## DCPI 1209/2006

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 1209 OF 2006

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##### BETWEEN

YU SHUN WAH JIMMY Plaintiff

### formerly known as YU KWOK WAH JIMMY

### and

CHEUNG HING CHEUNG BILLY 1st Defendant

LAU TSZ HUNG 2nd Defendant

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Coram : Her Honour Judge Mimmie Chan in Court

Dates of hearing : 2 & 3 June, 2008

Date of handing down Judgment : 24 July, 2008

# JUDGMENT

**Background**

1. This is an application for assessment of damages sustained by the Plaintiff, Mr. Yu, as a result of an accident which occurred on 1 July 2004. On 4 October 2007, interlocutory judgment in default was entered against the Defendants for payment of damages.
2. Mr. Yu was the driver of a taxi. The 1st Defendant was the owner of a light goods vehicle. The 2nd Defendant was the driver of the light goods vehicle owned by the 1st Defendant.
3. On 1 July 2004 at about 6:26 p.m., Mr. Yu was driving this taxi along Pat Heung Road in Yuen Long. The section of Pat Heung Road in question was an undivided two-way carriageway, with a single lane on each side. The 2nd Defendant was driving along the road from the opposite direction of Mr. Yu, but was traveling on the wrong carriageway, not realizing that Pat Heung Road was a two-way traffic road. As a result, there was a head-on collision, and Mr. Yu sustained head injuries as a result.
4. Mr. Yu was rendered unconscious, and taken by ambulance to the Accident and Emergency Department of the North District Hospital. He was found to have suffered injuries to his forehead, right hand and right chest. There were two laceration wounds of the left and right eyes. X-rays of the skull, chest and right lower ribs showed no fracture, but foreign bodies were discovered over the forehead wound. Glass pieces were removed from the wound, involving 23 stitches. Mr. Yu remained in the observation ward overnight.

