IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 309 OF 2001

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| BETWEEN | Woo Wai-kuen | Plaintiff |
|  | And |  |
|  | Li Siu-keung trading as Alex’s Kitchen | Defendant |

Coram: Deputy Judge Yu in Court

Date of Hearing: 19 June 2002

Date of Judgment: 19 June 2002

Present: Ms Lily Wong, of Messrs Au-Yeung Cheng Ho & Tin, assigned by the Legal Aid Department, for the Plaintiff

Defendant unrepresented, absent

J U D G M E N T

1. The plaintiff in this action claims against the defendants for damages arising from a personal injury. At the material time, the plaintiff was employed by the 1st defendant as a waitress in a business called Alex’s Kitchen. In the course of employment, she slipped and suffered injury to her sacrum.

2. Judgment on liability has been entered against the 1st defendant on 11 October 2001. The claim against the 2nd defendant has been discontinued and today I am only to assess the claim against the 1st defendant for damages suffered by the plaintiff as a result of the injury.

3. The 1st defendant is absent and I proceed with the application on an ex parte basis.

4. The loss claimed by the plaintiff appears at the revised statement of damages at page 17 of the bundle. The plaintiff called Dr Lam Kwong-chin and his opinion appears at page 65 to 71 of the bundle. I am satisfied of his qualification and admitted him as an expert. I fully adopt his medical opinion.

5. According to Dr Lam, his examination was carried out one year after the accident, in or about September 2000. There was still local tenderness at the sacrum. There was no lumbar muscle spasm or decrease in range of back motion. The plaintiff still complained of numbness at the tip of her toes.

6. Dr Lam assessed the plaintiff to have 5 per cent impairment of the whole person. Dr Lam commented that most patients with sacrum fracture could return to work. With the painful condition at the time of the examination, the plaintiff should be able to have lighter work, such as clerk, factory assembly line worker, office cleaning worker, cashier, car park attendant and so on. At the time of the examination, i.e. September 2000, the plaintiff was working as a telephone operator.

7. The plaintiff was born on 19 August 1960. At the time of the accident she was 39 years of age. She was born in Hong Kong and received education up to Form 5. At the time of the accident she was working for the 1st defendant as a waitress at the monthly wage of $5,500, being her first month of employment. She was promised an increased wage of $6,000 in the following month.

8. She was working in the fastfood shop on 28 September 1999. She had to walk past a corridor between the kitchen and shop F5 when working. She slipped and fell. But she continued to work and only informed the defendant later in the afternoon. She did not go to see a doctor immediately until she was off duty. On returning home, she had her husband to put some medicine on her back and her husband decided to bring her to see a doctor. She attended Kwong Wah Hospital for a consultation. She was given medicine and 4 days sick leave.

9. The plaintiff continued to have treatment by Kwong Wah Hospital on 14 October 1999. An X-ray was taken by the hospital showing that the plaintiff had a crack fracture of the sacrum with no displacement. The injured area could be cured by physiotherapy treatment. The plaintiff was given sick leave until 11 November 1999.

10. On informing the 1st defendant that she was injured and was granted sick leave by the doctor, the 1st defendant dismissed her and she had later taken out proceedings in the Labour Tribunal for inter alia an award of compensation under section 32P of the Employment Ordinance. The award appears at page 86(3) of the bundle and a breakdown of the compensation appeared at page 86(4) of the bundle which shows that the learned Principal Presiding Officer has compensated her loss of wages from 12 November 1999 to 18 May 2000.

11. After the injury the plaintiff had persistent pain at the lower back and sacral region. The pain intensifies when the weather changes. She could not lie flat and she experienced numbness of both big toes. She was advised by doctor not to perform heavy manual work. She worked as a substitute telephone operator in a furniture company in April 2000 and earned $4,000. In early July 2000, the plaintiff registered with the Labour Department but she could not find a suitable job after waiting for months. From February to April 2001 she worked as a co-ordinator in one Yui Fai Furniture Company earning $6,110 per month and since July 2001 she had been working as a foot massage therapist with monthly income of about $7,000.

12. In light of the very satisfactory recovery of the plaintiff and that she is earning more than her former employment with the 1st defendant, there is no future loss of earning and she had no claims to that.

