DCPI 669/2016

[2019] HKDC 48

**IN THE DSTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 669 OF 2016

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BETWEEN:

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| --- | --- |
| TONG CHUN YIP | Plaintiff |
| and |  |
| LEUNG SAU LAI  KUO CHUN TING | 1st Defendant  2nd Defendant |

|  |  |
| --- | --- |
| Coram: | His Honour Judge Harold Leong in Court |
| Date of Hearing: | 20 December 2018 |
| Date of Judgment | 16 January 2019 |

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JUDGMENT

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1. This is a personal injury claim as a result of a road traffic accident on 13 April 2014.

*Background*

1. The 1st defendant was the driver of a Mercedes car and it ran into the back of the plaintiff’s vehicle. Liability has been entered for the 1st defendant.
2. The 2nd defendant was the registered owner of the Mercedes car and he initially denied liability, claiming that the 1st defendant drove the car without his consent. However, on the day of the trial, the solicitor representing both defendants, Mr Yung, informed the court that the 2nd defendant instructed him not to defend.
3. Further, Mr. Yung confirmed with the court that both defendants would not take further part in the hearing of the trial.
4. The trial therefore proceeded in the absence of Mr. Yung and the defendants. Mr. Wong, the plaintiff’s counsel, made an application that the court should disregard the Affirmation of Leung Sau Lai (trial bundle pages 42 to 45) and the witness statement of Leung Sau Lai (trial bundle pages 76 to 78d) given that the witness was not attending the trial. The court granted the application accordingly.
5. Given the above, this would now be a straightforward assessment of damages hearing.

*PSLA*

1. According to the expert orthopaedics report prepared by the single joint expert, Dr. Tio Man Kwun, Peter (“Dr. Tio”), the plaintiff suffered from a soft tissue neck and back injury. MRI of cervical spine showed no nerve compression but only minimal disc protrusion of the C3/4 disc.
2. The plaintiff was referred for physiotherapy and occupational therapy but he defaulted. He attended follow-ups at Orthopaedics Outpatient department and, at his last attendance on 12 June 2014, it was recorded, amongst others: *“Numbness much improved. Neck pain better. Elbow pain much better. Declined analgesics…”*
3. The plaintiff was given sick leave from 15 April 2014 to 17 July 2014.
4. During Dr. Tio’s expert examination some 3 years after the accident, the plaintiff still complained of some residual pain but the examination shows only some residual tenderness, pain and minimal stiffness with no neurological deficit. Dr. Tio also found that her lower back pain might not be related to the accident.
5. After considering the cases of *Wong Eleven v. China Way Transportation Limited* [2018] HKDC 2016, *Wu Kin Ho v. Wong Kong Hop Kenneth* [2018] HKDC 526 and *Ko Hoi Seung Korin v. Liu Kwok Leung* HCPI 1206/2014, which concern with similar uncomplicated “whiplash” injuries, I would award HK$120,000 under this head of claim.

*Loss of earnings*

1. Mr. Wong fairly conceded that, in view of the expert’s opinion that the plaintiff should be able to resume his pre-injury job (with some degree of reduction of efficiency), the plaintiff would only claim for loss of earnings for the sick leave period.
2. During the trial, the plaintiff gave evidence that he worked as a freelance light goods vehicle driver. He would rent the vehicles and would pay for fuel as well. The rental and fuel costs would amount to around HK$6,000 a month. He confirmed that paragraph 4 of his witness statement (page 80 of the Trial Bundle) only referred to his total income and, taking account of rent and fuel, his *net* income per month should be around HK$9,000.
3. As such, I would award loss of income from the date of the accident (13 April 2014) to the last day of sick leave (17 July 2014), or 95 days: HK$9,000 x 95/30 = HK$28,500

*Loss of earning capacity*

1. The expert opined that the plaintiff’s degree of reduction in efficiency such as neck pain after driving for long periods etc. were *“also common to other professional drivers”*.
2. As such, I think that the plaintiff could only have a very small disadvantage on the open market so I would award HK$9,000 under this head of claim.

*Special damages*

1. The plaintiff claims HK$3,000 for medical expenses, HK$2,000 as tonic food and HK$2,000 as travel expense. I would allow this claim.
2. In summary, the quantum is assessed as follows:

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| --- | --- | --- |
|  |  | HK$ |
|  | PSLA | 120,000 |
|  | Pre‑Trial Loss of Earnings | 28,500 |
|  | Loss of Earnings Capacity | 9,000 |
|  | Special Damages | 7,000 |
|  | Total | 164,500  **(plus interest)** |

1. Interest will be awarded at 2% per annum on general damages from date of service of the writ and half interest rate on special damages from the date of the accident.
2. There be an order *nisi* for the costs of this action to be paid by the 1st and 2nd defendants to be taxed if not agreed, with certificate for counsel.

(Harold Leong)

District Judge

Mr Damian Wong, instructed by Ho & Associates, for the plaintiff

The 1st defendant was represented by B Mak & Co, and was absent

The 2nd defendant was represented by B Mak & Co, and was absent