## DCPI 431/2010

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 431 OF 2010

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| BETWEEN | WONG CHANSAMUT, the administratrix of the estate of WONG CHI PANG, deceased | Plaintiff |
|  | and |  |
|  | HUI CHING LUK | 1st Defendant |
|  | TSUEN WAN TUNG PO TOR MONASTERY LIMITED | 2nd Defendant |

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Coram : Deputy District Judge Grace Chan in Court

Dates of hearing : 10-12 April 2012

Date of handing down Judgment : 26 April 2012

# JUDGMENT

***Introduction***

1. In this action, the Plaintiff (“**Madam Wong**”) claims against both defendants under the Fatal Accidents Ordinance (Cap 22) (“**FAO**”) and the Law Amendment and Reform (Consolidation) Ordinance (Cap 23) (“**LARCO**”) for the fatal injuries sustained by her late husband, Mr Wong Chi Pang (“**Deceased**”) on 4 August 2007 while he was working at a two-storey building (“**Building**”) inside Gut Cheung Yuen (吉祥院) of Tung Po Tor Monastery (東普陀講寺) in Tsuen Wan (“**Accident**”).
2. By way of the statement of claim, she alleges that the 1st Defendant (“**Hui**”) was at all material times the employer of the Deceased and the contractor engaged by the 2nd Defendant (“**Temple**”) to demolish the Building. She claims that the Accident was caused by the breach of contract of employment, negligence and/or breach of duty on the part of Hui.
3. Hui has not shown his appearance or participation in this action at all. In fact, no notice of intention to defend was ever filed by him. As such, interlocutory judgment on liability has been entered against him pursuant to an Order dated 19 July 2011 with damages to be assessed. Hui continues to be absent in this trial.
4. Further, Madam Wong claims that the Accident was also caused by negligence and/or breach of duty on the part of the Temple. In particular, she alleges that the Temple, being the registered owner of the Building and *de facto* occupier within the meaning of the Occupiers Liability Ordinance (Cap 314) (“**OLO**”), was in breach of section 3(4)(b) of the OLO.
5. By its defence, the Temple does not admit that Hui was the employer of the Deceased and puts Madam Wong to strict prove the same. It further avers that since Hui and/or the Deceased were experienced and competent independent contractor, it should not be held liable for their own negligence and/or contributory negligence. On quantum, save and except the statutory bereavement ($150,000) and funeral expenses ($75,660), the Temple disputes all other heads of damages claimed by Madam Wong.

***DCEC 780/2009***

1. In 2009, an employees’ compensation claim against Hui was commenced by Madam Wong under *DCEC 780/2009* (“**EC Claim**”). The Temple was *not* a party to the EC Claim.
2. Hui defended the EC Claim and argued that he was not the employer of the Deceased; rather they were partners in taking up the demolition work in question.
3. In the judgment handed down on 27 August 2010 by the trial judge, the learnt judge ruled that the Deceased was Hui’s employee and that the Deceased earned on average $13,000 before his death, and made an award of $484,400 to Madam Wong (“**EC Judgment**”).

***Issues***

1. In view of the background set out above, the core issues for determination between Madam Wong and the Temple at trial (only issue (4) applies to Hui as judgment on liability has already been entered) are :
   1. Was the Deceased an employee of Hui?
   2. Was the Accident caused by the negligence or breach of duty on the part of the Temple?
   3. Was there any contributory negligence on the part of the Deceased?
   4. What is amount of damages payable under each head?
2. On the above issues, Madam Wong and 2 of the children of the Deceased (being the eldest daughter and the youngest son) have given evidence in the trial. Sik Tat Hong (釋達航大師) (“**Nun Tat-hong**”), a Buddhist nun of the Temple who contacted Hui for the demolition work of the Building, is the only witness for the Temple.

