#### DCPI 1112 / 2005

IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES NO. 1112 OF 2005

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| BETWEEN | FUNG LEE HUNG | Plaintiff |
|  | and |  |
|  | THE SPASTICS ASSOCIATION OF HONG KONG | Defendant |

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##### Coram: His Honour Judge Thomas Au in Court

##### (open to public)

Date of Hearing: 2,3 & 9 August 2007

Date of Handing Down Judgment: 16 October 2007

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### JUDGMENT

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1. The Plaintiff was employed by the Defendant as a therapist assistant. Since April 2005, she had been working at a conductive learning centre (“the Centre”) operated by the Defendant for spastic children.
2. By way of the present action, the Plaintiff claims against the Defendant for damages in relation to the injuries she has suffered as a result of an accident (“the Accident”) occurred while she was at work at the Centre on 8 April 2003. At the time of the Accident she was 47 years old.
3. The Plaintiff says as a result of the Accident, she has been suffering from back pain, neck and left shoulder pain as well as depression. She is also unable to return to her previous work as a therapist assistant due to these physical and mental disabilities. She claims for damages under various heads in the total sum of HK$1,146,640, but she would give credit for HK$161,053 as employees’ compensation she has received. In effect, she now claims against the Defendant damages in the sum of HK$985,587 for the Defendant’s negligence as employer and as an occupier of the Centre.
4. The Defendant disputes both liability and quantum. Although the Defendant does not dispute that the Plaintiff did suffer an accident and injury on 8 April 2003 while at work, it disputes that she suffered the Accident in the manner as she now claims (which I will describe in detail later). Further, again although not disputing that the Plaintiff has been suffering from back pain and depression, the Defendant contends that she has exaggerated the degree of her disability and thus the quantum she is now claiming. It is the Defendant’s case that she should be able to return to her pre-accident job or she could find an alternative employment, which would not result in any loss of earnings.

Issues

1. The core issues arising from the pleadings to be determined at trial are as follows:
2. Did the Defendant suffer the Accident in the manner as she claims: that is, whether she fell on her buttocks as she was tripped by a floor mat placed in front of the door of a storeroom at the Centre.
3. If so, whether the Accident was caused by the negligence of the Defendant in effectively failing to provide a safe work place or failing to provide adequate training to the Plaintiff.
4. If so, whether the Plaintiff was contributory negligent in causing the Accident.
5. The extent and degree of the Plaintiff’s disabilities caused by the Accident.
6. The quantum of damages.

Issue 1: Did the Accident occur in the way as claimed by the Plaintiff?

*The undisputed facts*

1. The following are undisputed or uncontroversial.
2. The Plaintiff was first employed by the Defendant as a therapist assistant in April 2002 on a 6-month contractual term. When it expired in October 2002, it was renewed for another 6 months to end of April 2003. The contract was not further renewed since then. It is not suggested by the Plaintiff that the non-renewal was due to the Plaintiff’s injuries.
3. Her main duties as a therapist assistant were essentially to assist in the taking care of and looking after the spastic children attending the Centre. Such duties involved lifting up of the children from time to time, and bending down to take care of them.
4. However as Hong Kong was hit by SARS in March and April 2003, no class was held at the Centre. As a result, since 2 April 2003, the Plaintiff had been assigned some cleaning duties, including cleaning the floors and various toilets in the Centre.
5. When she carried out the cleaning duties, she made use of a mop and a wheeled bucket containing water. These were provided by the Defendant.
6. On 8 April 2003, at around 5 pm, Ms Yeung Yuk Shan (“Ms Yeung”), an occupational therapist working at the Centre, was informed by one of her colleagues (a Ms Fung Man Ching) that someone fell down in one of the rooms at the Centre and she was asked to assist.
7. Ms Yeung went to a storeroom (“the Storeroom”) in the activity room (“the Activity Room”) of the Centre. At that time, there was a floor mat (“the Floor Mat”) placed right outside the Storeroom’s door front. The Floor Mat was made of the same material and colour as that of the floor tiles. It was about a 3 mm thick.
8. The Storeroom’s entrance is located at the middle of one of the sidewalls of the Activity Room. At the end of that wall at right angle, there situates the toilet (“the Disabled Toilet”) for the disabled.
9. When Ms Yeung arrived at the Activity Room, she saw the Plaintiff sitting on a bench near the Disabled Toilet. She noticed that it was all wet with water on the Floor Mat and the floor around it. She also saw a bucket and a mop lying on the floor.
10. The Plaintiff told Ms Yeung at that time she had tripped and fallen over the Floor Mat. She also complained of back pain.
11. The Plaintiff was then sent to the Accident and Emergency Department of Queen Elizabeth Hospital (“QEH”).

