# DCPI 566/2005

## IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 566 OF 2005

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# BETWEEN

## CHIM SZE PING Plaintiff

and

### LEE LO WAI Defendant

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## JUDGMENT ON APPEAL

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##### Coram: Deputy District Judge E. Yip in Chambers

###### Date of Hearing: 1 November 2005

###### Date of Judgment: 1 November 2005

#### Introduction

1. The plaintiff was the passenger of a public light bus. The defendant was the driver. A traffic collision took place resulting in certain injuries to the plaintiff. The plaintiff claimed against the defendant damages.

2. On 4 October 2005, the plaintiff filed his Check List with a proposed direction, amongst others (including a neurological specialist to be called by each side), to call an orthopaedic specialist. Upon hearing both sides, the master refused to so direct. The plaintiff appeals the master’s decision and seek an order that the orthopaedic specialist’s medical report be adduced without calling oral evidence.

*The history of the plaintiff’s orthopaedic conditions*

3. On 16 May 2002, whilst riding a motorcycle, he was rammed from behind by a taxi (PB 58). I shall call it “the first accident”. He suffered neck pain as a result. There was no medical report compiled for his injuries from that incident.

4. On 5 June 2002, the present collision happened. I shall call it “*the second accident*”. The plaintiff’s Particulars of Injuries, Treatment and Prognosis referred to, apart from certain neurological conditions, neck pain and low back pain.

5. On 21 February 2003, whilst driving a motorcycle, he was hit by a private car (PB 60). I shall call it “the third accident”. He suffered neck pain and back pain as a result. There was no medical report compiled for his injuries from that incident.

*The value of the orthopaedic specialist’s evidence*

6. The following medical reports were produced by agreement:

1. Dr. Subhash Chandran Madhava, a neurosurgeon, last saw him on 23 October 2003 and stated in the medical report (PB 36) that he had some neck pain which subsided with time but he still felt some tightness of the neck;
2. Dr. Rehman Safi Ur, a neurosurgeon, last saw him on 12 February 2004 and stated in the medical report (PB 37) that his neck symptoms were better than before.

7. The plaintiff was granted leave to call Dr. Yu Yuk Ling, a neurological specialist. His report was at PB 38-50. Dr. Yu diagnosed the plaintiff to have post-concussional syndrome (“PCS”). He referred to the 5th ed. of the Guides to the Evaluation of Permanent Impairment by the American Medical Association in 2001 (“AMA Guides 2001”). From a neurological point of view, the Permanent Impairment of the Whole Person (“PIWP”) was estimated to be 2%.

8. The defendant was granted leave to call Dr. Edmund Woo, also a neurological specialist. His report was at PB 57-75. From a neurological point of view, he referred to the AMA Guides 2001 and regarded the PCS to account for 1%, and the neck pain for another 1%, of PIWP. He regarded the first accident to account for 20%, *the second accident* for 40%, and the third accident for 40%, of his overall impairment.

8. The plaintiff sought to produce, in addition, the medical report dated 17 January 2005 (PB 53-56) of Dr. Chan Kow Tak, an orthopaedic specialist. The assessment was made on 14 January 2005. Dr. Chan diagnosed the plaintiff to have neck pain and low back pain. Dr. Chan was apparently not told of the first accident because he did not refer to it at all. Dr. Chan made the following assessment:

1. Neck pain and muscle guarding: 3%
2. Back pain and muscle guarding: 2%

Since the neck pain is a result of 2 accidents, I will apportion 2% for [*the second accident*] and 1% for [*the third accident*].

Hence, the Whole Person Impairment for [*the second accident*] is 2% and that for [*the third accident*] is 3%.

*The defendant’s submissions*

1. Ms. Chan for the defendant submits as follows:
   1. The test was relevance and probative value.
   2. Dr. Chan did not refer to the first accident, his findings and assessment were not relevant or had no probative value.
   3. He did not define what a “whiplash injury” meant, which would be expected of an expert report.
   4. Despite the courts’ general criticism of medical practitioners, he gave an assessment in terms of the percentage of PIWP and loss of earning capacity.
   5. He had not mentioned any reason why he found that the plaintiff suffered neck pain.
   6. He stated that the plaintiff had reached maximal clinical recovery, hence the plaintiff could have had no more orthopaedic symptoms.

10. I agree with Ms. Chan that the test was relevance and probative value.

11. I disagree with Ms. Chan that because Dr. Chan did not refer to the first accident, his findings and assessment were not relevant or had no probative value. At the present juncture, the issue is not what weight we should attach to the medical evidence but whether any orthopaedic evidence is relevant for and probative to the assessment of injuries. An orthopaedic specialist’s report is no doubt something which a neurological specialist is not in a position to give.

12. As a layman, I do not have any difficulty understanding what a “whiplash injury” means. I do not see why the lack of any medical definition given in or attached to the medical report renders the medical report irrelevant or non-probative.

13. Dr. Chan might well be making the same mistake as the defendant’s expert witness, Dr. Edmund Woo, who also gave an assessment in terms of the percentage of PIWP and loss of earning capacity. I do not understand why the defendant has not excised Dr. Woo’s medical report accordingly before it begins to criticize Dr. Chan’s medical report on the same ground. Those who live in glass houses should not throw stones.

14. It is not right for Ms. Chan to submit that Dr. Chan did not say why he found that the plaintiff suffered neck pain. He actually referred to his physical examination of the plaintiff.

15. It is also not right for Ms. Chan to submit that as Dr. Chan stated that the plaintiff had reached maximal clinical improvement, the plaintiff could have had no more orthopaedic symptoms. Dr. Chan was only saying that the plaintiff’s condition could not improve any more and the plaintiff would have to live with whatever impairment he had permanently.

16. I am of the view that Dr. Chan’s medical report is both relevant and probative. In the circumstances, I set aside the master’s order and make the order that Dr. Chan Kow Tak’s report dated 17 January 2005 shall be adduced as evidence without his being called. I order costs of and incidental to this appeal be to the plaintiff, with certificate for counsel.

### Dated this 1 November 2005

EDDIE YIP

DEPUTY DISTRICT JUDGE

Mr. Ubaid-Ur Rehman, instructed by M/s T.K. Cheng and Co., for the Plaintiff

Miss Anita Miu Lan Chan, of M/s Y.T. Chan and Co., for the Defendant