***Undisputed Facts and Opinion in the Expert Reports***

1. The following facts can be found from various investigation reports, fatal accident report and/or expert witness statements (mainly structural engineers) prepared by the Labour Department and the Buildings Department (collectively “**Expert Reports**”). The Expert Reports are agreed in terms of their authenticity and contents.
2. In or about March 2007, Nun Tat-hong asked Hui to demolish two buildings inside Gut Cheung Yuen (吉祥院), being 1/F of the Building and the whole of another 2-storey building next to it. Hui brought along Chung Ling Wai (鍾淩威) (“**Chung**”) to negotiate with Nun Tat-hong on the price of the demolition work. The price was later agreed at $35,000 (“**Oral Agreement**”).
3. Demolition work began on 2 April 2007 by Hui together with several daily-waged causal workers that he hired in Mongkok. By 6 April 2007, they had demolished the 2-storey building next to the Building.
4. The Deceased and Chung commenced work at the site on 7 April 2007 mainly to clear the debris. The demolition work of the Building started on 8 April 2007.
5. At this junction, I think it is useful to give a brief description on the structure and layout of the Building.
6. The Building was built in 1952 and was 55 years old at the time of the Accident. According to the senior structural engineer of the Buildings Department, the roof of the Building (on which the Deceased stood at the time of the Accident) was supported on a front wall, a back wall and 2 side walls of the 1/F of the Building. There were two reinforced concrete beams/supporting beams, one located mid-way between the front and back walls, spanning between the 2 side walls (“**Middle Supporting Beam**”); and the other on the back wall (“**Edge Supporting Beam**”). Reference can be made to a sketch (not to scale) and photo A annexed to the fatal accident report dated 2 October 2007 prepared by the Labour Department (“**Fatal Accident Report**”).
7. In the morning of 8 April 2007, the Deceased and Hui worked together on the rooftop of the Building and started to break the roof slab by using hammer and electric jack hammer, while Chung stayed outdoors to clear the debris. By the end of the morning session, about *70% of the roof slab* was demolished. That included the reinforced concrete of the *entire* Middle Supporting Beam and *part* of the Edge Supporting Beam. Understandably, the remaining of the roof slab thus became structurally unstable.
8. After lunch, the Deceased resumed work. He worked alone on the remaining portion of the rooftop to break up the remaining roof slab by electric jack hammer, while Hui worked on the 1/F to break the walls with some hand tools. Chung continued with clearing debris outdoors.
9. At about 1.30 pm, part of the remaining roof slab measuring 2m x 2.5m x 15cm (thick) suddenly collapsed and fell together with the Deceased onto the floor of the 1/F of the Building. The Deceased was trapped under the collapsed concrete and crashed to death.
10. The Expert Reports point out that it is in breach of the Buildings Ordinance that no authorized person/registered structural engineer (to co-ordinate or supervise the demolition work) and no registered specialist contractor (to carry out the demolition work) was appointed.
11. It is also opined in the Expert Reports that the manner in which the roof slab was demolished was appalling in that:
    1. The Middle and Edge Supporting Beams should not have been completely or partial removed (as the case may be) *before* the roof slab was demolished;
    2. The Middle and Edge Supporting Beams was not removed from its mid-span towards the supporting beams;
    3. There was no precautionary measures installed such as temporary supports to prevent collapse of roof slab during the demolition work;
    4. No method statement or risk assessment had been prepared prior to the demolition work;
    5. Since there was no method statement to follow, the Deceased adopted some unsafe practice during the Accident, ie standing on the roof slab and using an electric jack hammer/electric concrete breaker to break the roof slab, instead of adopting a safer but slower approach of taking down the roof slab in small pieces.