*The Plaintiff’s evidence*

1. It is the Plaintiff’s pleaded case that as she pushed the wheeled bucket past in front of the Storeroom, she was unaware of the Floor Mat and then “tripped” over it, as a result of which, she fell on the floor and sustained injuries to her neck, lower back and left shoulder. At paragraph 18 of her witness statement dated 1 December 2005, she again says that she was “tripped” by the Floor Mat and fell.
2. The Plaintiff’s oral evidence together with that stated in her witness statement effectively say the following as to how the Accident occurred.
3. At around 5 pm on 8 April 2003, after she had finished cleaning the other rooms of the Centre, she was heading to the Disabled Toilet intending to clean it. She thus went from an adjacent room to the Activity Room. She was walking and pushing the wheeled bucket with the mop anchored in the bucket. The bucket was about 2 to 3 inches in front of her.
4. When she entered the Activity Room, the lights were not on and thus it was dimmed inside. There was also no light coming from the Storeroom or the Disabled Toilet although their doors were opened.
5. She took a route close to the wall where the Storeroom was. She however did not notice the presence of the Floor Mat.
6. She suddenly felt that something was tripping her in her way.
7. The bucket then tipped and fell. She was also tripped and then she fell onto the floor landing with her buttocks.
8. After the fall, she felt pain in her back. She gradually pulled herself up and sat on the bench placed near to the Disabled Toilet. After about 5 minutes, she called for help. Two colleagues came to see her. One being Ms Yeung and the other with a surname Chan. They called for the ambulance, and she was sent to QEH.
9. Under cross-examination, the Plaintiff could not recall as to exactly how she was “tripped” by the Floor Mat and fell.
10. Further, it was pointed out to her under cross-examination that she had given different accounts of how the accident occurred when she consulted the medical professionals. In the medical report for the Employees’ Compensation, it was recorded that she “slipped and fell accidentally while she was cleaning the floor”. In the psychology report of East Kowloon Psychiatric Centre, it was recorded that she recalled that she slipped and fell down while she was washing toilet at work. In other medical reports, it was recorded that she “slipped” and fell while at work.
11. When asked as to why she had never told these medical professionals that she was “tripped”, and why she gave an account that she sustained the Accident while “cleaning the floor” or “washing the toilet” which are different from her evidence in chief, the Plaintiff replied and said that at the time when she saw the psychologist, she probably was emotionally unstable and thus could not be exact in giving her account of the events.

*The Defendant’s evidence*

1. Ms Cheng Yuk Kwan (“Ms Cheng”) and Ms Yeung give evidence for the Defendant.
2. Ms Cheng was and is still the supervisor of the Centre, responsible for the overall administration and management of its affairs.
3. Both Ms Cheng and Ms Yeung do not have any personal and actual knowledge of how the Accident occurred, as they were not at the scene when it happened.
4. As mentioned above, Ms Yeung went to see the Defendant in the Activity Room shortly *after* the Accident. She confirms in evidence that when she arrived at the Activity Room, she saw the Defendant setting on the bench. She also saw the bucket lying on its side around the Floor Mat area, and around which it was wet with spilled water.