13. There are two major items of claims and other miscellaneous items which I should deal with. Firstly, the plaintiff claims PSLA in the sum of $150,000; secondly, her pre-trial loss of earning. On the PSLA the plaintiff relies on three cases as listed in the opening of her solicitors. I do not wish to repeat myself on these three cases, Lee Yuk-lan v Royaltelle International Limited, Chair Sai-sui v International Country Club Limited and Yeung Sze v Win Art Design and Decoration Company Limited.

14. I have considered all these cases. I agree that the facts of the plaintiff are similar to the facts in those cases and I consider that an award for PSLA in the sum of $150,000 is appropriate.

15. On the loss of pre-trial earnings, I accept the plaintiff’s evidence that she was earning $5,500 for September 1999 and to be increased to $6,000 in October. She claimed loss of earnings from 29 September to February 2001. She has to prove that she could not return to work because of the injury. There is no evidence. Dr Lam did say that the plaintiff could take lighter work. The other complication is that she had had an award for compensation under section 32P of the Employment Ordinance. This is a compensation for her loss of unreasonable dismissal by the 1st defendant. Given that the learned Principal Presiding Officer has stated clearly that compensation is towards her loss of wages from 12 November 1999 to 18 May 2000, I cannot see how she could now say she suffered loss, at least for this period of time. Such loss must be covered by the said award.

16. Having considered all the evidence, especially the evidence of Dr Lam, it is obvious that the plaintiff could start working after a reasonable period of sick leave. Dr Lam suggested 2 to 4 months. I am prepared to give another 2 months for the plaintiff to look for a new job. This will be a total of 6 months. That took me to March or April in 2000. All these wages except the wages from 29 September to 11 November are covered by the said award. Given that there is no evidence as to why she could not return to work and whether such was related to the injury, I am not prepared to grant any award for her pre-trial loss of earning except for the period between 29 September to 11 November.

17. As I understand from solicitors for the plaintiff, this part of her claim was in fact covered by the award by his Honour Judge Lok given on 7 July 2001. Hence I am minded not to give any award again under this action but I would reduce the amount to be set off from this judgment against the award under the employees compensation action.

18. So in conclusion, I will make no award under the pre-trial loss of earning except I will make an adjustment in the deduction.

19. The plaintiff also claimed special damages. They included the travelling expenses to and from the Accident & Emergency Department of Kwong Wah Hospital in the total sum of $240. Although there was no receipt produced, I am satisfied with her evidence and I award that accordingly.

20. There was also travelling expenses on 14 November and 11 October at $60 per trip. I also allow that. For the tonic food, again there was no receipt for those tonic food purchased. In view of the amount, I am of the view that it is a reasonable sum to be incurred and I will therefore allow that as well. In total for special damages, I will award $1,140.

21. There was a claim for loss of benefit under the MPF fund. I will also award that in the sum of $750.

22. The interest on the general damages, I am afraid you have to do the calculation again. Let me have the breakdown. Miss Wong, I am using the concluding paragraph, paragraph 22, of your summing-up so what I say here is for PSLA I will award $150,000. There is no award under pre-trial loss of earning. For loss of benefit under the MPF, I will award $750. For special damages, I will award $1,140.

23. Interest on general damages at 2 per cent per annum from the day of writ until today and thereafter at judgment rate until payment.

24. There is interest on special damages. That will be apply at half the judgment rate, 4.07 per cent per annum, from day of accident until today and thereafter at judgment rate until payment.

25. I will deduct part of the ECC compensation in the sum of $6,453.33.

26. Costs of this action be to the plaintiff to be taxed if not agreed and the plaintiff’s own costs to be taxed in accordance with Legal Aid regulations.

27. To be absolutely fair to your client, I think I should only deduct a sum representing $17,013 minus her loss of wages for 44 days and not the sick leave. In fact it is slightly more than the sick leave allowance because she can recover that one-fifth under this action. So I think what I should do is first let me calculate what is the amount.

28. The sick leave was calculated on the basis of $5,500 and, as I said, I accept that she will have a salary increase so $6,000 and divide that by 30 and multiply that by 44. So that I will arrive at a figure of $8,800. This figure is to be taken away from $17,013.33 so it comes down to $8,213.30. So I think the correct figure that I should set off is $8,213.33. You understand why I do that adjustment because in effect I award her six months pre-trial loss of earnings but I said part of it is dealt with by the Labour Tribunal already so I should not make a double award and part of it is done here so all I need to do is I reduce the amount you agree to tax off so that is how I worked that out.

Deputy Judge Yu

District Court Judge