## DCPI 1106 /2005

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 1106 OF 2005

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##### BETWEEN

CHANG KIN WAI Plaintiff

### and

NG KWOK LEUNG 1st Defendant

NG WAI TONG 2nd Defendant

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Coram: Deputy District Judge W. C. Li in Court

Date of Trial: 14th March 2007

Date of Handing Down Judgment: 21st March 2007

J U D G M E N T

1. The Plaintiff was a taxi driver and when driving his taxi, he was assaulted on the head, chest and back by the Defendants who were the driver and passenger of another car, on 5 October 2004 at the Tai Chung Roundabout in Tsuen Wan. The police were called to the scene and the Plaintiff was taken to Yan Chai Hospital for treatment and later transferred to the Neurosurgical Department of Princess Margaret Hospital for admission.
2. Judgment against the Defendants on liability was entered in default of defence and the trial was for assessment of damages.
3. Dr Lam Lim, Sam of Yan Chai Hospital examined the Plaintiff at 6.16 a.m. on 5 October 2004 at the Accident & Emergency Department and found (1) tenderness over nose with blood stain on the nose; (2) abrasion wound on left eye brow with no swelling nor bruising; and (3) tenderness over left buttock with no bruising nor swelling. An x-ray examination showed no fracture of the skull, nose and pelvis. The Plaintiff was admitted into the Neurosurgical Ward of Princess Margaret Hospital for further management.
4. The medical report from Dr. Mo Pan Herbridge of Princess Margaret Hospital, Department of Neurosurgery recorded that the Plaintiff was admitted on 5 October 2004 and on physical examination, there were abrasion over the face and left periorbital bruises and swelling. X-ray done showed that there were no fracture of the skull, chest and pelvis. CT Scan done showed no contusion or traumatic haemorrhage. There was some fluid in the left maxillary sinus. The Plaintiff was examined by an ophthalmologist and CT orbit was arranged. Fracture of left orbital roof was found. He was neurologically sound and discharged on 15 October 2004. The Plaintiff complained of persistent dizziness, headache and impaired memory. He was referred to the Traumatic Psychological Clinic of Caritas Medical Centre for assessment. Dr. Mo summarized that the Plaintiff suffered from minimal head injury complicated by post concussion syndrome. His main problem is the left orbital injury.
5. Dr. Chiu Suk I, Senior Medical Officer of the Department of Ophthalmology attended the Plaintiff on 8 October 2004 for the left eye injury. She was aware that the Plaintiff had a past history of left cataract extraction a few years before. CT scan showed fracture of the left orbital floor and the left eyeball was slightly sunken into the orbit. No double vision was detected and there was a slight decrease in binocular single vision function. Repair surgery of the left orbital floor was carried out on 8 November 2004. There was no double vision and no evidence of significant intraocular damage.
6. Dr. Cheung Sek Hong prepared an Ophthalmologist report on 12 July 2006 and from his findings, he concluded that the Plaintiff suffered persistent binocular diplopia on up and down gazes and decreased sensation to touch at his left cheek area, and he estimated the Plaintiff to suffer 2% impairment of the whole person and 12.5% loss of earning capacity. Dr. Cheung also opined that the Plaintiff should be able to return to his pre-accident job as a taxi driver.
7. According to Dr. Cheung Sek Hong, the Plaintiff attended Caritas Medical Centre to attend the eye clinic and he was prescribed artificial eye drops for his eyes. The Plaintiff also attended Neurosurgical clinic every 3 to 4 months, attended Yan Chai Hospital for a tinnitus problem every 3 months, and also attended the psychiatric clinic at Caritas Medical Centre every month.
8. A Clinical psychologist report prepared by Dr. Valda Cho dated 11 January 2005 was also submitted to the court. The Plaintiff attended 5 sessions of clinical psychology including 2 sessions of Relaxation Treatment Group between 15 November 2004 and 7 January 2005. Dr. Cho found that depressive and anxiety features were noted in the Plaintiff and he was compliant to psychological intervention. Strong social support had also helped the Plaintiff to recovery. Further sessions on mood regulation and anxiety management were required.
9. No psychiatrist report was submitted to the court. There was no claim for psychiatric impairment, albeit, the Plaintiff became depressed and anxious as a result of the assault. The cause of the Plaintiff tinnitus in his ear was also unknown. The Plaintiff claimed it was caused by the assault. From the medical report of Yan Chai Hospital and Princess Margaret Hospital where the Plaintiff was first treated, there was no record of a complaint of tinnitus by the Plaintiff. From the medical examinations, the main injury was to the Plaintiff’s left eye and there was only minimal head injury from the assault.
10. The Plaintiff claims $250,000.00 for Pain, Suffering & Loss of Amenities (“PSLA”); Pre-trial loss of earnings of $133,000.00, i.e. 19 months at the rate of $7,000 per month; Post trial loss for 6 months at the rate of $600 per month, i.e. the difference between his previous income as a taxi driver and his subsequent work as a security guard; Loss of Earning Capacity equivalent to 12 months at the rate of $7,000 per month; Special Damages at $24,600.00; and Future Medical Expenses for $30,000.00.