*The Defendant’s submissions*

1. The Mr Daniel Chan, Counsel for the Defendant, submits that as a matter of law:
2. The burden lies on the Plaintiff to prove that the Accident occurred in the way she claims.
3. If the Plaintiff fails to prove her case, the Court is not bound to find an alternative way one way or another in which the Accident occurred.
4. It is open to the Court to decide the case on the burden of proof. Even if the Court is to reject the Defendant’s case, if any, it does not follow that the Court must find that the Plaintiff’s case has been proven.
5. In support of the propositions, the Defendant relies on *Li Tin Sang v Poon Bun Chak & Others* (unrep., CACV 152/2002, Le Pichon, Cheung JJA, Stone J, 18 November 2002), at paragraphs 3 and 77; *Lee Kit Ha v The Kowloon Motor Bus Company (1933) Ltd* (unrep., HCPI 539/2000, Deputy High Court Judge Carlson, 7 October 2002), at paragraph 8; *Tsang Yip Kwong v. Ng Kwong Yui t/a Ng Yiu Kee Transportation Co* (unrep., HCPI 1186/2004, Deputy High Court Judge Carlson, 4 January 2006) at paragraphs 2, 6, 13 and 17; *Chan Bing Choy v Ming Kee Co Ltd* (unrep., DCPI 1296/2004, H H Judge C B Chan, 29 May 2006) at paragraphs 4-10.
6. Mr Timothy Ling, Counsel for the Plaintiff does not dispute the above propositions.
7. I accept Mr Chan’s submissions. I agree that it is for the Plaintiff to prove her case as to how the Accident occurred and, even if the Defendant has no positive case on this or if the Defendant’s alternative case (if any) is not proved, it does not mean that I will have to accept the Plaintiff’s case. It still depends on whether I accept the evidence in support of the Plaintiff’s case.

*Assessment of the evidence*

1. Mr Chan submits that the Court should not accept the Plaintiff’s case for the following reasons.
2. First, the Plaintiff is not a credible witness:
3. It is clear that she is prepared to lie about her education level if it suits her: It was recorded in the medical report of Dr Johnson Lam (the Plaintiff’s orthopaedic expert) that she received education up to Form 5 in the Mainland. She also stated the same in the Defendant’s staff registration form. However, under cross-examination, she confirms that she is only educated upto Form 3 in the Mainland. When asked why there is such an inconsistency, she says she had to represent that she had a Form 5 education in order to get the job.
4. She has exaggerated her symptoms and disability, as demonstrated by the surveillance videotape of her activities.
5. She is inconsistent and changes her version of events as to when she first noticed that the Floor Mat was placed in front of the Storeroom.
6. She is unable to tell the Court under cross-examination how she was tripped by the Floor Mat.
7. As mentioned above, she has given different accounts to the medical professionals as to how the Accident occurred.
8. Second, the Plaintiff’s version of how the Accident occurred is inherently improbable:
9. The Floor Mat being of only 3 mm thick, it is unlikely that one would have got “tripped” over by it and fallen.
10. It is highly unlikely that the Plaintiff would have taken the route so close and edging towards the wall to move towards the Disabled Toilet, when there was plenty of room on the other side for her to manoeuvre and walk.
11. Given the Plaintiff’s evidence that the wheeled bucket was 2-3 inches in front of her when she was met with the Accident, it is highly unlikely that she would not have felt the bucket mounting on the Floor Mat as she says under cross-examination. It is also highly unlikely that, if she was tripped by the Floor Mat while moving forward, she would have fallen backward and landed on her buttocks as she claims, instead of falling forward.
12. Mr Chan’s above submissions have some force and I accept that they do raise some doubts on the reliability of certain part of the Plaintiff’s evidence and the version of events.
13. However, in light of Ms Yeung’s evidence that soon after the accident, she saw (a) the wheeled bucket lying near the Floor Mat, and (b) water spilled over around the Floor Mat area, in my judgment, I accept that the Plaintiff did suffer the Accident by tripping over the Floor Mat. I have come to this finding for the following reasons.
14. I attach much weight to Ms Yeung’s above evidence (being evidence from the Defendant), which is highly consistent with the Plaintiff’s case as to how the Accident occurred. If the Accident did not occur in such a way, the bucket and water should not have been found around the Floor Mat, or else it would have meant that the Plaintiff had intentionally made up or faked the scene of the accident at the material time. I do not think there is anything in the evidence to suggest this. I also see no reason why the Plaintiff should have “faked” such a scene, in particular in light of the Defendant’s acceptance that an accident did occur on that day.
15. Further, the Plaintiff’s apparent dishonesty in claiming a higher education level in her job application and her interview with her expert does not necessarily mean she is also dishonest in describing how the Accident occurred. She has given a reason for doing that, a reason which I accept. Moreover, she is frank in giving evidence at trial by voluntarily saying under cross-examination that she is only educated up to Form 3. It is not a case where she seeks to say in her evidence that she is educated up to Form 5, but is shown to be lying by objective evidence.
16. In relation to submissions that she has given apparently different versions of events to the medical professionals and that she could not recall now exactly how she was “tripped”, I do not regard these as sufficient to show that she is lying about how the Accident had occurred. My reasons are as follows.
17. First, I do not think it is incumbent on the Plaintiff to give any detail account to the medical professionals as to how the Accident had occurred. Secondly, when giving to the medical professionals an account of the events, one cannot expect the Plaintiff to be necessarily precise in her choice of words. As such, the Plaintiff’s use of the words “slipped and fell” (as recorded in some of the medical reports) cannot be taken too strictly to suggest that she was in fact not “tripped” by the Floor Mat as she now says. I do not think it is unreasonable for the Plaintiff to have used the words “slipped and fell” to describe the Accident to the medical professionals, when in fact she was tripped.
18. For the same reasons, the fact that the Plaintiff had described to the medical professionals that she sustained the injury while cleaning the floor or the toilet is not necessarily inconsistent with her present version of events. According to her, she was heading towards the Disabled Toilet to clean it and its floor when she met the Accident. As such, it is not clearly incorrect for her to describe casually to the medical professionals that she was cleaning the floor or the toilet when she suffered the injury.
19. For the reasons set out in paragraphs 42 to 45 above, I would not reject the Plaintiff’s evidence, as Mr Chan invites me to do so, insofar as it concerns how the Accident occurred.
20. Although it is correct to say that the Floor Mat was rather thin, I do not accept that it could not have caused the Accident in tripping the wheeled bucket and the Plaintiff. I also do not accept that it is so implausible for the Plaintiff to have taken the route she has described in heading towards the Disable Toilet. As such, the Defendant’s submissions on the inherent un-likeliness for the Accident to have occurred in the way as described by the Plaintiff do not and could not, in my judgment, outweigh the witnesses’ direct evidence as considered above.
21. In the circumstances, I find that the Plaintiff has proved on a balance of probabilities that the Accident occurred in the way as she described. That is, she was tripped by the Floor Mat and fell on her buttocks while she was pushing the wheeled bucket past the front of the Storeroom.