**Complaints of injury**

1. It is perhaps fair to say that apart from the wounds on his eyebrows, the swelling of his eyelids, and abrasion wounds on his right forearm and right knee, Mr. Yu's main complaint is that he suffered from dizziness, headaches, poor memory, poor attention, panic attack, hand tremor, recurrent nightmares, sleep disturbance and anxiety symptoms as a result of the accident, and that these symptoms have continued. According to the medical report of Mr. Yu's expert, Dr. Chow Lok Yee, who examined him on 4 December 2006, Mr. Yu was diagnosed as suffering from Post-Concussional Syndrome and Post-Traumatic Stress Disorder.
2. According to the medical records, Mr. Yu first complained of dizziness when he attended the Yuen Long Jockey Club Health Centre on 3 July 2004. His complaint of dizziness persisted throughout July 2004, as evidenced by the records of the Jockey Club Health Centre and the Department of Ophthalmology of Tuen Mun Hospital. On 4 March 2005, seven months after the accident, there was a record of Mr. Yu's complaint of right-sided headache and dizziness, as a result of which he was referred to the Neurosurgery Unit of the Tuen Mun Hospital for further management.
3. Mr. Yu admitted that he had resumed driving his taxi in 2004 about 6 weeks after the accident, when the wounds of his head injuries were recovering. He claimed that as he still suffered from constant headache and dizziness, he could only work 4 to 5 hours each day, which was not sufficient to cover his expenses. He said that he drove for about 6 months until the Chinese New Year in 2005, when he stopped working as a taxi driver altogether because his medical condition had deteriorated. Mr. Yu claims that he was involved in a traffic accident which occurred because he was not able to notice that the red light was on, or was not able to respond in time to stop his vehicle. As he felt that his medical condition made it unsafe for him to drive, he stopped working.
4. On 26 April 2005, Mr. Yu attended the Neurosurgery Unit of Tuen Mun Hospital, and complained of dizziness and occasional headache and inability to respond to traffic lights whilst driving. According to the medical report of Dr. Lai of the Tuen Mun Hospital, Mr. Yu had complained also of episodes of unprovoked falls and altered consciousness. Physical examination on that day was noted to be "grossly unremarkable". The provisional diagnosis was post-concussional syndrome. Subsequent investigations including a CT scan and EFG were normal, and Mr. Yu was referred to a neurologist for assessment of poor memory and for MRI. Although Mr. Yu was noted to have persistently complained of headache, dizziness and poor memory on follow-up visits, it was noted that his physical examination was normal.
5. According to the report of Dr. Siu of the Castle Peak Hospital, Mr. Yu was diagnosed with post-concussional syndrome and anti-depressants were prescribed. Follow up treatment from 28 February 2006 to 6 June 2006 showed that his mental condition gradually improved. He had decreased anxiety symptoms although he still complained of dizziness and headache, and his mood and sleep had improved. He was last seen by Dr. Siu on 6 June 2006. His mental state was considered by Dr. Siu to be settled by then. His speech was recorded to be relevant. Despite his continued complaints of occasional headache and dizziness, Dr. Siu was of the opinion that Mr. Yu's mental condition had improved satisfactorily after treatment and that the prognosis of his mental illness was good.
6. According to the medical report of Dr. Fu of the Department of Medicine and Geriatrics of the Tuen Mun Hospital, clinical neurological examination had shown that there were no focal neurological deficits. At a mini-mental state examination conducted on 7 October 2005, Mr. Yu was recorded to have scored 28 out of 30, with marks deducted for date recall and delay recall. All investigations were recorded to be normal, including the brain MRI, electroencephalogram and blood tests. The clinical and investigation findings showed no physical neurological damage, but Mr. Yu's symptoms were considered by Dr. Fu to be likely related to either post-concussion syndrome or post-traumatic stress disorder. He was referred to psychiatric management.
7. On 28 August 2006, Dr. Ng of the Tuen Mun Hospital issued a psychological report on Mr. Yu. His assessment revealed clinical features consistent with generalized anxiety disorder and post-traumatic stress disorder. Dr. Ng considered that depressive features were evident in terms of avoidance and withdrawal in daily living. In Dr. Ng's opinion, the signs and symptoms of post-traumatic stress disorder were on the improving trend, as Mr. Yu had reported on 27 June 2006 that there were only occasional anxiety attacks which remained manageable.
8. Mr. Yu relies on the report of Dr. Chow dated 17 January 2007. According to Dr. Chow's examination of Mr. Yu on 4 December 2006, Mr. Yu was mildly anxious and depressed, not suicidal, and not psychotic. Mr. Yu scored 22 out of 30 in the mini mental state examination conducted by Dr. Chow. Dr. Chow appears to agree with the diagnoses of the doctors who had previously examined Mr. Yu, i.e. that Mr. Yu suffers from post-concussional syndrome and post-traumatic stress disorder. Dr. Chow considered that the prognosis for complete resolution of these symptoms is poor as many of the post-traumatic stress disorder symptoms persist. According to Dr. Chow, Mr.Yu's response to both psychiatric and psychological treatment is sub-optimal. It is not entirely clear, but Dr. Chow appears to suggest that Mr. Yu's psychiatric symptoms result in attention and concentration deficit during exposure to traffic conditions. He further considered that the post-traumatic stress disorder aggravates Mr. Yu's anxiety and concern for his own safety and the safety of others as a result of his driving. According to Dr. Chow, although Mr. Yu's eye injury has not affected his visual acuity, it has nevertheless caused Mr. Yu further distress in terms of driving.
9. In conclusion, Dr. Chow considered that Mr. Yu suffers from a mild form of impairment of mental and behavioral disorder, and predicts a poor prognosis.
10. The Defendants rely upon the report of Dr. Chung, who examined Mr. Yu on 23 October 2007. A mental state examination was conducted by Dr. Chung. According to the doctor, Mr. Yu was attentive, his speech was relevant and coherent, he had good understanding of his circumstances, and his thoughts were well organized. The results of the tests on his intellectual and memory functions were mildly unsatisfactory. His intelligence was assessed to be within normal limits and his memory function was intact based on his overall performance in the interview. Dr. Chung considered that the mildly unsatisfactory test results were due to a lack of drive in doing the tests.
