## DCPI 818/2008

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 818 OF 2008

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| BETWEEN | CHANG TSUN TEIN | Plaintiff |
|  | and |  |
|  | WAI LEE SCAFFOLDING CO LTD | Defendant |

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Coram : Her Honour Judge Mimmie Chan in Court

Date of hearing : 19 April, 2010

Date of handing down Judgment : 26 May, 2010

# JUDGMENT

**Background**

1. This is an application for assessment of damages sustained by the Plaintiff (“**Mr. Chang**”**)** as a result of an accident which occurred on 24 April 2005. On 22 May 2008, judgment on liability was entered, by consent, against the Defendant (“**Wai Lee**”) for damages to be assessed.
2. Mr. Chang, aged 23 at the time of the accident, was employed as a scaffold worker. On 24 April 2005, he was dismantling a scaffolding with his co-workers on the wall of a building in Wanchai, when a worker above Mr. Chang lost hold of a bamboo pole and caused it to drop, hitting Mr. Chang on the head. He sustained injuries as a result of the accident, and was granted sick leave from 24 April 2005 to 7 June 2006.
3. Mr. Chang was taken to the Accident & Emergency Department of Ruttonjee Hospital. According to the hospital report, Mr. Chang had a 2cm laceration of the scalp, with no neurological deficit. The skull x-ray conducted was found to be normal. He was treated with Panadol and discharged on the same day, with sick leave granted until 29 April 2005.
4. According to the report of the Tuen Mun Hospital (“**TM Hospital**”) dated 1 July 2005, Mr. Chang attended the Accident and Emergency Department of the TM Hospital on 1 May 2005, complaining of "persistent dizziness and difficulty in concentration" after the injury on 24 April 2005. He was examined and found to be alert and conscious, with no focal neurological signs. The report recorded that Mr. Chang's scalp wound had healed, and that a CT scan of the brain showed no intracranial haemorrhagia or skull fracture. Mr. Chang was referred to the neurosurgery clinic for management of suspected post-concussion syndrome.
5. According to the report dated 17 September 2008 issued by the Department of Neurosurgery of the TM Hospital, Mr. Chang was examined on 28 June 2005. He was recorded to be conscious and alert, with a 4 cm scar over the left high parietal region. His limb power was recorded to be full. According to the report, Mr. Chang was given symptomatic medication, was seen by the psychiatrist for poor sleep and was put on medication. He was last examined at the Department of Neurosurgery of TM Hospital on 2 September 2008, when he was still complaining of mild left-sided headache and episodes of dizziness.

