# DCPI388/2003

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 388 OF 2003

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BETWEEN

## HUNG SHING KUN Plaintiff

### and

YEUNG CHI MING 1st Defendant

LAM SAI CHEONG 2nd Defendant

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Coram : Her Honour Judge H.C. Wong in Court

Dates of Hearing : 16th to 20th January 2006

Date of Handing Down Judgment : 12th May 2006

JUDGMENT

1. The Plaintiff claims against the two Defendants for damages for personal injuries arising out of an assault on 2 October 2001.
2. The Plaintiff is now age 59. He was born on 19 September 1946. He is married to his wife Wu Enlan and they have a daughter and a son. At the time of the incident on 2 October 2001, he and his family lived in Tai Po, Tai Yuen Estate. He was employed as a carpenter working for Chan Shun Kei Construction Works (“Chan Shun Kei”). Between May and October 2001, the Plaintiff (“Mr. Hung”) was working at his employer’s construction site located at Tolo Highway at Pak Shek Kok area. At the material time, Chan Shun Kei was a sub-contractor for road and drainage works of the road-widening project at Tolo Highway (“the construction site”). The employer was the Highways Department. The principal contractor of the project was Hong Kong Construction (Holdings) Ltd. The construction work undertaken by the principal contractor was to widen the Tolo Highway involving reclamation of part of the Tolo Harbour. In about September and October 2001, the reclamation line had come close to the original coastline and at the time before the reclamation completed, an artificial lagoon had been formed in front and below the offices of the sub-constructors of the construction site including that of Chan Shun Kei.

The Plaintiff’s Case

1. 2 October 2001 was a public holiday. There was no one working at the lagoon area of the construction site. Shortly before noon, Mr. Hung took his wife and his two children to the said construction site for some fishing at the lagoon. Mr. Hung went into the Chan Shun Kei office where he changed into shorts leaving his wife and two children behind in the office before going down to the lagoon to swim and to catch fish. Within an hour, his daughter went down to the lagoon and came back with a bucket of fish he caught. Mr. Hung carried on fishing until he felt thirsty and went up to shore with a bag of fish, a fish net and a lifebuoy. As he was ascending up the earth mound to get to the road he saw two men approaching him. They had an argument with Mr. Hung over Mr. Hung’s fishing in the construction site area. One of the men demanded Mr. Hung shall put down the lifebuoy. Mr. Hung refused to pay any attention to them and went on his way back to the office when he was suddenly assaulted from behind. He turned and tried to defend himself, but was attacked by the two men with fists, they also kicked him. His bag of fish and the lifebuoy fell to the ground.
2. At the same time, Mr. Hung’s wife Madam Wu Enlan came down from the office to look for Mr. Hung and found he was being beaten up by two men. She went up to the men shouting to them to stop. They ignored her and Mr. Hung called out to his wife telling her to report to the police.
3. As Madam Wu spoke little Cantonese at the time, she called up a friend and asked her to call 999 on her behalf. She then went back to the office and asked her daughter to call 999 on her mobile phone. Minutes later, she herself also called 999 and reported to the police that her husband was being assaulted. She then returned to the scene and saw Mr. Hung lying in front of a jeep. Mr. Hung handed to her a bunch of keys and told her those were the keys to the jeep belonging to the two men.
4. Eventually the police arrived and all persons were taken back to the police station for enquiries while Mr. Hung was taken directly to the Prince of Wales Hospital for treatment.