11. Mr. Yu scored 22 out of 30 in the mini mental state examination administered by Dr. Chung. This score is suggestive of mild dementia, which Dr. Chow considered to be inconsistent with Mr. Yu's overall performance during the interview. Dr. Chung did not consider Mr. Yu to be suffering from dementia.
12. Dr. Chung agrees that Mr. Yu's complaints are suggestive of post-concussional disorder and post-traumatic stress disorder. He pointed out that the head trauma should be minor as suggested by the short duration of Mr. Yu's loss of consciousness, the absence of any neurological deficits and the normal brain scan. Dr. Chung pointed out that symptoms of post-concussional disorder are usually at its worst immediately after an accident, and such symptoms usually show improvement a few weeks to months after the head trauma. Dr. Chung considered that it is unusual that Mr. Yu did not note any bad memory or difficulty in concentration during the few months whilst he was working after the accident. According to Dr. Chung, the delayed onset of bad memory and difficulty in concentration is difficult to be explained by the head trauma, and are likely to be subjective and related to Mr. Yu's emotional disturbances.
13. Again, the fact that Mr. Yu's alleged anxiety was said to have developed after Mr. Yu had driven his taxi for a few months after the accident was considered by Dr. Chung to be unusual for patients with post-traumatic stress disorder. Dr. Chung noted that objective signs of significant anxiety or depression were not elicited during his assessment of Mr. Yu in October 2007. Dr. Chung also pointed out that the tests on Mr. Yu's cognitive functions were worse than expected, which suggested that he had portrayed a worse picture of his mental functioning.
14. In conclusion, although Dr. Chung did not disagree that Mr. Yu had symptoms of post-concussional disorder and post-dramatic stress disorder, he considered that these should be largely in remission, and that Mr. Yu had probably exaggerated his complaints. According to Dr. Chung, the impairment levels caused by the mental problems are mild and compatible with most useful functions. Dr. Chung observed that after the psychiatric treatment which Mr. Yu had received in the public sector, his mental condition has shown improvement and has stabilized, with only residual symptoms remaining. Dr. Chung considered that Mr. Yu is mentally capable of performing all activities of daily living.
15. The neurological specialists, Dr. Huang and Dr. Woo, agree that Mr. Yu's head injury was very mild, and that his symptoms of headaches, dizziness, impaired concentration and tremor are not the result of any organic neurological disorder. From a neurological perspective, Mr. Yu does not suffer any impairment.
16. Although Counsel for the Defendants cast doubt on the truth of Mr. Yu's complaints of headaches and dizziness resulting from the accident, as they were only made about 7 months after the accident, I accept that having regard to Mr. Yu's evidence as a whole, and to the reports of Dr. Chow and Dr. Chung, Mr. Yu was suffering from post-concussional syndrome and post-traumatic stress disorder in 2005 and 2006. It can be reasonably envisaged that a head-on vehicle collision would have traumatic effects on a professional driver. The dizziness, headaches and overall condition of Mr. Yu in the weeks immediately after the accident led to a further accident, and that obviously caused further anxiety, nervousness and emotional instability on Mr. Yu's part. Importantly, the doctors in the government hospitals who examined and treated him in 2005 and 2006 had consistently diagnosed Mr. Yu as suffering from generalized anxiety disorder, post-traumatic stress disorder and post-concussional syndrome.
17. I do not regard the fact of Mr. Yu returning to work about one month after the accident and continuing work, albeit at reduced levels, for about 6 months to be totally contradictory to his claim of having suffered occasional headaches and dizziness during the material time and which required him to take rests. His scalp wound had healed, and he thought that he had recovered. Naturally, one would be anxious to return to remunerative work, and Mr. Yu's earnings depended on his taxi rounds. He stopped driving after the second accident when he realized that his inability to focus posed a threat to the safety of himself and others.
18. However, in the light of Dr. Chung's report concerning his examination of Mr. Yu in October 2007, I accept that Mr. Yu's condition would appear to have stabilized by that time, and that some of the complaints which Mr. Yu had made to Dr. Chung at the time of the examination might have been exaggerated. Nevertheless, I accept on the evidence that some of the symptoms of disorder remain. This was also acknowledged by Dr. Chung.
19. Apart from his post-concussional disorder and his post-dramatic stress disorder, it would appear that Mr. Yu's other physical injuries were minor. He had only been required to put eye-drops into his eye, and there is no evidence to support Mr. Yu's claim of blurred vision.
20. Dr. Chow considered that the appropriate period of sick leave for Mr. Yu's psychiatric condition was 2 years from the date of the injury. This is more or less consistent with the contents of the medical reports issued by the government hospitals with regard to Mr. Yu’s condition (see Dr. Siu's report dated 26 July 2006). According to Dr. Chung, the usual convalescent period is 6 months from the date of the accident.
21. On the evidence, as reported by Dr. Siu in her report of 26 July 2006, Mr. Yu's mental condition had improved by 6 June 2006. He had decreased anxiety symptoms, his mood and sleep had improved, his mental state appeared on examination to have been settled without any psychotic symptoms, and there were only occasional dizziness and headaches. Dr. Ng of the Tuen Mun Hospital also reported on 28 August 2006 that at Mr. Yu's last appointment on 27 June 2006, there were only occasional anxiety attacks which remained manageable. I accept therefore that Mr. Yu's condition had settled and improved by the end of June 2006. His counsel pointed out that he was still attending follow-up consultation and being prescribed antidepressants to treat the remaining symptoms. In all, I accept 24 months as the reasonable period of sick leave.