**Complaints of injury**

1. According to the Revised Statement of Damages filed on 24 March 2010, Mr. Chang complains that as a result of the accident, he continues to suffer from dizziness, headache, inability to concentrate, loss of memory, impairment in psychological and social functioning, and post-concussional syndrome.
2. Mr. Chang was examined by his neurological expert, Dr. Edmund Woo, on 25 September 2006. At the time of this examination, Mr. Chang's complaints were that he still suffered from headaches, dizziness, impairment of memory, and inability to think with speed or clarity. The headaches and dizziness were recorded to recur almost every day, lasting for up to 1 to 2 hours on each occasion. There was no visual disturbance, nausea or vomiting. Mr. Chang also complained to Dr. Woo that he had become unsociable, avoiding interaction with friends. According to Dr. Woo's report of the examination on 25 September 2006, Mr. Chang had complained of hearing a female voice calling him at night but there were no other features of delusion or hallucination in Mr. Chang. Mr. Chang was recorded to have no vivid recollection or unpleasant dreams of the accident.
3. According to the expert opinion of Dr. Woo, Mr. Chang had a mild head injury as a result of the accident. Dr. Woo considered that Mr. Chang's residual headache, dizziness, and subjectively impaired memory are consistent with the diagnosis of a very mild post-concussional syndrome. Despite Mr. Chang's expressed apprehension of going near a scaffold, Dr. Woo considered that there were no other features in Mr. Chang to suggest a post-traumatic stress disorder.
4. 2 years 7 months later, on 27 April 2009, Mr. Chang was jointly examined by the psychiatric experts appointed for these proceedings, Dr. Ho and Dr. Chen. On the basis of their examination and Mr. Chang's reports of his condition and symptoms, Dr. Ho diagnosed Mr. Chang as suffering from a very mild degree of post-concussional disorder, and adjustment disorder with mixed anxiety and depressive mood. Dr. Chen diagnosed Mr. Chang as suffering from a moderate degree of post-traumatic stress disorder, with impairment in his cognitive function.
5. I agree with Counsel for Wai Lee that there are inexplicable discrepancies and inconsistencies in the symptoms described by Mr. Chang to Dr. Woo in September 2006, and those he described to the psychiatrists in April 2009. Whereas he had informed Dr. Woo 17 months after the accident that he had had no unpleasant dreams of the accident, he told Dr. Ho and Dr. Chen 4 years after the accident that he would intermittently think of the accident, around once or twice every 1 to 2 weeks, that it had been as frequent as 2 to 3 times a week in "the initial stage", and that he had had nightmares related to scaffolding.
6. Mr. Chang complained to Dr. Woo in September 2006 that he had become unsociable and had avoided interaction with his friends. He also informed Dr. Ho and Dr. Cheng in April 2009 that he only had "some degree of social interaction", that his relationship with others was not good and that he did not want to talk with people.
7. However, on 14 February 2006, Mr. Chang was in fact videotaped at a surveillance. He spent nearly an hour on that day at a garage in the company of at least 4 to 5 workers. Mr. Chang described them in his evidence as his friends. From the video, Mr. Chang was seen to be cheerful in such company, was engaging and at ease, smoking, and chatting comfortably and laughing. I certainly cannot observe from the surveillance any signs of social disability in Mr. Chang, notwithstanding his claims to Doctors Woo, Ho and Chen.
8. Mr. Chang informed Dr. Ho and Dr. Chen in April 2009 that he was still dizzy with headaches and could not drive. However, when he was videotaped at the surveillance on 14 February 2006, Mr. Chang was seen to have taken, from the garage, the keys to a car, and to drive the car from the garage onto the road, all on his own initiative and without any prompting or assistance whatsoever from any of the people present. He demonstrated confidence and ease in the course of the exercise.
9. Considering Mr. Chang's evidence on the whole, including the reports of his complaints made to Dr. Woo, Dr. Ho and Dr. Chen, and the surveillance video, I do not find Mr. Chang to be a truthful or reliable witness in relation to his complaints and the symptoms he reported to the experts. He has exaggerated his claims to Dr. Ho and Dr. Chen, and I note that Dr. Ho also considers that Mr. Chang had a tendency to give an affirmative answer when direct questions were put to him about his symptoms during the interview. Examples which can be found from the report are when he was asked whether he had fear, whether his problem- solving skill had got worse, and whether he had nightmares related to scaffoldings.
10. When Mr. Chang was asked by the psychiatrists in April 2009 whether he had any fear, he had said that he did have some mild fear, was fearful of scaffolding, and did not want to go back to his previous job, being afraid of having another accident. He also claimed that he felt scared at the time of the accident and was worried that he would die, claiming that he felt lucky that he had survived. Dr. Chen considered that these expressions of fear justified her diagnosis of post-traumatic stress disorder, but they appear to me to be normal feelings generally associated with any person faced with an accident. It is only natural for Mr. Chang to be apprehensive about going back to work on the scaffolding again after having gone through such an accident.
11. My finding that Mr. Chang had exaggerated his symptoms to Dr. Ho and Dr. Chen in April 2009 is supported by the report of Dr. Rachel Cheng of the Castle Peak Hospital dated 25 September 2008. Dr. Cheng is the resident doctor at Castle Peak Hospital who had treated Mr. Chang since July 2008. As pointed out by Counsel for Wai Lee, there is no mention of nightmares, hallucination, fear or palpitation in Dr. Cheng's report of her treatment of Mr. Chang at the Castle Peak Hospital from July 2008 to September 2008. I would expect such symptoms as reported by Mr. Chang to Dr. Ho and Dr. Chen to be noted in Dr. Cheng's report if these symptoms had indeed existed in Mr. Chang and had been presented to Dr. Cheng in 2008.
12. According to Dr. Cheng’s report, a formal neuro-psychological assessment had been performed on Mr. Chang by the clinical psychologist of the Castle Peak Hospital. This revealed Mr. Chang as functioning at the borderline range of intelligence. His attention was shown to be average. His memory and executive function fell into the borderline range to a low average range. However, in summary, the assessment indicated that there was no significant deterioration in Mr. Chang's cognitive functioning. When Mr. Chang was last seen at the Castle Peak Hospital on 22 September 2008, he was noted to be mentally stable. His speech was coherent and relevant. There was no depressive symptom or psychotic symptom elicited. Mr. Chang was recorded to have harbored no negative cognition or suicidal idea. Dr. Chen considered that Mr. Chang suffered from post-concussional syndrome, was mentally stable with no active psychiatric symptoms, and whose psychological assessment had revealed no significant deterioration in his cognitive function. She considered that there was minimal impairment on Mr. Chang’s vocational capacity.
13. For completeness, Mr. Chang was recorded to have scored 20/30 in the mini-mental test conducted by Dr. Ho and Dr. Chen in April 2009, suggesting some mild to moderate degree of cognitive deficit.

