DCPI 853/2004

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**PERSONAL INJURIES ACTION NO. 853 OF 2004**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

BETWEEN

CHEUNG YU TIN ALVIN Plaintiff

and

HO HON KA Defendant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Coram: Deputy Judge W. Lam in Court

Date of Hearing: 6th June 2005

Date of Handing Down Judgment: 9th June 2005

### JUDGMENT

# **The Claim**

1. As a result of a motor vehicle accident dated the 4th March 2003, where the Plaintiff (“P”) was a bus passenger in the upper deck, and where Defendant (“D”) driving a taxi which cut into the lane used by the bus, causing a collision between the two vehicles, P claims for pain suffering and loss of amenities (“PSLA”), loss of past and future earnings, special damages, interest and costs. It is agreed that the bus was travelling slowly at the time, being at approximately 15kph.

2. Defendant has already admitted liability (negligence).

# **The Evidence**

3. P (now aged 29) says that before the accident he had suffered no relevant illness or disability. However after the accident he experienced low back pain, although the pain was not severe and he was in a hurry to go to work and hence he did not seek treatment until a few hours afterwards. About 2 hours after arriving at work his pain persisted, and so he obtained permission from his superior and took a taxi from work to the QMH. He was given 2 days of analgesics but was not required to be admitted into hospital or return for further attendance. His pain however persisted, together with numbness in the low back. Two days later he went to the PWH and was again given 2 days analgesics and ointment. Diagnosis was strain to the lower back muscles. P says he would experience pain and discomfort after sitting or walking for 45-60 minutes, and he is now reluctant to engage in activities such as soccer and disco dancing which he used to enjoy before. He had also suffered from nightmares although he has not consulted any psychiatrist or psychologist regarding this aspect. P says that even now he experiences tightness and pain when the weather changes and on prolonged sitting and standing.

4. P tenders the medical report of orthopaedic surgeon Dr LEE. The content of the medical report is consistent with P’s testimony. Dr LEE diagnosed soft tissue injury only. He assessed P’s whole person impairment at 1%, but at the same time he said recovery was normally expected between 2 weeks and 2 months. He recommended swimming exercises. P has not swum as a method of treatment, although he says he intends to participate in same in future.

5. After 4 days sick leave P returned to his normal work as an accident compensation consultant. He is presently doing the same work as before the accident. His monthly salary including commission at the time was $19,000.

## Assessment

***PSLA***

6. The evidence, which P himself conceded to a degree, was: (1) The bus was travelling slowly at about 15 kph, (2) Property damage to the vehicles was minor, (3) P was given 2 days sick leave by the QMH with no follow-up attendance required, (4) P was given 2 more days sick leave by the PWH with no follow-up attendance required, (5) P says he used both hands to press against the seat in front of him during the sudden braking by the bus, but there is no complaint or evidence of any pain strain or problem with either upper limb, including wrists or hands or fingers, (6) P played soccer about 1 year after the accident and I have heard no complaint relating to this game. In any event P says his abstenance from soccer and disco dancing was more due to his being cautious than pain-related, e.g. there is no evidence to say that *physically* P is no longer able to play soccer or dance. (7) P says he has had nightmares but has not consulted any psychiatrist or psychologist, and (8) Dr LEE’s assessment has been summarised above, i.e. minor soft-tissue injury with recovery normally expected within 2 weeks to 2 months, although P has a permanent body impairment of 1%.

7. I accept P has suffered low back strain. However for the abovestated 8 reasons I also find his disability to have been minor, and his residual pain today to be very small. I refer to authorities and cases such as WONG Chiu-wa HCPI 852/1999, *CHIU Wing-Sze Karby* HCPI 616/1999 and *NG Ming-wa* DCPI 98/2000. Most of the cases cited by the parties consist of organic injuries, such as fracture of the clavicle, fracture of the sacrum, some of them serious, and/or involving lengthy hospitalisation and treatment, e.g. *WOO Wai-kuen* DCPI 309/2001. On the whole of the evidence of the case before me, therefore, I assess PSLA at $ 25,000.00

# ***Loss of Past Earnings***

8. P claims for loss of 4 days wages. However he was paid his normal wages even though he was given sickness certificates for these 4 days. I accept that if he had not sustained this injury he would not have used up these 4 days of sick leave. I also accept he had suffered “loss of a chance” to find new customers during the 4 days. I allow such loss at half the sick days taken, i.e. $19,000 / 26 days, x 2 days = $ 1460.

# ***Loss of Future Earnings***

9. P claims the equivalent of 1% of income under this heading. However as P has been performing his usual duties in his pre-incident job, and there is no evidence to show P will be forced to change to a lesser paid job in future, I do not accept P’s claim under this heading. In fact P’s claim here is more akin to “Loss of future earning capacity”, but P has fairly abandoned his claim under this heading because there is simply no evidence to say that P has a real risk of losing his present job, or that if he has to find another job in future, his present impairment will affect his opportunity in the job market, because he is not in the manual labour market so that in looking for work as a labourer, his 1% impairment due to back pain would affect his chance in that market: see *Moeliker v A.Reyrolle & Co Ltd* [1977] 1 WLR 132.

# ***Special Damages***

10. P has produced a list of expenses incurred, which is found in the pleadings. Defence queried the quantum of taxi fares from Gloucester Road to the QMH, and from home in Shatin (Tin Sum) to the PWH, the necessity to attend a bone-setter, and the necessity to use a taxi to go to the bone-setter’s clinic in Causeway Bay. P agrees with the Defence regarding the lack of need to take a taxi to Causeway Bay, and even if he had used a taxi, the fare would only have been about $60-80, not $200. However as to necessity to see a bone-setter, although I have no evidence to say that a bone-setter would in truth be of help to P, I accept it was reasonable for P to seek help from a bone-setter because “western doctors” had told him they could do nothing further, and P was still suffering from pain, and so in the circumstances and the closeness of time between the incident and his consulting a bone-setter, I find it was reasonable for P to seek help from a bone-setter. In the circumstances I allow the claim under “Past special damages” at $800 (including travelling to and cost of the bone-setter).

11. As to “Future special damages”, P says he will take part in swimming exercises to improve his condition, such as what Dr Lee recommended. However P has not embarked on this course despite the passage of more than 2 years. I find that there is no, or no significant, necessity or justification to now say he finds it necessary to embark upon such exercises and will incur what expenses, not to mention the fact that I have no actual receipts or quotations on which to base or calculate such a claim.

## Summary

12. From the whole of the evidence I assess the claim as follows:

(1) PSLA: $ 25,000.00

(2) Loss of past earnings: $ 1,460.00

(3) Loss of future earnings: $ Nil

(4) Special damages: $ 800.00

13. There will therefore be judgment in favour of the plaintiff for $ 27,260 with interest on the special damages at half the judgment rate from the date of the accident to date of judgment, and interest on the general damages at 2% p.a. from the date of the writ to date of judgment. Costs nisi to the Plaintiff, to be taxed if not agreed.

( William Lam )

Deputy District Judge

Parties: Mr. Sun Po of Messrs. Huen & Partners for the Plaintiff.

Mr. Jacky Jim instructed by Messrs. Hoosenally & Neo for the

Defendant.