Issue 2: whether the Accident was caused by the negligence on the part of the Defendant

1. There is no dispute that the Floor Mat was placed in front of the Storeroom by the Defendant. It is of the same colour and material of the floor. It is fairly accepted by Ms Cheng that as such, its presence is not readily noticeable by a user of the room.
2. Given the above, in my judgment, in placing the Floor Mat at the floor space in front of the Storeroom, which was part of the passageway in the Activity Room and towards the Disable Toilet, the Defendant ought to have foreseen that this might pose a potential risk to the users of or people working (including the Plaintiff) in the Activity Room and the Disable Toilet, that they might be tripped over by it.
3. In the premises, the Defendant as an employer and an occupier of the Centre, owed a duty to these users including the Plaintiff either not to place such a Floor Mat on the floor in the Activity Room or to give sufficient notice to them of the presence of the Floor Mat. Such notice could include oral notice specially made to the Plaintiff (and the other users), or by a conspicuous notice warning of the presence of the Floor Mat placed near to its location.
4. It is also not disputed by the Defendant that as an employer, it also owed a duty to the Plaintiff to provide a safe place of work.
5. For the above reasons, and subject to the question of contributory negligence, I find that the Defendant was negligent both as an employer and an occupier in putting the Floor Mat (of such material) in front of the Storeroom coupled with its failure to give sufficient notice or warning to the Plaintiff of its presence.
6. I therefore further find that the Accident was caused by the Defendant’s negligence.