**Whether the Deceased was an employee of Hui**

1. Madam Wong gave evidence to the effect that the Deceased had been working as a construction worker doing mainly demolition work since the 1980s; however, he did not possess or bring home any work tools. In the evening of 6 April 2007 which was around the Ching Ming Festival, the Deceased received a telephone call. After the telephone call, the Deceased told her that “Ngai Chai” (矮仔) requested him to work after the Ching Ming Festival. The Deceased told her that it was better to earn $700 a day than doing nothing at home during the Ching Ming Festival holiday. And since the Deceased was an illiterate, he asked one of their daughters to write down the work address for him. He also asked their daughter to find out the transportation to reach the work place.
2. Their eldest daughter also gave evidence to the same effect in the trial. She added that after the Accident, she together with some family members went to the scene of the Accident in order to find out what had happened. They met Hui and Nun Tat-hong at the scene. She said that Hui admitted to the family that it was he who asked the Deceased to work in the Building at $700 per day. Nun Tat-hong asked Hui how he intended to handle the situation. Hui replied that he wanted to take responsibility but had no money. He requested Nun Tat-hong to pay the balance of the demolition fee of $15,000. As a result, Nun Tat-hong gave him $20,000. He at once gave that $20,000 to the family of the Deceased.
3. Nun Tat-hong did not have give any direct evidence on the alleged employment relationship of Hui and the Deceased (or the lack of it). But Mr Mui, Counsel for the Temple, said that since the Temple was not a party to the EC Claim, it is not prepared to accept the ruling given in the EC Judgment. He further submits that Madam Wong has failed to prove that the Deceased was an employee of Hui because:
   1. Hui said in his various statements given to the Labour Department that the Deceased were entitled to a share of the profit of the demolition work in question (“打大數”); that it was the Deceased, being more experienced than Hui and Chung, who divided the work among them; and that it was the Deceased himself who decided to work on the roof slab of the Building by using an electric jack hammer;
   2. The Fatal Accident Report described the Deceased as “self-employed”.
4. In my view, the aforesaid allegations contained in Hui’s witness statements, which were given to the Labour Department during the latter’s investigation into the Accident, are all self-serving. Besides, such allegations do not sit well with Hui’s own witness statement dated 17 April 2007 in which he told the Labour Department that since Nun Tat-hong said that the demolition work was urgent and since both Chung and the Deceased indicated that they would *not* take the work, Hui went to Mongkok to hire 2 causal workers and they together demolished the whole building next to the Building. Here is what he said in the said witness statement:

“*我問她工程急唔急, 如果急的話我就幫手揾幾個散工做。大師說要急拆，叫我揾人幫手，我有應承她的*，我向她解釋請散工，人工逐日出逐日計，她應承支付一萬蚊給我可以用作支付散工的開支及清理泥頭的開支。我之後打電話揾阿鵬 ，阿鵬說我要返鄉下，我回港後再與我聯絡，*因為阿鵬唔做，阿威唔做，我去了旺角揾兩個散工拆了一座兩層高的建築物*。” (emphasis added)

1. Coupled with the above observation, it cannot be denied that the Deceased did not take part at any stage in the negotiation of the Oral Agreement or eceive any partial payment of the demolition fees directly from the Temple; it was mainly Hui who did so. Further, when the Deceased commenced working at the site, more than ½ of the demolition work, ie whole of a 2-storey building, was completed, leaving only the 1/F of the Building to be demolished. All these facts show that it is more likely than not that the Deceased was not a partner with Hui in taking up the demolition work, but just a causal worker joining the work mid-way.
2. The description of the Deceased as “self-employed” in the Fatal Accident Report is neither here or there and bears little evidential value. It is perhaps worthy to note that the Fatal Accident Report also records that the Oral Agreement was reached between *Hui and Chung* (not the Deceased) on one hand and Nun Tat-hong for the Temple on the other hand (para 3.1 therein refers).
3. To conclude, I believe in Madam Wong and the eldest daughter’s evidence. I find that the Deceased did tell Madam Wong that Hui asked him to work for Hui after Ching Ming Festival at $700 a day. I also believe that Hui did admit to the eldest daughter that he asked the Deceased to work at $700 a day. I find that Madam Wong has proved on balance that the Deceased was an employee of Hui at the time of the Accident.

