action, to be taxed if not agreed. The Plaintiff was represented by a solicitor instructed by the Legal Aid Department until legal aid certificate was discharged on 1 December 2006. Where applicable, the Plaintiff’s own cost is to be taxed in accordance with Legal Aid regulations. This costs order is nisi and to be made absolute 14 days after handing down of this judgment.

( W. C. Li )

Deputy District Judge

Representation:

The Plaintiff: not legally represented, present in person.

The Defendant: not legally represented, absent from the trial