Issue 3: whether the Plaintiff was contributory negligent in causing the Accident

1. I accept Ms Cheng’s evidence that the Floor Mat had been placed in front to the Storeroom for some time before the Accident. It is her evidence that after the re-decoration works were completed sometime in January of 2003, the Defendant decided to use the surplus floor tile as a floor mat to be placed in front of the Storeroom to avoid scratching of the floor surface when things were moved in and out of the Storeroom. I find Ms Cheng an honest and reliable witness and there is no reason for me to disbelieve her in this part of the evidence.
2. It is the Plaintiff’s evidence that she had not seen the Floor Mat in the few days before the Accident when she also worked around the area. But given my finding above that the Floor Mat was not readily noticeable to a user of the Room, I do not think the Plaintiff’s evidence is necessarily at odd or inconsistent with Ms Cheng’s above evidence.
3. Further, on balance, I accept the Plaintiff’s evidence that at the time of the Accident, the lights in the Activity Room and the Disabled Toilet were not turned on. The Plaintiff’s evidence is consistent with Ms Cheng’s own evidence that (a) it was a routine of the Defendant’s staff to turn off all the lights in the rooms if he or she was the last one to leave a room after 5 pm, (b) no one used the Activity Room on 8 April 2003 as no classes were held there because of the SARS.
4. I thus further find that the ambience of the Activity Room was dim when the Accident occurred.
5. In light of the above findings, although I do not find the Plaintiff to be contributory negligent in not turning on the light when she entered the Activity Room (as there was no reason to alert her to do so), I accept Mr Chan’s submission that she was however contributory negligent in causing the Accident. This is so because, notwithstanding that the Floor Mat was not readily noticeable to a user of the Activity Room, had she looked more carefully while working in the vicinity of the Activity Room during the days before, and on the date of, the Accident, she should have noticed its presence and thus be more careful when she pushed the wheeled bucket over it or should have avoided pushing the bucket over it at all.
6. Mr Chan in reliance on *Wong Lok Keung v Discovery Bay Transportation Services Ltd* (unrep, CACV 238/2005, Woo VP, Yeung JA and Barma J, 14 November 2005) submits that the Plaintiff should be at least 30% contributorily negligent in causing the Accident.
7. However, insofar as the existence of an apparent risk of an accident is concerned, I am of the view that the circumstances of the present case are not as obvious as in the case of *Wong Lok Keung*. Thus, giving the appropriate adjustment, I think it is fair to apportion 20% contributory negligence to the Plaintiff in the present case.

Issue 4: The extent and degree of disability the Plaintiff is now suffering as caused by the Accident

1. It is pleaded that by reason of the Accident, the Plaintiff suffered injuries to her low back, left shoulder and neck.
2. In her witness statement, she claims that she is now suffering from significant low back pain affecting her daily activities. She could not sit or walk long. She feels numbness and pain at both legs, with the left more significantly affected. If she walks for more than 15 minutes, her left leg would become painful and weak. Although she could walk unaided generally, because of the left leg pain and weakness, she would usually use a stick to assist her walking on a daily basis. She also has neck and left shoulder pain. She also feels numbness and pain over her left hand, which wakes her up at night from time to time.
3. She has also been suffering from depression after the injuries from the Accident. Since January 2005, she has been consulting psychiatrists at the Kowloon East Psychiatric Centre. She has been receiving psychiatric and psychology consultations and treatments for her depression.
4. The Plaintiff had also previously sprained her back in May 2002 when a cerebral palsy child fell on her. She was treated at QEH’s Accident and Emergency Department and given sick leave for 3 days or so. She says she has recovered fully from that injury. She has not claimed any employee’s compensation or damages from the Defendant, as her employer.