The Defence Case

1. The two Defendants, Mr. Yeung Chi Ming and Mr. Lam Sai Cheong, admitted they were present at the construction site on the day of the incident. The 1st Defendant Mr. Yeung was working at the construction site as supervisor of Man Wah Concept Engineering Limited. The 2nd Defendant Mr. Lam was a shareholder and director of Man Wah Concepts Engineering Company Limited.
2. Man Wah Concepts Engineering Company Limited was a sub-contractor of Hong Kong Construction (Holdings) Ltd. working on the reclamation work at the construction site at Pak Shek Kok reclamation area phase 4 in Tai Po in October 2002.
3. It is Mr. Lam’s evidence that on 2 October 2002, at about 2.00 p.m., Mr. Lam drove his car (registration no. GS7121) with Mr. Yeung to patrol the construction site. When he reached the reclamation area opposite the lagoon, he saw a man sitting on a floating ring catching fish. He and Mr. Yeung drove down to the shore near the lagoon and stopped the car, got off, and shouted at the man telling him to leave. Both Mr. Yeung and Mr. Lam claimed that the man immediately came up from the water and went up the dam or mound made of rocks. As he began climbing up the mound before reaching the top, he suddenly lost balance and fell down the mound. Mr. Lam and Mr. Yeung claimed that when they saw the man fell down hurting himself, they immediately went up and together helped him to walk towards their car. They put him into the passenger seat next to the driver seat inside the car before going off to call the police for help. Later on, when the police arrived they went to the police station with the police because the man’s wife accused the two of them of assaulting her husband.

**Findings**

Liability

1. The issue on liability is whether the Plaintiff was assaulted by the Defendants after a heated argument or did the Plaintiff accidentally injured himself when he tried to climb up the mound, tripped and fell, hurting himself.
2. There is no dispute to the following:-
   1. The time and date of the incident was 2 October 2001 after 2.00 p.m.;
   2. The identities of the persons at the scene were Mr. Hung and his wife Madam Wu and the 1st and 2nd Defendants Mr. Yeung and Mr. Lam;
   3. Mr. Hung was catching fish in the lagoon, as he came up from the lagoon he sustained injuries.
   4. After Mr. Hung sustained injuries he was placed inside the Defendants’ car.
   5. 999 calls were made and after waiting for some time, the police and ambulance arrived at the scene.
   6. Mr. Hung’s wife and the police found Mr. Hung lying in front of the Defendants’ car.
      1. It is also not disputed that the 1st and 2nd Defendants had never met Mr. Hung or his wife before the incident. The Defendant’s counsel Ms. Tsui accused the Plaintiff Mr. Hung and his wife Madam Wu of concocting a story against the two Defendants. Mr. Hung and his wife both claimed that the two Defendants assaulted Mr. Hung after he came up from the lagoon with a bag of fish and a lifebuoy in his hands.
      2. Mr. Hung and his wife Madam Wu made separate witness statements to the police. In Madam Wu’s case, her statement was taken at the police station immediately after the incident, Mr. Hung’s police statement was made on 6 October at the hospital bed after he received treatments at the Prince of Wales Hospital. Both of them claimed that Mr. Hung was assaulted by the 1st and 2nd Defendants, Mr. Yeung and Mr. Lam. The police statements of Mr. Yeung and Mr. Lam both claimed that Mr. Hung had fallen down from the mound and hurt himself after he left the lagoon he had accidentally tripped and fallen down.
      3. On page 5 of the bundle of documents relating to liability, the police 999 records were exhibited. On pages 5 and 6 of the 999 reports recorded on 2 October 2001, the first report relating to this incident was recorded at 13:51 on that day; it was revealed that the informant reported his friend was being assaulted by someone. The records on page 5 are as follows:-

13:51 TP console was informed

13:51 PC33936 assigned

13:51 PC33936 in charge of inc.

13:51 PC00810 assigned

13:52 other informant girl Hon Hoi Shan Tel. 96613968 report her father was assaulted by two males at TP Waterfront Park near Pak Ken Construction site. AMB & TPRC was informed.

13:53 Prime data updated

on page 6

13:59 it is recorded Female/Ng with CND 96613968 reported the same case and she stated that her husband was assaulted by 2 males (age about 40. One wore blue T-shirt and other wore white T-shirt). AMB was informed.