***Was the Accident caused by the negligence/breach of duty of the Temple***

1. Mr Cheung, Counsel for Madam Wong, submits to me that the Temple was and is the owner and occupier of the Building. As such, the Temple bears a non-delegable statutory duty of care under section 3(4)(b) of the OLO which provides that:

“where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger *if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor* and *had taken such steps (if any) as he reasonably ought in order to satisfy himself that* *the contractor was competent and that the work had been properly done*.” (emphasis added)

1. Further, he relies on *Waan Chuen Ming v Lo Kin Nam & Another*, FACV 19/2009 in which the CFA upheld the CA’s decision that an employer who engaged a contractor knowing that unsafe measures were being implemented would not escape liability if he chose not to take necessary measures to prevent the occurrence of the accident.

1. There is no dispute by Mr Mui for the Temple that the Deceased was a lawful visitor to the Building at the time of the Accident. And I think Mr Cheung must be right in saying that the Temple was and is the owner and occupier of the Building. It is stated clearly in the memorandum of association of the Temple that one of the objectives of the Temple are “to construct, maintain, alter, full [pull] down and develop any houses, buildings, or works necessary or convenient for the purpose of the Monastery” (Clause 3rd (j) therein refers).
2. The crucial question thus is this: had Nun tat-hong on behalf of the Temple acted reasonably in all circumstances in entrusting the demolition work to Hui; had she taken any steps as she reasonably ought to have to satisfy herself that Hui was a competent contractor and that the work had been properly done.

1. It is the evidence of Nun Tat-hong that she was a housewife before becoming a nun and thus she knew nothing about construction/demolition work or related safety regulations. For example, she did not know that prior approval from the Buildings Department was required. She never thought of taking advice from the professionals or from the government departments on the same.
2. She explained that she asked Hui to handle the demolition work because (1) Hui had done voluntary work for the Temple previously and she found Hui honest and diligent; (2) Hui represented to her that he had years of experience in demolition work; and (3) Hui told her that Chung got a “demolition licence” (ie licence for registered specialist contractor). She had stressed to Hui that the whole work process had to be safe and in compliance with the law. She said that since she had duly entrusted the demolition work to an experienced and trustworthy independent contractor (ie Hui) and his workers, she did not pay further attention to the demolition work. She was busy for other affairs of the Temple at that time.
3. I do not mean to be disrespectful to Nun Tat-hong, but I do have a general impression that in answering questions under cross-examination, Nun Tat-hong was not always straightforward and at times evasive. She was particularly evasive when she was asked of the simple question: “who of the Temple was in charge of the work site”. She failed to give any response at first. When the same or similar question was put to her again for more than 3 times, she still did not give a direct reply. When pressed hard with an answer, all she said, repeatedly, was that the work was entrusted to Hui and the workers; she was a nun who knew nothing but saying Buddhist prayer. Finally she was asked if she represented the Temple to hire Hui, she surprisingly said that she did not know how to answer this question. Her evasive attitude in answering questions during cross-examination shows that she selectively did not give a direct reply to the questions that may be to her disadvantage, which in turn greatly discredits her evidence.
4. On the other hand, even if her evidence was to be accepted fully by the court, I do not hold the view that she had acted reasonably in entrusting the demolition work to Hui and that she has taken reasonable steps to engage a competent contractor (ie Hui).
5. First, other than her mere observation that Hui was honest and diligent in doing voluntary work for the Temple, and the mere oral representation by Hui that he was experienced and that Chung got a licence, Nun Tat-hong has not taken any or any reasonable steps in ascertaining the qualification and competence of Hui. It needs to be emphasized that the voluntary work undertaken by Hui was mainly cleaning work and had nothing to do with demolition work. She did not even bother to ask Hui/Chung to show her the relevant licence. Stated simply, there is no reasonable basis for her to regard Hui as a competent contractor in demolition work.
6. Secondly, it is plain and obvious from the various witness statements given by Hui to the Labour Department and the police that Hui did not possess the requisite licence for registered specialist contractor in demolition work. The investigation by these departments did not show that Chung got this requisite licence, either. As such, Hui cannot possibly be regarded as a competent contractor in any respect.
7. Thirdly, apart from merely telling Hui to be safe and to comply with the law, Nun Tat-hong has not taken any or any reasonably steps in ascertaining whether Hui would put in place any safety measures such as hoarding or fencing. The evidence before me does not show that she had made any enquiry with Hui, at the very least when the Oral Agreement was reached, as to concisely what the safety measures (if any) would be adopted so as to satisfy herself that the demolition work would be properly and safely done.
8. Fourthly, her evidence that she knew nothing about building construction or demolition work is taken by the court not as an explanation but a mere excuse. In my view, if she really knew nothing about the demolition work or relevant legal regulations or safety measures, she could have asked for professional advice, or, at the very least should have enquired with Hui on the same at the negotiation stage or at the time when the Oral Agreement was reached so as to satisfy herself that the demolition work would be properly and safely carried out.
9. Last but not the least, Nun Tat-hong’s evidence given in the death inquest shows that despite Hui had told her expressly that he was *not* capable of taking up the demolition work, she still asked Hui to assist in the demolition work. Here is what she said in reply to Hui’s cross-examination (see p64 lines B to I of the transcript of the death inquest):