11. For PSLA, Plaintiff referred to the cases of *Lai Ka Wai v Lo Tak Cheung & Others* HCPI 1227/1995, *Chow Yuk Ng v Lau Ming Fai* HCPI 899/1996, *Chan Kin Ka v Siu Tung Hung & Others* HCPI 570/1998, *Sze Ping Chui v Lau Ching Wai* HCPI 1051/2001 and *Kwan Shek Sang v Chan Kam Wah trading as Wing Wah Air-conditioning Engineering (a firm)* HCPI 872/2000. The injuries in all these cases were more serious than the Plaintiff’s. The Plaintiff’s injury was far short of any serious injury. He was hospitalized for 10 days and he was given sick leave of almost 12 months. He then attended a course under the government re-training scheme and he was also receiving public assistance during the time he was unemployed. Dr. Cheung Sek Hong, Ophthalmologist, opined that the Plaintiff should be able to resume his pre-accident work as a taxi driver. However the Plaintiff changed his work and became a security guard earning more or less the same income as before. His left eye suffered an injury that resulted in a slight decrease in binocular single vision function and binocular diplopia in up and down gazes, and a 2% disability of the whole person was assessed. He also suffered post-concussion syndrome and became depressed and anxious as a result of the assault. He improved after several psychological treatment sessions, and although mood control and anxiety management were still recommended, he had recovered well with good social support. For PSLA, I would assess $100,000.00 being appropriate for the pain and suffering and the injury he had received from the assault.
12. For Pre-trial loss of earnings, the sick leave given was for a period of just under 12 months. 12 months was reasonable given the time the Plaintiff needed to have treatment for post-trauma syndrome and for clinical psychological sessions. The claim for 19 months was due to a period of unemployment after the 12 months sick leave. He did not drive a taxi again though he was medically fit to resume his former job. I believed he could have found work as a taxi driver if he had tried. He was on public assistance and had also undergone a job re-training scheme. I do not think the pre-trial loss should exceed 12 months in the circumstances. As for the amount of his monthly earning, the Plaintiff’s statement that he adopted as his evidence was that he earned around $6,000.00 to $7,000.00 per month as a taxi driver. No income proof of any kind was submitted to the court. I would therefore take the middle figure of $6,500.00 as his average income. The claim under this head would therefore be $6,500.00 x 12 months = $78,000.00.
13. As for post trial loss, there appeared to be no difference in the two incomes. His present work as a security guard was that he earned $5,100.00 salary with $900.00 disciplinary allowance and $500.00 diligence allowance. No award is therefore made under this head.
14. For loss of earning capacity, I would make an award equivalent to 6 months income at the rate of $6,500.00 per month. The award under this head would therefore be $39,000.00.
15. The Plaintiff claimed Special Damages of $24,660.00 being $7,000.00 for bone setter fees, $5,660.00 traveling expenses for follow up treatment, and $12,000.00 for tonic food. The claim for bonesetter fees was for injury to the lumbar/back and shoulder region. There were no bruising or swelling to the Plaintiff’s back and shoulder after the assault as examined by the doctors at Yan Chai Hospital. There was tenderness over left buttock. Receipts of the bonesetter at $500 per session for 14 sessions were produced. It was unclear what injury was suffered by the Plaintiff to require 14 visits to a bonesetter. I do not think it is justifiable to award the whole amount to the Plaintiff when the injury was only tenderness at the buttock. I would award half of this amount in the sum of $3,500.00 to the Plaintiff. As for the traveling expenses for treatment, again the claim for $5,660.00 was not backed up with calculations. A rough idea was given on the amount of bus fares for each trip from Plaintiff’s home to the hospitals. I would allow a claim for $2,000.00 for traveling expenses. As for tonic food, a claim of $12,000.00 appears to be excessive for this type of minor injury. I would allow a claim of $4,00.00 for tonic food. The total Special Damages would therefore come up to $9,500.00 under this head.
16. The last head of claim is for $30,000.00 for future treatment. As an outpatient, each session cost the Plaintiff $60.00. The Plaintiff was expected to incur traveling expenses too. Assuming 30 sessions would be required at the various hospitals/clinics, an amount of $5,000.00 would be sufficient to cover these expenses. I would therefore award $5,000.00 under this head.
17. To summarize, (1) PSLA assessed at $100,000.00;

(2) Pre-trial loss $ 78,000.00;

(3) Loss of earning capacity $ 39,000.00;

(4) Special Damages $ 9,500.00;

(5) Future medical expenses $ 5,000.00

Total: $231,500.00

The total amount awarded to the Plaintiff therefore is $231,500.00.

1. All special damages shall carry interest at 2% p.a. from the date of the writ until judgment (handing down) and thereafter at judgment rate until payment. All general damages shall carry interest at half judgment rate from the date of the assault/accident until judgment and thereafter at judgment rate until payment.
2. I also order the Defendants to pay the Plaintiff’s costs of this action, to be taxed if not agreed.

(W.C. Li)

Deputy District Judge

Representation:

Mr. Anthony K.T. Poon of Messrs. Ho, Tse, Wai & Partners for the Plaintiff.

The Defendants acting in person being absent.