1. The aforesaid was the police 999 records of the calls made at the time of the incident to the police. The 999 records of the police evidently showed that Madam Wu had been consistent in her police statement, her evidence in Court and her witness statement filed in this case. The first 999 call regarding this incident was made by Madam Wu’s friend at her request. The second call was from Madam Wu’s own mobile phone made by her daughter. The third call was from Madam Wu herself; she gave the same information as the other two calls that her husband was being assaulted by 2 men. She made the call at 13:59 hours and gave descriptions of the two males who assaulted her husband.
2. Mr. Hung’s evidence was consistent with the evidence of his wife Madam Wu. His evidence in Court and in his witness statement contained a large number of minor details. They included details such as he had a bag of fish in one hand and a lifebuoy in the other hand, these fell down to the ground when one of the two men assaulted him from behind with an object that Mr. Hung suspected was a mobile phone. For Mr. Hung, the lifebuoy became an object of dispute for he was told to put it down by one of the two men, because he refused and walked away he was assaulted by the two men.
3. The evidence of Mr. Yeung and Mr. Lam was consistent with each other. Their evidence was Mr. Hung went up the rocky mound, tripped and fell, hurting his face and hand. They went to help him, pulled him up and helped him into their car. However, they did not explain why did they fail to drive Mr. Hung to a hospital nearby immediately after they helped him into the car. It was obvious that Mr. Hung was quite badly injured. He was bleeding and yet neither man after helping him to their car took him to the hospital. They claimed they were making a 999 call for an ambulance to take Mr. Hung to hospital. Unfortunately, no record of their 999 calls had been exhibited, otherwise, there would have been some evidence of the report and the contents of their call to the police would be revealed.
4. The two Defendants were originally taken to the police station for enquiries and put on police bail. A few months later they were told they would not be charged by the police and they were released. The Plaintiff’s solicitor was informed by the Police Department that the police considered there was insufficient evidence to charge the arrested persons (see letter dated 29 March 2002).
5. I turn to the medical reports of Mr. Hung after the incident on 2 October 2001. The first medical report was written by Dr. C.Y. Chow, Division of Neurosurgery, Department of Surgery, Prince of Wales Hospital. It stated that:-

“This gentleman was assaulted by people using mobile phone hitting over the head on 2 October 2001.

He had transient loss of consciousness. He was sent to Prince of Wales Hospital. Physical examination revealed right facial laceration and left parietal scalp haematoma. There was no neurological deficit.”

(Page 1 of bundle B).

The second report was a report by Dr. Yau Kit Ting, Medical Officer at the Accident & Emergency Department of Alice Ho Miu Ling Nethersole Hospital (page 2 of Bundle B). It described the case as a common assault case, diagnosed as post concussion syndrome. It included the following description “Alleged assault with injury of head on 2-10-01. Complained of dizziness and left shoulder pain. Examination of shoulder showed mildly decreased range of movement. Neurological examination was normal”.