“問: 我想澄清呢, 即係當達航師父, 有一次我收到個電話, 佢話叫阿威嚟開工, 但係我有打電話畀阿威, 阿威華要去第二個人開咗工, 先去嗰度做工, 跟住話打番畀--話我--我話我係--佢話--*師父就話, 咁你叫我去做, 我話我冇咁嘅力量去做, 我有講過嘅, 係咪呀?*

答: *有, 有,有。*

….

問: 你話「你可以嚟幫下佢手吖」, 咁樣, 係有講過嘅, 叫我去幫 下佢手, 有冇講過吖?

答: 有。

問：係嘞，*你話你--許清綠，你既然自己做唔到，你可以嚟當係幫下佢手格， 係咪係？有冇講過先？*

答: *有。*” (emphasis added)

1. Of course, I have not overlooked Mr Mui’s submission that Nun Tat-hong/Temple could not have reasonably foreseen that there was a risk in the demolition work in question. With respect, I do not agree. Mr Mui has conceded in his 1st closing submission that most demolition works are dangerous and risky by nature. The Building was a very old one, over 50 years old by the time of the Accident. According to Nun Tat-hong in her witness statement given to the Labour Department on 10 April 2007, the Building was left vacant and un-used for several decades. From the photos attached to the Fatal Accident Report, the Building looks old and does not appear to be under regular maintenance. And it was also Nun Tat-hong’s evidence in the death inquest that she knew Hui was not capable of taking up this demolition work.
2. Under such circumstances, the Temple must have reasonably foreseen that there was a real risk in the demolition work. However, Nun Tat-hong/Temple simply turned a blind eye not only to the obvious risk, but also to whether safety measures would be implemented in the demolition work, not alone to take any or any reasonable steps to stop or prevent the Accident.
3. Due to the maters set out above, I rule that the Temple was negligent and in breach of the statutory duty of care as an occupier of the Building under section 3(4) (b) of the OLO.