**Pain, suffering and loss of amenities**

1. On all the evidence, I consider Mr. Chang's claims of fear, hallucination, being withdrawn and unsociable as grossly exaggerated and unreliable. Dr. Chen's diagnosis on the basis of these false and exaggerated claims is likewise rendered unreliable. On the basis of Mr. Chang suffering from a mild head injury and a mild form of post-concussional syndrome, I consider on the authorities cited to me that an award of **$150,000**, as conceded by Wai Lee, is more than adequate for Mr. Chang's pain, suffering and loss of amenities.
2. According to Dr. Woo, with Mr. Chang's mild head injury, he should have recovered sufficiently by October 2005, 6 months after the accident, to be able to resume gainful employment by then. As I have already observed, the surveillance video of 14 February 2006 shows Mr. Chang to be normal, sociable, confident and largely if not fully recovered from his injuries by then.

**Pre-trial loss of earnings**

1. Mr. Chang claims that at the time of the accident, his monthly salary was $13,550. By way of challenge, Wai Lee seeks to rely on its salary return filed with the Inland Revenue Department in respect of the salary paid to Mr. Chang from 1 April 2004 to 31 March 2005, being the period just before the time of the accident. According to the Return, Mr. Chang was paid a total sum of $139,195, giving a monthly salary of $11,600. I will accept this as the best evidence of Mr. Chang's earnings at the time of the accident.
2. It is not in dispute that Mr. Chang was granted sick leave totaling 377 days from 24 May 2004 to 6 June 2006. He received his full salary during the period of sick leave. According to Dr. Woo, Mr. Chang should have recovered sufficiently by October 2005, 6 months after the accident, to be able to resume gainful employment. The surveillance of 14 February 2006 supports Dr. Woo's view. As reflected in the Answer to the Revised Statement of Damages dated 31 March 2010, Wai Lee is prepared to make payment for an additional period of 3 months to give time to Mr. Chang to look for employment. This is fair and I agree that Mr. Chang is only entitled to the sum of **$36,540** ($11,600 x 1.05 x 3) as his loss of earnings.

**Loss of Earning Capacity**

1. Dr. Woo is of the opinion that Mr. Chang should be able to resume his pre-accident employment as a scaffold worker. Even if Mr. Chang is not able or prepared to resume such work as a result of this accident, Mr. Chang had experience of working in a garage, and had received training as a paint worker. He was educated up to form three. He can also drive, and take up employment as a messenger, a security guard, or as a construction site or interior decoration worker.
2. According to the report of Dr. Cheng, Mr. Chang had refused the offer of occupational therapy assessment and vocational training.
3. I have seen no evidence of Mr. Chang suffering any disadvantage in the labor market as a result of his injury, and decline to make any award under this head.

**Future Medical Expenses**

1. Dr. Ho has advised that Mr. Chang would benefit from further psychological treatment. On Mr. Chang's evidence, he has been receiving treatment once every 3 or 4 months. There is no reason why he cannot continue to receive such treatment from the government hospitals, and I will allow the sum of **$5,000** proposed by Wai Lee, as adequate payment for Mr. Chang's future medical expenses.

**Future Loss of Earnings**

1. For the same reasons set out in paragraph 23 - 25 above, I decline to make an award under this head.

**Summary of award**

1. The award for damages comprises :
   1. PSLA $ 150,000.00
   2. Pre-trial loss of earnings $ 36,540.00
   3. Future medical expenses $ 5,000.00

Less: Employees' Compensation received $ 52,585.00

Total : **$ 138,955.00**

1. I will award interest on the award of PSLA at 2% p.a. from the date of service of the writ to the date of judgment, and on the award of total special damages at half the judgment rate from the date of the accident to the date of judgment.

1. I will further make an order nisi that the costs of the action be paid by Wai Lee to Mr. Chang, to be taxed if not agreed. Mr. Chang's own costs are to be taxed in accordance with the Legal Aid Regulations.

(Mimmie Chan) District Judge

*Mr. Kent Tam of Messrs. Kent Tam & Co. (assigned by D.L.A.), for the Plaintiff*

*Miss Christina Lee, instructed by Messrs. Philip K.H. Wong, Kennedy Y.H. Wong & Co., for the Defendant*