1. There was also exhibited the nursing record taken at the Prince of Wales Hospital, Accident & Emergency Department, recording the brief complaints and history. According to the nursing record on page 57, it was described as an “assault by two people, hit over face with mobile phone facial L/W? LOC chest wall contusion”. The same record appeared on the top right hand corner of page 60. Presumably, the information was recorded when Mr. Hung was admitted into Prince of Wales Hospital at 14:39 hours on 2 October 2001, he or someone must have given the history of assault to the doctors and nurses at the Accident & Emergency Department of the Prince of Wales Hospital.
2. It was the evidence of Madam Wu that she had to go to the Tai Po Police Station with the police officers and did not accompany her husband to the Prince of Wales Hospital. Therefore, the information about Mr. Hung being assaulted by two persons must have come from Mr. Hung himself at the time when he was examined by the doctors at the hospital’s Accident & Emergency Department. The progress & treatment report at page 61 of the bundle also recorded the same history at 3:20 p.m. On page 63, it was recorded that at about 6:00 p.m. on the same day, he was examined by Dr. S. Lam from the Plastic & Reconstructive Surgery Department and it stated again “allegedly assaulted by men by mobile phones at construction site today 2:00 p.m.”
3. It follows that Mr. Hung had maintained from the beginning that he was assaulted by two men at the construction site at around 2:00 p.m. His evidence was supported by his wife that he was assaulted by the two Defendants. Mr. Hung and his wife Madam Wu were vigorously cross-examined. They were questioned about various matters including the time of the incident, whether Mr. Hung was under the influence of alcohol and lastly whether the head injury had affected his memory. The medical record at the time of admission at Prince of Wales Hospital, Madam Wu’s police witness statement and Mr. Hung’s own police witness statements all supported their version of what happened on 2 October.
4. I find Mr. Hung and his wife Madam Wu to be honest witnesses and their evidence to be reliable. On the other hand, I find the evidence of the 1st and 2nd Defendants to be inconsistent. Their evidence of witnessing Mr. Hung falling down the steep mound while trying to run away and hurt himself in the fall and their efforts to help him in particular I find to be illogical. If they made an effort to help Mr. Hung back to their car, why did they not take him in their car to the hospital to seek immediate medical treatment? They claimed they call up the police instead, yet, there was no police 999 record of their call exhibited. They admitted while Mr. Hung was hurt and bleeding, they were giving the police instructions to get to the construction site and they had waited a long time for the police and ambulance to arrive. If that was the case, they could have driven Mr. Hung in their car to meet the ambulance and the police at the entrance to the construction site. I find their story to be incredible and unconvincing. On a balance of probabilities, I reject their evidence and accept the evidence of Mr. Hung and his wife Madam Wu.

Injuries

1. The Plaintiff Mr. Hung was delivered by ambulance to the Accident & Emergency Department of the Prince of Wales Hospital. The hospital records showed that upon physical examination, Mr. Hung suffered from facial laceration and left parietal scalp haematoma. Mr. Hung was treated with suturing of the facial laceration. He was admitted into the Neurological Ward for observation and was discharged home on 5 October 2001. Mr. Hung continued to suffer from persistent headache, dizziness, pain and weakness over the left side of his body. He complained of having had eight episodes of loss of consciousness. Five episodes were documented in medical reports of 8 October 2001, 28 February 2002, 25 May 2002, 23 November 2002 and 15 September 2003.
2. The hospital records of the Nethersole Hospital in Tai Po showed that 3 days after his discharged from the Prince of Wales Hospital he was re-admitted into the Accident & Emergency Department of the Nethersole Hospital on 8 October 2001 because Mr. Hung experienced an episode of loss of consciousness. Mr. Hung also complained of weakness over the left side of his body and the upper limb and not able to hold a bowl and chopsticks. He was admitted for observation and discharged on 13 October 2001. At the out patient follow up treatment of Nethersole Hospital on 12 November 2001, he complained there was residual pain over the left upper limb around the shoulder, elbow, wrist and hand region, and that he was not able to move the left upper limb. Upon examination, doctors found the muscle group on his left upper limb to be grossly deficit with grade 2/5 which meant his motor power was not sufficient for anti-gravity activities.
3. Mr. Hung continued to complain of persistent headache, dizziness and episodic loss of consciousness since the accident up to the date of hearing. He was prescribed the drug stemitil for his dizziness. He continued to receive neurosurgery outpatient follow-up treatments at the Prince of Wales Hospital and occupational therapy sessions at Nethersole Hospital. In addition, he also attended the outpatient clinic of Tuen Mun Hospital for treatment of loss of consciousness and dizziness. These are recorded in the medical reports from Nethersole Hospital, Prince of Wales Hospital and Tuen Mun Hospital.