*Orthopaedic expert evidence*

1. For the purpose of the trial, the Plaintiff was examined by her own orthopaedic expert Dr Johnson Lam. Dr Lam provided two expert reports, dated respectively 6 August 2005 (“Dr Lam’s 1st Report”) and 8 August 2006 (“Dr Lam’s 2nd Report”). In Dr Lam’s 2nd Report, he also specifically considered the surveillance videotape commissioned by the Defendant, recording the Plaintiff’s activities on 27 January and 17 February 2007.
2. Dr Lam’s opinions in his 1st and 2nd Reports are in summary as follows:
3. The Plaintiff is suffering from low back pain as a result of a contusion injury to the back, consistent to have been caused by the Accident. Since the Accident, the Plaintiff’s conditions of the low back have been improving, and she should have reached maximal medical improvement, in that medical or paramedical treatments are unlikely to improve her conditions any further, other than providing symptomatic and temporary relief.
4. Because of the low back condition, she should not be able to return to her previous job as a therapist assistant, a position which requires lifting of children. Alternative employment however is feasible such as a saleslady for light goods or furniture.
5. The surveillance evidence of the Plaintiff’s activities is consistent with the disability she has described and it does not affect his above opinion.
6. The neck pain of the Plaintiff is unlikely to have been caused by the injury from the Accident, but more as a result of natural degeneration of the cervical spine.
7. The Plaintiff’s previous back injury should have no bearing on her present disability.
8. There is a 7% permanent impairment and10% loss of earning capacity for the Plaintiff as a result of her low back problem.
9. The Defendant’s orthopaedic expert is Dr Chun Siu Yeung (“Dr Chun”). For the purpose of the trial, he provided one medical report dated 4 April 2006 (“Dr Chun’s Report”). For the purpose of the report, Dr Chun had also reviewed the surveillance videotape of the Plaintiff.
10. The views in Dr Chun’s Report can be summarized as follows:
11. The Plaintiff suffered *initially* at most a minor soft tissue contusion of her low back from the Accident.
12. Her conditions have become static and no further treatment is required.
13. She has exaggerated her symptoms and signs. She should be able to go back to her previous work as a therapist assistant without restriction.
14. The Plaintiff has no more than 0.5% permanent impairment of the whole person and 0.5% loss of earning capacity as a result of the injury from the Accident.

*Assessment of the Orthopaedic evidence*

1. Both experts are not called to give oral evidence pursuant to a previous Court direction.
2. Doing the best I can in such circumstances, I prefer the opinions of Dr Lam to that of Dr Chun. In my view, Dr Lam’s opinions are supported by and consistent with the other medical reports coming from the Government hospitals, physiotherapists, and another private practitioner (Dr David Fang) consulted by the Plaintiff.
3. I reviewed the surveillance video in Court, and I have come to the views that it shows that the Plaintiff’s manner of activities as recorded are not inconsistent with her disabilities as observed and opined by Dr Lam. Dr Chun’s conclusions that the Plaintiff has exaggerated her signs and symptoms and that she is practically fully fit, do not in my view sit well with this surveillance evidence.
4. In the circumstances, I accept Dr. Lam’s opinions set out in Dr Lam’s 1st and 2nd Reports insofar as they relate to the Plaintiff’s conditions and disability.
5. I therefore find that:
   1. The Plaintiff is still suffering from low back pain affecting her left leg caused by the Accident. She may have exaggerated slightly her conditions in this regard while giving evidence, but I do not think the exaggeration is significant in any material respect.
   2. Because of her low back conditions, she will be unable to return to her previous job as a therapist assistant but should be able to take up alternative employment such as a saleslady for light goods or furniture.

*Psychiatric evidence*

1. The Plaintiff was examined jointly by psychiatrists Dr Ho Pang Nin and Dr Chung See Yuen on 17 February 2006. They made a joint report dated 17 March 2006.
2. Both are of the view that the Plaintiff is suffering from a form of depression, likely to have been caused by the aftermath of the Accident.
3. Dr Ho does not think that the Plaintiff has the tendency to exaggerate her symptoms, and the prognosis is unfavourable. However, she is not totally incapable, on psychiatric grounds, of returning to her previous job, although she may have some mild difficulties in relation to her psychiatric problem that had included the psychological component of her pain. From a psychiatric viewpoint *alone*, Dr Ho assessed the Plaintiff’s impairment as a whole person at about 8% and the loss of her earning capacity 5%.
4. Dr Chung is of the view that the impairment level of the Plaintiff caused by the mental problems was mild and believes that she has portrayed a worse picture of her painful condition.
5. Dr Chung is further of the view that she should be able to return to her pre-accident job psychiatrically. She is also in any event mentally fit to work as a cashier or shop assistant. He assessed the Plaintiff’s degree of permanent impairment to the whole person at 3% and the loss of earning capacity also 3%.
6. Again, doing the best I can from the joint report of Dr Ho and Dr Chung, I find that:
   1. The Plaintiff is suffering from a mild form of depression caused and aggravated mainly by the persistent physical symptoms she has been suffering from as a result of the injury from the Accident, coupled with the social and financial problems arising therefrom.
   2. The Plaintiff is not prevented from returning to her pre-accident job mentally.

