# DCPI 430/2003

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 430 OF 2003

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### BETWEEN

CHAN TSZ SING Plaintiff

and

##### LO CHING PONG 1st Defendant

WONG CHING HEUNG 2nd Defendant

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Coram : H.H. Judge Wong in Court

Date of Hearing : 16th & 17th February 2004

Date of Handing Down Judgment : 27th February 2004

**JUDGMENT**

#### Issues

1. The Plaintiff claims against the Defendants for damages for personal injuries arising out of a motorcar accident on 26/11/00 in which the 1st Defendant who was the driver negligently drove a car registration No. HP9125 owned by the 2nd Defendant into the rear of a public light bus registration No. FX 8656. The Plaintiff was the front seat passenger. As a result of the accident the Plaintiff suffered injuries.

2. The 1st Defendant was eventually convicted of careless driving.

3. There are 2 issues. 1, whether the Plaintiff had fastened the seat belt thus contributed to his injuries and 2, assessment of the amount of damages.

The Plaintiff’s injuries

4. As a result of the accident the Plaintiff sustained injury to his forehead and both eyebrow regions. Surgical toilet and suturing was done. He discharged himself against medical advice on the same date. On follow up stitches were removed. X-ray of skull revealed opacities inside the skin of forehead. He was scheduled to be admitted for exploration under general anaesthesia and X-ray control but he did not turn up.

5. He found glass splints in some of the wounds and he removed some of the glass splints himself. He said he was depressed with low self-esteem and refused to go out for 6 months.

The Plaintiff’s Personal Background

6. The Plaintiff was 23 years of age at the time of the accident. According to Man Hing Motor Engineering from 16/8/00 to 15/11/00 he was a technician and car salesman earning $7,000 a month. He left after 3 months’ trial period. According to J-Tek (HK) Ltd. he then worked as a miscellaneous worker at $400 a day.

7. He said prior to the accident he was a person with confidence and considered himself as good looking. He became an introvert as a result of the continuing ill-effects of the injuries. He said he had not worked for almost 2 years as he lost self-confidence and refused to show himself to others.

8. He said he tried to find a job as sales after the accident but to no avail because of his ugly scar. It also prevented him from finding a job of operating a caterpillar because he could not wear a helmet in view of the pain on his face. He thought he was not suitable to do a job which required him to wear a helmet.

#### Assessment of Damages

1. PSLA

9. Miss Fung for the Plaintiff submitted that damages under this head should be about $300,000 and she relied on

1. Yanti and another v Chun Shiu Chuen HCPI No. 1176/2000 where $380,000 was awarded. In that case the Plaintiff suffered from serious dog bites which resulted in extensive abrasions and puncture wounds with no fewer than 19 very conspicuous darkly pigmented, raised and scattered scars of significant dimensions on her legs; there were multiple faint abrasions and punctured scars on that limb. On her left calf there were 4 obvious similar unsightly scars as well as a number of faint scattered abrasions and puncture markings, 2 noticeable raised, thickened and pigmented scars on her right arm. According to the psychiatrist she developed a phobia towards dogs and suffered from post-traumatic stress disorder and inferiority complex.
2. Leung Yuk Kwan v. Maple Professional Beauty Centre Ltd. P1 No. 274 of 2000. The award under this head was $300,000. Her right leg was severely scalded causing immediate pain and eventually blistering and ulceration. The scar was unsightly as observed by the master in court. The psychiatrist opined that she suffered from depressive reaction to her injuries.
3. Cheang Kam Ian v. Hong Kong Prime Printing Co. HCPI No. 143 of 1998. In that case $200,000 was awarded. The Plaintiff suffered a circumferential 1st to 2nd degree burn on his right calf. About 5 % of the total body surface area was involved. He was hospitalised for a total of 12 days.
4. Leung Pui Yin v. Wong Yiu Kuen & others HCPI 453/2000. $225,000 was awarded. She was 8 years old at the time of the accident. She suffered from 1st to 2nd degree burns to her right forehead, right cheek and a small area over her right shoulder, arm and back. The total surface of her body affected was 3% and she was hospitalised for 20 days.

10. The cases Miss Fung cited are for more serious than what the Plaintiff suffered. The Plaintiff had the 3 glass fragments taken out after local anaesthesia. From what I observed in Court he only has a faint light pink patch on his forehead. There was no residual disability. Annexure 1 is a photo taken in March 2001 less than 4 months after the accident and annexure 2 are two close up photographs taken on 29/8/01.