Medical Expert Evidence

1. The Plaintiff’s neurological expert was Professor W.S. Poon of the Prince of Wales Hospital and the Chinese University. Professor Poon concluded that Mr. Hung had a minor head injury on 2 October 2001. The injury however was significant as it was followed by periods of loss of consciousness. Professor Poon after considering the medical reports said Mr. Hung had “an estimated 18 hours of post-traumatic amnesia. And Mr. Hung also suffered from persistent postconcussional syndrome with headache and dizziness that require regular medication”. He concluded Mr. Hung exhibited “a moderate global impairment of cognitive function” and he found Mr. Hung suffered from 5% impairment of the whole person. In Professor Poon’s opinion, the five episodes of collapse were more likely to be convulsion related. He considered it might take up to 12 to 18 months for the Plaintiff to recover from the head injury. Professor Poon expressed that his medical report on page 10 of bundle B was not based on his own clinical assessment of the Plaintiff but was prepared based on the reports written by the doctors in his Department.
2. The Defendants’ neurological expert was Dr. Edmund Woo. It was his opinion that the Plaintiff had sustained only a mild head injury on 2 October 2001 for he had only suffered “transient loss of consciousness”. Dr. Woo seriously doubted the genuineness of Mr. Hung’s complaints. He said Mr. Hung demonstrated the Hoover’s sign on left hip flexion, that he might have feigned or grossly exaggerated the weakness in his left extremity. On page 3 of bundle B, another doctor who saw the Plaintiff shortly after the incident referred to his “suboptimal effort of exertion”. Dr. Woo therefore found it was difficult to gauge the true extent of the Mr. Hung’s residual neurological handicap. Dr. Woo estimated that Mr. Hung should not suffer more than 1% impairment of the whole person. Dr. Woo further found the five occasions of collapse were “syncopal in nature and due to his cardiac disturbance of sinus bradycardia”. In Dr. Woo’s opinion, for this type of mild head injury Mr. Hung should have recovered over a period of six to twelve months.
3. As to the duration of the period of post-traumatic amnesia, based on the contemporary hospital notes and the records taken during the time Mr. Hung was in hospital, Professor Poon concluded that Mr. Hung had an 18 hour post-traumatic amnesia because Mr. Hung was recorded to be feeling drowsy at 6:00 a.m. on 3 October 2001. Dr. Woo, on the other hand, did not make any findings as to the duration of the amnesia. He offered, however, an alternative cause of amnesia and suggested it might have been caused by alcohol consumption. He said it was because of the alcohol consumption that contributed to the amnesia that followed the head injury or at least partially contributed by Mr. Hung’s intake of alcohol prior to the accident. He referred to pages 60 to 61 of the medical notes in bundle B, the doctor examining Mr. Hung recorded “alcohol smell?” in the medical notes. Professor Poon, however, ruled out the possibility of alcohol causing amnesia in the case of Mr. Hung and in general.
4. Dr. Edmund Woo in his 13 January 2005 report (page 16 of bundle B) commented at page 24 of the bundle:

“2. He complains of residual headache, giddiness, impaired memory and weakness in his left extremities. His neurological examination, however, demonstrated many unusual features.

3. Neurophysiological principles dictate that the motor deficits in any extremity associated with a brain injury take on a pyramidal distribution in which the muscle weakness is characterized by a differential involvement of the agonist and the antagonist muscles at each joint, and the weakness is associated with hypertonia (increase in muscle tone) and hyper-reflexia (hyperactive deep tendon reflexes). Mr. Hung demonstrated moderate weakness in all the muscles of the left upper and lower extremities, but such weakness was characterized by an equal involvement of the agonist and the antagonist muscles at each joint. There was no associated hypertonia or hyper-reflexia.

4. He demonstrated the Hoover’s sign on left hip flexion. This indicated under-performance in the motor examination.

5. While pain in the left shoulder may limit volitional activity in the left periscapular muscles, weakness in the distal muscles of the left hand clearly cannot be accounted for by pain in the proximal part of the extremity.

6. The above discrepancies and inconsistencies defied neurophysiological principles and they raised the strong suspicion that his deficits were either feigned or grossly exaggerated for the purpose of the examination. They cast serious doubt on the genuineness and integrity of his complaints.