***Any Contributory Negligence of the Deceased***

1. In his closing submission, Mr Mui relies on *Chan Yan Nam v Hui Ka Ming t/a Kar Lee Engineering & Others*, HCPI 1169/2000 and submits that the Deceased should be held at least 50% contributory negligence in this Accident. He refers me to the following documents to establish contributory negligence of the Deceased:
   1. Hui said in his witness statement to the Labour Department dated 18 May 2007 that that it was the Deceased who divided the work among Hui and Chung because he was the most experienced and that it was the Deceased himself who decided to work on the roof slab of the Building and used a electric jack hammer;
   2. The opinion given in the Fatal Accident Report that as there was no method statement to follow, the Deceased adopted some unsafe practice to complete the task, ie standing on the roof slab to break the roof slab with an electric breaker;
   3. The opinion given by a senior structural engineer of the Buildings Department that the whole process of the demolition work was un-planned, lack of supervision and carried out by workers without adequate relevant experience of the task.
2. Mr Cheung, however, argues that where the statutory safety regulations are meant to protect the workmen, and that the employers are bound to know their statutory duty and take all reasonable steps to prevent the workmen from committing breaches, that being the statutory objective of protecting the workmen, the court would adopt a minor reduction for contributory negligence: See *Mak Woon King v Wong Chiu* [2000] 3 HKC 350 citing *Stavely Iron and Chemical Co Ltd v Jones* [1956] AC 627.
3. I have already expressed my view on the witness statements of Hui given to the Labour Department that they were self-serving (see para 25 of this judgment).
4. What is essentially opined in the Fatal Accident Report is that: since there was no prior planning or method statement for the Deceased to follow in the demolition work, he adopted an unsafe method to complete his task. And in my view, if anyone was to be responsible for devising a method statement to follow in this demolition work, it must be the employer. The Deceased, being an employee only, should *not* be held liable for such omission on the part of his employer.
5. That said, I agree with Mr Cheung that the purpose of statutory safety regulations will be defeated if the purpose of which is not to protect the workmen but rather punish them for any employer’s failure of compliance.
6. Accordingly, I rule that there is no contributory negligence on the part of the Deceased in causing the Accident.

***Quantum***

1. It seems to be of little dispute that the Deceased earned $700 per day for the demolition work of the Accident. But the Temple puts Madam Wong to strict prove (1) that the monthly income of the Deceased was $13,000 at death; (2) that the Deceased contributed $5,000 per month to the household expense of $9,000; and that Madam Wong and the youngest son were the dependents of the Deceased; and (3) that the Deceased would have the alleged accumulation of wealth but for the Accident.

***Monthly Income of the Deceased***

1. It was the evidence of Madam Wong that the Deceased was the main breadwinner of the family. He was very hard working and worked regularly as a construction worker doing mainly demolition work before his death. He was paid $700 - $800 per day, but his monthly income was not stable. On average, he earned $13,000 per month. Yet she was not able to produce any documentary proof on the Deceased’s income, such as tax return or bank passbook.
2. In the EC Judgment, it is found that the monthly income of the Deceased was $13,000.
3. Mr Mui submits that since the Temple was not a party to the EC Claim, the question of issue estoppel does not apply to the Temple and the Temple is perfectly entitled to dispute the allegation of monthly income of the Deceased.
4. True as it may be, the Temple has not provided any positive evidence to rebut the oral evidence of Madam Wong. Madam Wong’s evidence is not perfect and has some minor inconsistencies. But my overall impression is that she has tried her best to tell me the truth. For example, she did not hide from me that it was the 2nd daughter who took charge of the accounts of household expenses; she honestly told me that she knew little details of the Deceased’s work except that he was paid $700-$800 per day and worked regularly.
5. After all, an average monthly income of $13,000 at $700 per day (which means 18 or 19 days’ of work a month) is not unreasonable by any standard and cannot possibly be taken as excessive in any event.
6. Thus, I accept that the Deceased earned on average $13,000 at the time of his death.