**Pain and suffering and loss of amenities**

1. At the time of the accident, Mr. Yu was 46 years old. He claims that as a night shift taxi driver in the New Territories, his monthly income was about $10,000. I have not seen sufficient evidence to contradict this, and will accept this as Mr. Yu's earnings at the time of the accident.
2. I have been referred to various comparable cases by Counsel. Mr. Yu's injuries were less serious than those suffered by the plaintiffs in the cases of *Yuen Pak Cheong v. Chan Ka Leung*, unreported, HCPI 254/2003, *Pang Ping Sum v. Enpack (Hong Kong) Ltd. & Ors*, unreported, HCPI 290/2003 and *Tse Ngai Heung v. Lo Sin Tak*, unreported, HCPI 565/1999. I consider the case of *Yip Kwan Cheung & Anor v. Chim Hong Wing*, unreported, DCPI 475/2006 to be more comparable, and will make an award of **$250,000** under this head.

**Pre-trial loss of earnings**

1. As indicated above, I am prepared to accept a period of 24 months as a reasonable period of sick leave to which Mr. Yu is entitled, and $ 10,000 as Mr. Yu's monthly earnings at the time of the accident.
2. Mr. Yu claims that after he stopped working as a taxi driver in early 2005, he has not been able to find any employment. The Defendants claim that if he was indeed unemployed after January 2005, this was not caused by his medical condition but because he had not made serious or sufficient attempts to look for employment, or to return to work. The Defendants also claim that Mr. Yu's evidence that he had remained unemployed after January 2005 is not to be believed, and suggest that Mr. Yu had actually resumed working as a taxi driver in mid-2005, as otherwise he would not have been able to afford paying for the medical expenses between 2 July 2004 and 2 May 2008. On his part, Mr. Yu claims that he had borrowed from friends. He further claims that he had not asked for sick leave certificates from doctors after July 2005 because he was not employed and there was no point to obtain such certificates. It is also clear that notwithstanding the absence of sick leave certificates, Mr. Yu did receive medical treatment after July 2005, as evidenced by the medical records.
3. Although Mr. Yu worked for about 6 months before he stopped working altogether in early 2005, his evidence is that because he had to take constant breaks as a result of the dizziness and headache spells, his income over this period was not sufficient to cover the fuel and other expenses, such that his claim for total loss of earnings extends to this period of 6 months. Overall, Mr. Yu is a reliable witness and I accept his evidence in this regard.
4. There is no evidence to support the Defendant's' suggestion that Mr. Yu had been in employment after early 2005. I accept Mr. Yu's evidence that because of the dizziness and sense of nervousness from which he suffered in 2005 and 2006, he did not feel it was safe for him to resume work as a professional driver. However, I also accept that if he had put in sufficient efforts, he should have been able to find alternative work after his condition had stabilised. With serious determination, Mr. Yu should have been able to resume work by July 2006.
5. Mr. Yu had been interviewed for work as a security guard. Counsel submits that the monthly income of a security guard is $6,000. Mr. Yu is prepared to accept, for the purpose of his claim for pre-trial loss of earnings, that he could have been able to secure employment from 2 July 2006 (after 24 months) at a monthly income of $6,000. Using a monthly salary of $6,000 which Mr. Yu could have earned upon the expiry of 24 months' sick leave, the loss of earnings before trial is as follows:

Loss from 1 July 2004 to 1 July 2006 (24 months)

$10,000 x 24 = $240,000

Loss from 2 July 2006 to 31 May 2008 (23 months)

$(10,000 – 6,000) x 23 = $92,000

Total : **$332,000**

**Post-Trial Loss of Earnings**

1. Mr. Yu was 46 years old at the time of the accident. He claims that but for the accident, he would still be working as a taxi driver until he reaches the normal retirement age of 65.

1. According to Dr. Chow, Mr. Yu's work efficiency will continue to be affected as he will be disturbed by residual physical symptoms (headache and dizziness and necessity for frequent breaks or rest) and psychiatric symptoms (attention deficit, subject to forgetfulness, easy triggering of anxiety). After hearing Mr. Yu and observing him in the course of his giving evidence, I accept Dr. Chow's opinion that Mr. Yu's ability to work as a taxi driver is impaired as a result of his residual physical and psychiatric symptoms. The medication which is prescribed to treat Mr. Yu's depression and anxiety has side effects such as drowsiness and these obviously affect his ability to work as a professional driver.
2. Having considered the cases cited by counsel for Mr. Yu, I am prepared to adopt a multiplier of 9 for calculating Mr. Yu's future loss of earnings, and to adopt the formula proposed by Counsel on the basis of Mr. Yu being able to secure alternative employment with a monthly income of $6,000. The award under this head is accordingly : ($10,000 - $6,000) x 12 months x 9 = **$432,000.**

**Loss of Earning Capacity**

1. After hearing Mr. Yu, I accept that because of his condition, he will suffer some disadvantage in the labor market, as can be seen from his evidence on the responses from potential employers and the results of his endeavors to seek employment. I will make an award of **$25,000** for loss of earning capacity.

**Future Medical Expenses**

1. Dr. Chow recommends that Mr. Yu should receive a course of physiotherapy of 12 hourly sessions on a weekly basis, at the cost of $2,000 per session in the private sector. I see no reason why Mr. Yu cannot continue to receive treatment and follow-up at government hospitals. I will make the award of **$10,000** agreed to by the Defendants.

**Special damages**

1. The parties have agreed that the award for special damages should be **$5,000,** and I make such an award accordingly.

**Summary of award**

1. The award for damages comprises :
   1. PSLA $ 250,000.00
   2. Pre-trial loss of earnings $ 332,000.00
   3. Future loss of earnings $ 432,000.00
   4. Loss of earning capacity $ 25,000.00
   5. Future medical expenses $ 10,000.00
   6. Special damages $ 5,000.00

Total : **$1,054,000.00**

1. Due to the limit in my jurisdiction, the award for damages will be restricted to **$1,000,000**. I will award interest on the award of PSLA at judgment rate from the date 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 the Defendants to Mr.Yu, with certificate for counsel, to be taxed if not agreed. Mr. Yu's own costs are to be taxed in accordance with the Legal Aid Regulations.

(Mimmie Chan) District Judge

*Miss Yvonne Chiu, instructed by Ho, Tse, Wai & Partners, for the Plaintiff*

*Miss Susanna Leong, instructed by Lau, Chan & Ko, for the Defendants*