7. In the fact of the above inconsistencies, it is difficult to gauge the true extent of the residual neurological handicap. With his mild head injury, the usual natural history is one of gradual recovery over a period of 6 to 12 months, although a mild degree of residual headache, nonspecific giddiness and subjectively-impaired memory consistent with the diagnosis of a mild post-concussional syndrome may remain.”

1. Dr. Woo concluded that the symptoms presented by the Plaintiff Mr. Hung to account for not more than 1% impairment of the whole person. That the impaired memory may limit Mr. Hung’s performance at work while the headache and giddiness may compel periodic rests during the day. He concluded that Mr. Hung would nevertheless be able to resume his pre-accident job as a form worker at construction sites. And the loss of earning capacity should not exceed 1%.
2. Professor Poon, however, in reply to the comments by Dr. Woo said at page 34 of the bundle:

“Mr. Hung has sustained a minor head injury associated with a significant period of post-traumatic amnesia. Disabilities following minor head injury have traditionally been under-estimated. Recent data from Scotland confirmed that 47% of this group of patients continued to be disabled one year after injury.”

1. Professor Poon disagreed with Dr. Woo’s view that Mr. Hung’s syncope attack was not seizure (epileptic) attacks; and syncope associated with bradycardia has no relationship with head injury. Professor Poon considered Mr. Hung’s syncope attack is likely to be a seizure and his reasons:

“(a) in the first episodes on 8 October 2001, it was associated with a left sided weakness, which resolved with time;

(b) these episodes of syncope were associated with a period of drowsiness. For patients with classical syncope related to vasovagal attacks, they wake up immediately when normal cardiac rhythm is resumed.”

1. Professor Poon and Dr. Woo maintained their differences in the diagnosis of the cause of Mr. Hung’s continuous and numerous attacks of blackout. In any event, it was the evidence of Mr. Hung and his wife prior to the attack that Mr. Hung enjoyed very good health. Since the incident of attack, Mr. Hung was prone to blackouts and fainting spells when he would lose consciousness and had to be taken to hospital.
2. The hospital records exhibited showed that Mr. Hung was admitted into the Hospital Authority hospitals on no less than eight occasions since the incident on 2 October 2001.
3. The hospital records from Alice Ho Miu Ling Nethersole Hospital prior to the incident on 2 October 2001 showed that Mr. Hung had been admitted into the Nethersole Hospital on three occasions in 2000 due to chest pain and these records showed that there was no loss of consciousness and no dizziness on any of these occasions (pages 145 to 147 of the bundle). However, on his later admissions after the incident on 2 October 2001, each of the admission recorded that his admission was due to loss of consciousness, headache and dizziness, slow in response, but no chest pain had been recorded as one of the symptoms, although there was complaint of weakness of the whole left side of the body.
4. As Mr. Hung’s previous occupation working at the construction site required Mr. Hung to be fully alert and his present status being prone to fainting spells, losing consciousness and dizziness would make him unsuitable to work at a construction site.
5. Based on the reply of Professor Poon to Dr. Woo’s updated second medical report of 30 September 2005, Professor Poon concluded on 29 October 2005 in his updated report that having regard to all medical evidence it was more probable that the Plaintiff syncope attacks were convulsion related rather than due to his sinus bradycardia. Evidence of medical records before the incident on 2 October 2001 showed that the fainting attacks before the 2 October 2001 incident in 2000 were due to sinus bradycardia but they were associated with chest pain. The post-incident fainting spells and blackouts were not associated with chest pains. On a balance of probabilities, after considering the hospital records on Mr. Hung over a long period after the incident, I am satisfied Mr. Hung’s blackouts were due to the head injury he suffered on 2 October 2001 rather than due to sinus bradycardia.
6. As to Dr. Woo’s assessment of the condition of Mr. Hung of his loss of consciousness followed by 18 hours of post-traumatic amnesia after the assault to be probably due to possible intake of alcohol before the head injury. There was a significant lack of comments from the attending doctors at the Prince of Wales Hospital or Tuen Mun Hospital or the Tai Po Nethersole Hospital that the 18 hours prolonged post-traumatic amnesia was due to intake of alcohol. Based on the background of the case that Mr. Hung had been fishing and swimming for 2 hours before the head injury was inflicted, it is most unlikely that he would still be under the influence of alcohol even if he had drunk alcohol at lunch time before he went fishing at the said construction site. Furthermore, there was no evidence from either Defendant that Mr. Hung smelt of alcohol at the time of the incident. Both Mr. Hung and Madam Wu denied Mr. Hung had been consuming alcohol before the incident.