***Household Expenses and the Deceased’s Contribution***

1. The Deceased was born on 12 August 1950 and was 56 at the time of the Accident. He would have been 61 at the time of this trial. As said above, he was married with 3 daughters (all financially independent before his death) and a youngest son (“**Son**”).
2. Madam Wong gave evidence in court that when the children were still small, she took care of the household expenses. But after the children have grown up, it was the 2nd daughter who took charge of the household expenses. According to her, the household expenses immediately before the death of the Deceased was $9,000 (set out in para 17 of her witness statement), among which the Deceased contributed $5,000 and gave it to the 2nd daughter. The 2nd and 3rd daughters each contributed $2,000 to the household expenses. On top of that, the Deceased gave her $2,000 each month as her pocket money, which she would utilize for having tea with the children or buying groceries at supermarkets. Further, the Deceased would pay for the school fees, books, school uniform and pocket money of the Son in the total sum of about $3,280 per month.
3. The Son, born on 3 September 1991, was aged 15 studying Form 3 at the time of the Accident. It is his evidence that the Deceased paid for his education including books, stationery and school uniform ($2,160 + $1,200 per year) but he has not kept the receipts thereof. He also said that the Deceased gave him $100 as pocket money each day if it was school day. If it was not a school day, the Deceased would give him $60 (if he did not go out for fun) or $100 odd (if he went out for fun). Thus, his pocket money was on average $100 per day. In 2009, he graduated Form 5 and embarked on a vocational training course which was completed in August 2011. Since then, he has been working part-time.
4. It cannot be denied that Madam Wong was no longer the person who took care of the accounts and the physical payment of the household expenses at the time of the death of the Deceased; the work has been entrusted to the 2nd daughter after she has grown up. Mr Mui thus, quite understandably, attacks on the suitability of Madam Wong to give evidence on the household expenses and contribution (when she was no longer in charge of the same) and the failure of the 2nd daughter to give evidence in this trial.
5. The unchallenged evidence of the eldest daughter shows that the 2nd daughter started work 2 years before the Deceased’s death (at the age of 19), which means that it is very likely than not that the 2nd daughter took care of the accounts and the physical payment of the household expenses of the family also 2 years before the death of the Deceased. Before that, it was Madam Wong’s responsibility. Given the relatively short time lapse (of just 2 years), I would not say that Madam Wong is in no position at all to generally tell the household expenses at the time of the death of the Deceased by referring to the time when she still took charge of the accounts of the household expenses.
6. Besides, given the living standard of Hong Kong, I cannot see one can successfully challenge that monthly expenses of a family of 6 in the sum of $9,000 is unreasonable or excessive.
7. I therefore accept the household expenses at the time of the Accident were $9,000.
8. Of all the income earners in the family, the Deceased earned the most and being the father and main bread winner of the family, it is just natural and logical that he would account for a bigger share in the household expenses.
9. The 3rd daughter could not possibly be the main bread winner of the family at the time of the Accident, because the evidence shows that (and this is not challenged by the Temple) she was only a part time cashier earning just $4,000 per month. What she earned, without taking away her own personal spending, was unable to cover the monthly household expenses.
10. The eldest daughter was unemployed at the material times.
11. That left only the 2nd daughter. According to the evidence, she was a full-time cashier earning $7,000 per month. Since she worked full-time and was a young lady of 21 at the time of the death of the Deceased, one would not expect her to utilize *all* her income on the family. A reasonable sum of say at least $100 - $200 per day should be set aside for her personal spending to cover travelling, lunch and even clothing and beauty products. As such, the 2nd daughter could not possibly be the main bread winner of the family at the time of the Accident. Madam Wong’s evidence that the 2nd daughter contributed $2,000 to the family is reasonable and should be accepted.
12. Due the matters aforesaid, I accept and find that the Deceased contributed $5,000 to the household expenses of $9,000 per month prior to his death. I find that the Deceased also paid $2,000 per month to Madam Wong as her pocket money and that he paid for the Son’s education and pocket money in the sum of about $3,280 per month.

