## DCPI 1252/2004

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1252 OF 2004

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##### BETWEEN

ORLA GILROY Plaintiff

and

EASY UP INVESTMENTS LIMITED

(trading as Caledonia Restaurant & Bar) Defendant

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Coram: Deputy District Judge K. Lo in Court

Date of Hearing: 25th January 2006

Date of Handing Down Judgment: 1st February 2006

J U D G M E N T

1. On 29th November 2001, the Plaintiff, as a lawful visitor, had a fall from the top of stairs in a bar and restaurant of which the Defendant was both the occupier for the purpose of the Occupiers Liability Ordinance (Cap. 314) and the operator. Interlocutory Judgment was obtained by the Plaintiff against the Defendant on the 16th April 2005 and this is the assessment of damages of the Plaintiff’s claim.

# Injuries and disabilities

2. The Plaintiff was aged 31 at the time of the accident. She suffered the following injuries: -

1. the entire right side of her face and head was severely swollen;
2. severe bruising around her right eye and to a lesser extent her left eye;
3. bruising to the nose and right upper lip;
4. a 10 cm long bruise and swelling on her right hip;
5. a molar tooth in her right upper jaw was broken and she lost sensation over the right side of her teeth and gums;
6. minor abrasions over face and body including cuts on her right leg and hand;
7. she was concussed and distressed.

3. The Plaintiff was sent to the Accident & Emergency Department of Queen Mary Hospital and was later, on her request, transferred to Hong Kong Sanatorium & Hospital and admitted as an inpatient for 5 days. For the first 3 days in hospital, she constantly vomitted and received medication to control the same.

4. The Plaintiff was granted sick leave until 9th December 2001 and had not been working in full swing for the next 2 months. She had headaches until July 2002 on constant basis and needed to take painkillers.

5. The broken tooth of the Plaintiff was removed and filled with a cap. The feeling of numbness persisted in her right upper jaw and gum and the same was likely to be permanent.

6. The Plaintiff was also treated by neurologist for post concussion syndrome.

7. Presently, the Plaintiff sometimes felt like being pinched with pins and needles in her upper right lip and upper right gum area and when touched, there was sometimes sharp pain like electric shock, e.g. when kissing her fiancée.

8. There were still also occasional headaches.

9. She also felt the right side of her face less sensitive and relatively ‘dull’ compared to her left side.

10. At times, she also fuzziness or cloudiness in the right side of her head. She said her concentration was not as good as before.

11. According to the report of Dr. Chan Kwan Hon, the neurologist attending the Plaintiff, dated 17th January 2006 (mistyped as 17th December 2006), the resulting numbness and loss of sensation resulted from permanent nerve damage. There is no chance of recovery. The degree of permanent disability as a result of the injury is five percent.

12. In Court, the Plaintiff also said she had since the accident fear staircases. This was the first time that such was mentioned by the Plaintiff. The same had not been raised in any witness statement or statement of damages or medical report.

Pain, Suffering and Loss of Amenities (PSLA)

13. In the case of *Pang Wai Hung v. MPC Express Services Company* (HCPI No. 1093 of 2005), the victim fell, in the course of employment, hit his face on the ground and as a result lost 4 teeth with 2 other teeth chipped. Another tooth suffered pulpal death. There was also laceration on the lower chin which subsequently healed and there was a scar which is noticeable at close distance.

14. The Judgment for PSLA in that case for the damage to the teeth was $70,000.00.

15. The case of *Cheung Lap Yan and Another v. Siu Ching Kee and Another* (HCA No. 1462 of 1979) was also considered. In that case, the woman victim had 4 teeth with fracture crowns and 2 had cracked crowns. Two teeth were extracted and reconstructed with porcelain crowns. She also suffered injuries. PSLA was assessed at $45,000. The decision was given on 14th June 1982.

16. Solicitors for the Plaintiff referred this Court to the case of *Hau Kwok Fong v. The Kowloon Motor Bus Co. (1933) Ltd. and others* (HCPI 101 of 1997), the victim there suffered compound fracture of his right mandibula ramus and he received surgical reduction of his bone fracture. This Court afraid that the nature of injuries and the treatment received in that case was quite different from our case here and the case is not of much assistance to this Court.