11. The pain and suffering in the present case is trivial when compared to the 4 cases Miss Fung cited. I award $30,000 under this head as the Plaintiff’s injuries were minor. The treatment was only surgical toilet and suturing under local anaesthesia and he discharged himself on the same day. He also had 2 other operations under local anaesthesia later on to take the glass splinters subsequently. There was no functional disability. There is no keloid, no hypertrophic scar and no contracture.

2. Loss of earnings

12. His evidence about his earnings is grossly exaggerated. In his statement he said he earned $9,000 as a casual worker and part time car sales and that after the accident he did not have any job for almost 2 years as he lost self-confidence. He said he found broken glasses coming out from his skin and he feared the glass splints would endanger himself and co-workers.

13. However from the document issued by Man Hing Engineering he earned only $7,000 a month and he left on 15/11/00 after a trial period of 3 months. He then worked for J-Tek (HK) Ltd. from 20/11/00 until the accident on daily basis earning $400 a day.

14. He said he did not go out for 6 months and did not have contact with people however annexure I shows that in March 2001 he attended his brother’s wedding. When asked whether he made any attempt to go back to work he said he had interviews but was not given the job. Realising that that contradicted his earlier evidence of not having gone out for 6 months he retracted and said it was during visits by his friends at home he asked if they could reserve a job for him when he would be fit to work.

15. From the evidence I am convinced that he was able to work shortly after the accident. I find the pre-trial loss of earning to be $7,000 being the equivalent of 1 month’s salary as workman in Man Hing Engineering on the basis that he was prevented from going to work as there was bound to be discomfort and that he had to address his wounds.

16. If it is true that he did not work it was self-induced. There is no medical evidence from psychiatrist to say that he suffered from psychiatric disability. Miss Fung argued strenuously that he told Dr. Chow about this. Dr. Chow only recorded what he said. Dr. Chow did not diagnose or make such finding. Miss Fung also argued that neither the Defence nor the Master asked for such report. With respect she must have forgotten the basic principle that he who allege must prove.

3. Loss of Earning Capacity

17. There is no residual disability arising from the accident which prevented him from doing any sort of job. In Ho Chi Ming v. Union Rife HK Ltd. PI No. 1204 of 1996 Suffiad J held that before an award for loss of earning capacity could be made there must be a real risk of handicap in the labour market. That was echoed by Registrar Chu as she then was in Ip Yiu Fai v. Chan Che Kwong in PI No. 445 of 1998.

4. Tonic Food

18. The Plaintiff claims $5,000 for consumption of bird’s nest for 2 months. There is no evidence that bird’s nest is beneficial to this sort of injury. It is consumed even by people with no injury and good health. I disallow this claim.

1. Medical expenses

19. Hospital charge in the sum of $68 is admitted by the Defendant.

20. As for the $36,600 medical expenses relating to consultation and operation for exploration of 3 foreign bodies by private doctor Dr. Chow, the North District Hospital had offered the service in December 2000, the Plaintiff agreed to undergo such operation but did not turn up. His explanation is that he did not have confidence in government doctor. This explanation is unacceptable. However since this expenses had been incurred, I allow this claim.

#### Future medical expenses

21. The Plaintiff claims for $62,000 for laser dermabrasion of the scar. The scar on the forehead is minor. There is no keloid, no hypertrophic scar nor scar contracture. Dr. Lee is of the view that such treatment is not recommended.

22. In any event Dr. Lee reported that such treatment can be done in the plastic surgery unit of the government or university sector at $100 per treatment. I allow $100 for future medical expenses.

#### Seat belt

23. The 1st Defendant gave evidence that when he was driving he saw that none of the passengers had fastened the seat belt. I do not accept his evidence. It is unlikely that he could have observed the back seat passengers did not fasten their seat belts.

24. The Plaintiff said that he had fastened the seat belt. His injury with no injury to other parts of his body is consistent with the fact that he had his seat belt fastened.

25. In the premises I do not find that there was contributory negligence on the part of the Plaintiff.

#### Conclusion

26. For reasons above I find that the Plaintiff is entitled to the following awards

1. PSLA $30,000
2. Pre-trial loss of earning $7,000
3. Medical expenses $36,668
4. Future medical expenses $100

###### Total $73,768

27. In the premises I give judgment for the Plaintiff in the sum of $73,768 with interest at 2% for PSLA from date of writ to judgment and interests on special damages at ½ judgment rate from date of accident to judgment.

28. Order nisi: costs to the Plaintiff. Certificate for counsel.

( Wesley Wong )

## District Judge

Miss Carol Fung instructed by Messrs. S.C. Chan & Co. for Plaintiff.

Mr. Walker Sham instructed by Messrs. Ip Kwan & Co. for D1 & D2.