## DCPI 835/2005

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 835 OF 2005

--------------------

##### BETWEEN

LEE KA KUEN Plaintiff

### and

HUNG SHING ENVIRONMENTAL RECYCLE Defendant

LIMITED

--------------

Coram : Her Honour Judge Mimmie Chan

Date of hearing : 16 June, 2008

Date of handing down Judgment : 19 June , 2008

# JUDGMENT

**Background**

1. Mr. Lee was employed by Hung Shing Environmental Recycle Ltd. as a labourer. Hung Shing carried on a business of recycling and storing waste plastic materials. On 6 October 2004, Mr. Lee was working at Hung Shing's premises at Tuen Mun. His duties included cleaning, transporting and weighing the waste plastic materials, operating the forklift at the site, and cleaning the work site. Mr. Lee explained that this involved constant bending, squatting, standing, walking and lifting of heavy materials.
2. At the time of the accident on 6 October 2004, Mr. Lee was between 2 piles of waste plastic materials at the site. Each pile had 3 layers, and each layer consisted of a number of packages of waste plastic materials. Each package was 2.5 feet in height, and weighed about 200 to 300 kilograms. Mr. Lee was in a squatting position, and doing some cleaning work, when one package of waste plastic materials fell from a height of 5 feet and struck Mr. Lee’s back. The package rolled down from Mr. Lee's back onto the ground, hitting Mr. Lee's head in the process. He fell forward and in the process, sustained injuries including fracture of the 2nd, 3rd, 4th and 5th metatarsals of his right foot, abrasion over both knees, tenderness of the lumbar region of the back and 3 broken incisors.
3. On 12 January 2006, judgment on liability was entered against Hung Shing. The hearing before me was for assessment of the damages payable to Mr. Lee as a result of the accident.

**Injuries sustained and medical treatment**

1. Mr. Lee was admitted to the Tuen Mun Hospital after the accident. He received open reduction and internal fixation for his fractured 2nd, 3rd and 5th metatarsals. A short leg POP was applied after surgery and he was discharged from the hospital on 17 October 2004. Mr. Lee was re-admitted to the hospital on 23 March 2005 for removal of the hardware from his 2nd and 3rd metatarsals, and discharged on 26 March 2005. From 28 December 2004 to 11 March 2005, Mr. Lee received 10 courses of physiotherapy. He received 7 courses of occupational therapy from 8 February 2005 to 11 March 2005, and attended follow up treatment until 8 April 2005.
2. According to Dr. Au Ka Kau who examined Mr. Lee on 19 July 2005, Mr. Lee could walk normally, could stand on tip-toe and on his heels and could stand single-legged on either leg. He could squat fully. Dr. Au found that the lateral border of Mr. Lee's right foot was more prominent at the base of the 5th metatarsal. There was mild swelling on the dorsum of his right foot. There were 2 surgical scars on his right foot. The movement of the right ankle joint was limited. Motor power of the legs was normal, as was sensation. There was stiffness of movement of the 2nd and 3rd toes on the right side, and weakness of right toe extension except for the right big toe. Dr. Au considered that Mr. Lee suffered 2% total body impairment.

**Compensation payable**

***Pain suffering and loss of amenities***

1. Mr. Lee complains that currently, he still suffers from pain in his right foot, particularly after long periods of standing, walking up steps or squatting. On the evidence, and after considering *Chow Tai Loi*  *v. Leung Kam Hung* HCPI 584 of 2001, 6 December 2002, I will allow an award of **$250,000**.

***Pretrial loss of earnings & MPF***

1. I accept that at the time of the accident, Mr. Lee was earning $4,780 a month ($4,000 + $780)

.

1. Mr. Lee was granted sick leave from 6 October 2004 to 22 April 2005, which period was endorsed by Dr. Au.
2. Upon expiry of his sick leave, Mr. Lee began to look for work. He was employed as an electric apprentice with effect from 1 April 2007. I will allow his loss of pre-trial earnings at **$142,603.33** ($4,780 x 29 months 25 days), and loss of Mandatory Provident Fund benefits of $5,966.67 ($4,000 x 5% x 29 months 25 days).

***Special damages***

1. I will allow the sum of **$5,000** claimed as traveling expenses for attending medical treatment, and tonic food expenses.

***Loss of earning capacity***

1. According to Dr. Au, Mr. Lee is fit to return to his previous job as a worker in a plastic recycling company. Mr. Lee left his job after Hung Shing had defaulted in payment of sick leave payments due to him. Mr. Lee claims that currently, the pain in his right foot meant that he had to work less efficiently as he was not able to stand, walk or squat for long periods and had to take breaks to rest. He claims that his employer had complained that he was too slow in his work as a result. I accept that Mr. Lee's competitiveness in the job market would be affected by the residual effect of his injuries. In the light of the decisions in *Cheng Chi Hong v. Lo Chi Hung* HCPI 330/2004 28 April 2005 and *Azhar Hussain v. Fastcut Services Ltd.* DCPI 902/2004 14 February 2006, I am prepared to make an award of **$71,700** ($4,780 x 15) under this head.

**Award**

1. The total award for damages includes :
   1. PSLA $250,000
   2. Pre-trial loss of earnings & MPF $ 148,570
   3. Traveling expenses & tonic food $ 5,000
   4. Loss of Earning Capacity $ 71,700

Less : Employees compensation payment $ 47,713.16

Total : $ 427,556.84

1. I allow Mr. Lee's claim of interest on the award of $250,000 at the rate of 2% per annum from the date of the service of the Writ on 4 July 2000 to the date to judgment, and on the award of 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 Hung Shing to Mr. Lee, to be taxed if not agreed. Mr. Li's own costs are to be taxed in accordance with the Legal Aid Regulations.

(Mimmie Chan)

District Judge

*Mr. Tam Ying Kit of Ambrose Ng & Co for the Plaintiff*

*The Defendant absent*