*Total impairment and loss of earning capacity*

1. In light of her physical and mental disability as found above, I assess that as a whole, the Plaintiff suffers 6% impairment of the whole person and 8% loss of earning capacity.

Issue 5: Quantum

1. Based on the above findings of the Plaintiff’s physical and mental conditions and disability, my assessment of the quantum of damages under various heads of the claim are as follows.

*Pain, suffering and loss of amenities*

1. The Plaintiff claims HK$300,000 under this head. Mr Ling relies on the following authorities:
2. *Chan Pui Kuen v Lee Oi Wah* (unrep., HCPI 661/2000, Deputy High ocurt Judge Toh, 6 September 2001). In this case, a domestic helper sustained injury to her low back (resulting in spondylolithesis), and to her right elbow. The impairment of the whole person was assessed at 14% and loss of earning capacity at 15%. HK$350,000 was awarded under PSLA.
3. *Li Fat Tsang v Aquality Engineering Co Ltd* (unrep., HCPI 558/2002, V Bokhary J, 15 July 2002). In this case, a concrete cement worker suffered persistent low back pain with weakness and numbness of the right leg as a result of an injury at work. His sex life had been adversely affected by his back pain and he suffered considerable emotional stress. Total body impairment was assessed at 8% and loss of earning capacity at 12%. He was awarded by the Court HK$300,000 under this head.
4. *Lai Kam Wah v Wing & Kwong Co Ltd* (unrep., HCPI 1131/2002, Sakhrani J, 28 November 2003). In this case, a steel-bender sustained an injury to his back and was diagnosed to have suffered from low back strain. There was a small annular tear in the L5/S1 intervertebral disc. He became depressed and anxious, with insomnia and suicidal thoughts. He was diagnosed to have been suffering from an adjustment disorder with symptoms of anxiety and depression. He was awarded PSLA at HK$350,000.
5. Mr Chan submits on the other hand that an award of HK$180,000 for PSLA should be appropriate in light of the conditions of the Plaintiff. He relies on the case of *Chan Chung Keung v Greenvoll Limited t/a Conrad Hong Kong* (unrep., HCPI 275/2005, Deputy High Court Judge Carlson, 20 December 2005).
6. In *Chan Chung Keung*, a bar captain fell on a wet floor on his buttocks. He suffered from persistent back pain with left wrist pain and a numb left leg and thigh. The diagnosis was soft tissue contusion of the lower back. The learned judge held that he was suffering no more than a soft tissue injury which exacerbated a pre-existing weakness caused by the natural ageing process. The condition however did cause the plaintiff certain degree of psychological problems leading to depression. The Court awarded HK$180,000 for PSLA. It was held that this was not a severely disabling condition and the plaintiff could perform all the activities of daily living. The Court also factored into the award a very real element of exaggeration of symptoms.
7. No two cases are of exactly the same factual circumstances. After reading the above authorities, in my view, the Plaintiff’s physical and psychological disabilities are of a lesser severity than those cases cited by Mr Ling, but are slightly more serious than the situation in *Chan Chung Keung*.
8. With reference to those authorities, in my judgment, an award of HK$200,000 is an appropriate quantum for PSLA in the present case.
9. Taking into account of the 20% contributory negligence I have found, I will award the Plaintiff damages in the sum of HK$160,000 for pain, suffering and loss of amenities.