**Quantum**

Pain, Suffering and Loss of Amenities

1. Mr. Hung’s counsel, Mr. Law, submitted that on if Professor Poon’s view are accepted, then the sum of $250,000 should be appropriate according to the case of *Lau Yuk Sim v. Wong Yuk Chun* DCPI 107/2004, (one of my assessment of damages on 3 September 2004) an award of $180,000 was allowed under this head. In the case of *Wong Siu Shan v. Tsang Hin Sum* DCPI 181/2002, a judgment and assessment by my brother Judge Lok on 18 December 2002, the plaintiff sustained laceration on his head, arm and leg from the assault, resulted in headache, dizziness, fatigue, irritability, impairment of memory, insomnia, reduced tolerance to stress and emotional excitement. The PSLA awarded was $180,000. Mr. Law further referred to the case of *Ng Ka Ho v. Yeung Kwok Leung* DCPI 28/2004, an assessment by Deputy Judge P. Li on 4 May 2005. He awarded $250,000 to the plaintiff who received head injury with a loss of consciousness and further minor injury at the right knee with no fracture. The plaintiff in that case had developed on the next day dizziness and vomiting, and subsequently, the plaintiff complained of loss of memory but suffered no damage to the brain or haemorrhage dysfunction. Both medical experts in that case, Dr. Edmund Woo and Dr. Pierre Lam, assessed the plaintiff to have an overall 1% impairment of the whole person.
2. Ms. Tsui, counsel for the Defendants, referred to two cases. The case of *Tong Lin Keung v. Wong Chi Leung* HCPI 789/1996 (date of assessment 28 October 1999) where the plaintiff, due to neck injury, suffered from disturbance to his balancing system, post-concussion syndrome, loss of memory and mood change. The award under PSLA of $90,000 was made. The second case of *Mak Hung Yin v. Tsang Kuen Chung* HCPI 1038/1997 (date of assessment 9 August 2000), where the plaintiff suffered from head injury resulting in mild impairment (5%) of memory and concentration. The PSLA awarded was $90,000.
3. I take into my consideration the post-incident conditions of Mr. Hung and the serious attack Mr. Hung received on 2 October 2001 in the hands of the two Defendants. I considered the PSLA of $180,000 to be appropriate. However, because Mr. Hung had a previous complaint of sinus bradycardia it may have contributed to some of the post-incident blackouts that caused Mr. Hung so much discomfort, therefore, I would make a deduction in the PSLA award and allowed the sum of $150,000 as an allowance for a possible contributing factor of the pre-existing sinus bradycardia of Mr. Hung.