**Loss of Dependency**

1. The monthly loss of dependency for Madam Wong and the youngest son as at the death of the Deceased are:
   * 1. Madam Wong: $9,000/6 + $2,000 = $3,500
     2. The son: $9,000/6 + $3,280 = $4,780
2. The pre-trial loss of dependency (the pre-trial period being 60 months for Madam Wong and 52 months for the son (up to August 2011)) is thus this:
   * 1. Madam Wong: $3,500 x 60 months = $210,000
     2. The son: $4,780 x 52 months = $248,560
3. For the post-trial loss of dependency of Madam Wong, Mr Cheung adopts a multiplier of 1.5 to which Mr Mui does not seem to object. Thus, the post-trial loss of dependency of Madam Wong is:

$3,500 x 1.5 x 12 = $63,000

***Loss of Accumulation of Wealth***

1. According to the schedule of assets and liabilities of the Deceased dated 18 November 2009 attached to the Letters of Administration under Grant No. HCAG013104/2009, the Deceased had a total savings of $61,673.89 in his bank accounts with the Bank of China and Dah Sing Bank.
2. Mr Mui says that the Temple does not dispute that there was a sum of $61,673.89 in the Deceased’s bank accounts as at the application for the Letters of Administration. However, he submits that since Madam Wong was not able to produce the ban passbooks of the aforesaid bank accounts, it remains unknown whether the said sum of $61,673.89 or any part thereof was credited into the bank accounts before or after the death of the Deceased.
3. With the greatest respect to Mr Mui, what he is seemingly trying to say is a very serious allegation; yet there is nothing to substantiate his allegation or doubt. I will simply reject this argument. I find that at his death, the Deceased had saved up $61,673.89.
4. I agree with Mr Cheung that the monthly savings at the time of the Deceased’s death would be: $13,000 - $5,000 (household contribution) – $3,280 (contribution to son while he was still at school) - $2,000 (pocket money to Madam Wong) - $1,500 (his own personal spending) = $1,220
5. I share Mr Cheung’s view that with the Son’s completion of his education in August 2011 and ceasing to be dependant, the Deceased would have saved more money.
6. The loss of accumulation of wealth is thus as follows:
   * 1. From date of Accident to August 2011:

$1,220 x 52 months = $63,440

* + 1. From September 2011 to October 2013:

($1,220 + $3,280) x 26 months = $117,000

1. I refuse to make an award on MPF benefits since there is insufficient evidence on such loss before me.

***Summary on Quantum***

1. The total damages to be awarded are set out in the table below for easy reference. Credit will be given to the amount of compensation in the EC Claim, being $484,400:

|  |  |
| --- | --- |
| Under FAO |  |
| Pre-trial loss of dependency | $ 458,560 |
| Post-trial loss of dependency | $ 63,000 |
| Bereavement (agreed) | $ 150,000 |
| Under LARCO |  |
| Loss of accumulation of wealth | $ 180,440 |
| Special damages (agreed) | $ 75,660 |
| Sub-total: | $ 927,660 |
| LESS EC Compensation | $ 484,400 |
| Total: | $ 443,260 |

***Conclusion***

1. Due the matters set out above, I will enter judgment on liability in favour of Madam Wong against the Temple.
2. I will also order that the damages assessed and awarded to Madam Wong against Hui and the Temple in this action are $443,260.
3. There will be interest on general damages at 2% per annum from the date of the service of the Writ to the date of judgment; on bereavement at judgment rate from the date of death to the date of judgment; and on special damages at half the judgment rate from the date of the accident to the date of judgment.
4. I will further make an order *nisi* that the costs of the action are to be paid by Hui and the Temple to Madam Wong, to be taxed if not agreed, with certificate for counsel. Madam Wong’s own costs are to be taxed in accordance with the Legal Aid Regulations. If there is no application to vary the costs order *nisi*, it will become *absolute* within 14 days from the date of this Judgment.

Grace Chan

Deputy District Judge

Mr Y L Cheung instructed by Messrs Liu, Chan and Lam for the Plaintiff

1st Defendant in person and absent

Mr Louie KK Mui instructed by Messrs. Paul Kwong & Company for the 2nd Defendant