*Pre-trial loss of earnings and MPF benefit*

1. There is no dispute that:
2. The Plaintiff’s average monthly income before the accident was HK$6,950.
3. The Plaintiff was granted sick leave from 8 April 2003 to 31 December 2004, a period of 20.75 months.
4. It is also agreed between the parties that the Plaintiff is entitled to her loss of earnings in this period in the sum of: HK$6,950 x 20.75 months = HK$144,212.
5. It is the Plaintiff’s case that she requires four moths after the expiration of sick leave to enable her to find an alternative job. The Defendant does not seriously dispute this. In these circumstances, the Plaintiff is further entitled to HK$6,950 x 4 months = HK$27,800 as her pre-trial loss of earning.
6. It is however further the Plaintiff’s case that, after the Accident, she would only able to work part-time earning nominally HK$2,500 per month. As such she has also suffered loss of pre-trial earning in the sum of HK$120,150 calculated as: (HK$6,950 –HK$2,500) x 27 months.
7. But, as mentioned above, it is Dr Lam’s view that the Plaintiff is able to work as a saleslady. It is also common ground that the Plaintiff had previously worked as a saleslady. In relation to this, the Plaintiff has not adduced any evidence to show why since the expiry of the sick leave, she has not worked as or could not find a job as a saleslady. Although she says for the first time in oral evidence (which is not mentioned in her witness statement) that she has looked for various jobs but could not find any, when asked by the Court, she confirms that it is not a case that she has not been offered a job because of her physical conditions or disability.
8. The Plaintiff has also adduced no evidence or any reasonable ground to support her nominal case of a part-time job (as opposed to a full time job) with a nominal monthly income of HK$2,500.
9. The Plaintiff’s case that because of the Accident, she could only work as a part-timer earning on average HK$2,500 per month, is therefore wholly inconsistent with her own expert Dr Lam’s opinion, and is in any event not supported by any evidence or reasonable basis. I have no hesitation in rejecting it.
10. Given that the average market monthly salary of a saleslady, shop assistant or a cashier as provided by the Government’s statistics is similar to that of the Plaintiff’s pre-accident salary, I accept Mr Chan’s submissions that the Plaintiff has thus suffered no further pre-trial loss of earning other than the HK$144,212 and HK$27,800 as set out above.
11. In the premises, the total amount of pre-trial loss of earnings together with the related loss of MPF benefit should be: (HK$144,212 + HK$27,800) x 1.05 = HK$180,613.
12. Again, taking into account of the 20% contributory negligence, I award the Plaintiff a sum of HK$144,490.40 (HK$180,613 x 0.8) as her pre-trial loss of earnings and MPF benefit.

*Future loss of earnings and MPF benefit*

1. Given my ruling at paragraphs 95 and 96 above, the Plaintiff has suffered no future loss of earning and MPF benefit.

*Loss of earning capacity*

1. This is agreed between the parties to be in the sum of HK$16,380.
2. Given 20% contributory negligence, I award a sum of HK$13,104 under this head.

*Future medical expenses*

1. In my judgment, the Plaintiff is entitled to further receive psychological treatments for 2 years with 2 sessions per month as recommended by Dr Ho. However, she should continue to receive these at the public sector costing HK$100 per session per month. The evidence shows that she has been improving by receiving such treatments at the government clinic in the past.
2. Taking into account of 20% contributory negligence, I therefore award the Plaintiff a sum of HK$3,840 (HK$100 x 2 x 24) for future medical expenses.

*Miscellaneous special damages*

1. This is agreed between the parties to be HK$35,000. With 20% contributory negligence, I award the Plaintiff a sum of HK$28,000 under this head.

*Total damages - summary*

1. In summary, I award damages to the Plaintiff under various heads of claim as follows:

1. Pain and suffering HK$160,000.00

2. Pre-trial loss of earnings + MPF HK$144,490.40

3. Future loss of earnings NIL

4. Loss of earning capacity HK$ 13,104.00

5. Future medical expenses HK$ 3,840.00

6. Special damages HK$ 28,000.00

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Total HK$349,434.40

Less ECC payment HK$161,053.00

Total Damages awarded HK$188,381,40

Conclusion

1. For the above reasons, I give judgment in favour of the Plaintiff for damages in the total sum of HK$188,381.40.
2. The Plaintiff should also pay interest on general damages at 2% from the date of the writ to the date of judgment and on special damages from the date of the accident to the date of the judgment at half judgment rate, and thereafter at judgment rate until payment.
3. The Plaintiff having succeeded in her claim, I further make an order *nisi* that costs of the action be to the Plaintiff to be taxed if not agreed, with certificate for counsel. The Plaintiff’s own costs be subject to legal aid taxation. This order will be made absolute 14 days from the date of the judgment unless either party applies to vary it before then.
4. Lastly, I thank counsel for their helpful submissions.

# (Thomas Au)

District Court Judge

Mr. Timothy Y.C. LING instructed by Messrs Tang, Wong & Chow for Plaintiff.

Mr. Daniel K.K. CHAN instructed by Messrs Tsang, Chan & Wong for Defendant.