Loss of Earnings

Pre-trial loss of earnings

1. Mr. Hung’s monthly earnings were documented in the tax documents. His counsel, Mr. Law, accepted that with the downturn of economy since 2001 the median earning during the pre-trial period to be $18,000 per month. This amount was accepted by the Defendants.
2. On the basis that Professor Poon considered Mr. Hung’s head injuries should recover in 12-18 months and Dr. Woo agreed Mr. Hung’s condition would recover between 6 to 12 months, and Mr. Hung did produce evidence of sick leave to cover a similar period, I accept the period of 12 months sick leave to be reasonable. His loss of earnings would therefore be in the sum of $216,000 for the 12 months period.
3. I also accept that after 12 months, Mr. Hung should be able to find a job as a caretaker earning $6,500 a month; therefore, the loss of earnings each month would be $11,500. I also accept Mr. Law’s submission that to allow for possible risk arising from his pre-existing sinus bradycardiac, a 50% discount should be applied. Consequently, for the pre-trial period of 51.5 months and the remaining balance of 39.5 months his loss should be $11,500 x 39.5 x 50% = $227,125.
4. Total pre-trial loss therefore comes to $216,000 + $227,125 = $443,125.
5. The corresponding 5% of loss of MPF is therefore in the sum of $22,156.

Post-trial loss of earnings

1. In Dr. Woo’s opinion, there should be no further loss of earnings for the Plaintiff because Mr. Hung was 59 years old at the time of the trial and under normal circumstances he should retired at the age of 60.
2. Mr. Law, counsel for the Plaintiff, disagreed because Mr. Hung has a young family and he would under normal circumstances have supported his family up to the age of 65. Mr. Law submitted that Mr. Hung’s evidence that if not for the assault, he would have worked until 65 was not challenged. Mr. Law submitted that a multiplier of 3 to be a reasonable multiplier to apply.
3. I accept Mr. Law’s submission that a multiplier of 3 is a reasonable multiplier to apply in view of the fact that Mr. Hung has a young family and it is in this type of Chinese family that the father would work until his health stops him from doing so.
4. I also accept, on the basis of Professor Poon’s view, and applying a 50% discount, the loss would be based on a monthly earning of $17,000 as the current monthly earnings of Mr. Hung’s previous occupation with a deduction of $6,500 (the pay of a caretaker). Therefore, $(17,000 – 6,500) x 12 x 3 ÷ 2 = $189,000.
5. The corresponding 5% loss of MPF is $9,450.

Loss of Earning Capacity

1. The Defendants submitted that on Dr. Woo’s assessment basis, there should be no further loss of earnings and the amount to be awarded should be three months i.e. $17,000 x 3 = $51,000. Based on Professor Poon’s opinion, 3 months would be $6,500 x 3 = $19,500. I accept Professor Poon’s view and adopt the calculation. The 3 months calculation would come to $6,500 x 3 = $19,500.

Special Damages

1. On the claim of special damages: travelling expenses claimed was $5,000, and $5,000 on tonic food. I allow both sums because of the nature of Mr. Hung’s complaint was blackouts and dizziness and the taking of taxis to go to hospital both of which I find to be acceptable. As the taking of tonic food is a traditional and conventional belief amongst Chinese particularly for Mr. Hung’s type of complaints. I accept the amount of $5,000 to be reasonable.

Summary

1. The Plaintiff’s award is as follows:-

(a) PSLA $150,000

(b) Pre-trial loss of earnings 443,125

(c) Post-trial loss of earnings 189,000

(d) Loss of MPF ($22,156 + $9,450) 31,606

(e) Loss of earning capacity 19,500

(f) Special damages 10,000

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Total $843,231

Interest

1. I award interests at 2% p.a. on the award of PSLA from the date of service of writ to the date of judgment. As to interests on special damages and loss of earning capacity and pre-trial loss of earnings, it will be at half judgment rate from the date of writ to the date of judgment and thereafter at judgment rate until full payment.

Costs

1. Costs to the Plaintiff to be borne by the Defendants to be taxed if not agreed with certificate for Counsel. The Plaintiff’s own cost to be taxed in accordance with Legal Aid Regulations.

( H.C. Wong )

District Court Judge

Parties:

Mr. Dennis Law instructed by Messrs. D.S. Cheung & Co. assigned by Director of Legal Aid for the Plaintiff.

Ms. Winnie Tsui instructed by Messrs. Betty Chan & Co. for the 1st and 2nd Defendants.