17. The other case advanced by the Solicitors for the Plaintiff was the case of *Wong Siu Sham v. Tsang Hin Sum* (DCPI 181 of 2002), the victim in that case suffered injury to head, arm and leg as a result of assaulted by knife. His injuries included 8 cm length deep laceration over the vertex and suture was done. He was hospitalized for 2 days. Subsequent to the incident, the victim suffered post-concussional syndrome including headaches, dizziness, fatigue, irritability, difficulty in concentrating and performing mental tasks, impairment of memory, insomnia, and reduced tolerance to stress and emotional excitement. Dr. Yu, the neurologist in that case said the permanent disability of the victim was 3%.

18. The case of *Cheng Lai Kwan v. Nan Fong Textiles Ltd.*( [1998] 2 HKLRD 729) was considered in that case. Victim in that case suffered forehead injuiry withi full recovery, might have suffered 2 per cent disability for post concussional syndrome, was able to resume her work after 4 ½ months sick leave. She was awarded $150,000.

19. The *Hau Kwok Fong* case was also considered. Victim in case of *Wong Siu Shan* was awarded $180,000 for PSLA.

20. In the case of *So Sau Man v. Leung Ming Kwong and Another* (DCPI 376 of 2005), the victim suffered right lip laceration and lost 3 teeth as a result of a traffic accident.

21. She suffered no permanent disability apart from (i) numbness in the wound area (ii) a small but quite unnoticeable scar near the upper right lip. The teeth were all replaced by artificial ones. Suturing was done on the laceration wound over the upper lip of the victim and there was wound infection afterwards and resutrning of the wound had to be performed again.

22. She had 2.4 months sick leave in that case.

23. She was awarded $100,000 for damages under PSLA.

24. In our present case, the Plaintiff has suffered loss of 1 tooth and the same was replaced. There was residual numbness and sharp pain of pin and needles, there was no laceration and therefore no suturing or resuturing. There was no scar left. There was also occasional headaches, fuzziness in head.

25. The sick leave in this case was relatively short compared to the other cases though it was said that she did not work full time during the 2 months subsequent.

26. The Plaintiff is a young woman and the numbness and strange sensation would affect her social and intimate relationship with the fiancée.

27. There was also post concussional syndrome in same way similar to the case of *Cheng Lai Kwan* although there were much less symptoms and the permanent disability assessed was 5% and not 3%.

28. Having considered all the circumstances, I consider a sum of $170,000 appropriate under this head.

Loss of Earning Capacity and Loss of Damages

29. In this case, the Plaintiff made no claim for loss of earning capacity and loss of earnings.

# Special Damages

30. The plaintiff also claims for dental treatment fee of $9,200 (supported with receipts), $3,620 follow up treatment with neurologist ($2,700 supported with receipts) and $240 travelling expenses.

31. I allow in full the Special Damages claimed save the $920 follow up fee with neurologist not supported with receipts.

32. The total sum allowed under this head is therefore $9,200 + $2,700 + $240 = $12,140.

33. The Plaintiff claims also future expenses incurred for visits to the acupuncturist and purchase of drugs for symptomatic relief in sum of $2,000.

34. In Court, she admitted that she had received 2 consultations each of $600 from an acupuncturist. She said the acupuncturist told her that the chance of recovery from acupuncture is small.

35. I found the sum claimed generally for the purchase of medicine as claimed reasonable and I allow the sum of $2,000.

Conclusion

36. The Plaintiff’s claim is therefore allowed as follows: -

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| PSLA | $170,000 |
| Special Damages | $14,140 |
| Total | $184,140 |

37. The Plaintiff is also entitled to interests on amount of PSLA at the rate of 2% per annum from the date of writ to the date hereof and thereafter at judgment rate and interests on the Special Damages mentioned above at the rate of 5.044%, which is half of the existing judgment rate, from the date of accident to the date hereof and thereafter at judgment rate.

38. The Plaintiff is also entitled to costs of the assessment.

(K. Lo)

Deputy District Judge

Mr. Simon Cleves of Messrs Krishnan & Tsang for Plaintiff.

Defendant in person, absent.