# DCPI 1350/2020

[2022] HKDC 1194

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 1350 OF 2020

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BETWEEN

CHONG TAK LEE Plaintiff

and

CHUNG KWAI HING PATRICK Defendant

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Before: His Honour Judge Andrew Li in Court

Date of Hearing: 11 July 2022

Date of Judgment: 25 October 2022

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JUDGMENT

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*INTRODUCTION*

1. This case involves a minor traffic accident between a taxi and a private vehicle which occurred on 30 December 2018.
2. The plaintiff, who was a taxi-driver, had sustained minor neck injury in the accident. The defendant, who was the driver of the private vehicle, was convicted of careless driving as a result of the accident.
3. The writ in this case was first issued on 20 May 2020. Yet, the case was allowed to drag on for more than 2 years before the defendant was willing to admit liability. In fact, it was not until 2 working days prior to the case was warned for trial on 11 July 2022 that the defendant was willing to do so: first by way of an open letter dated 7 July 2022; and later on the same day purportedly by way of a Form 16C. Hence, instead of making use of the 3 days originally set aside for the trial to decide on both issues, only one day was spent for: (a) dealing with the Form 16C issue; and (b) hearing the assessment of damages.

*BACKGROUND*

*The plaintiff’s case*

1. The plaintiff was the driver of an urban taxi bearing registration number HL9777 (“the Taxi”).
2. At around 8:16 am on 30 December 2018, when the plaintiff was driving on westbound of Oi Kan Road in Sai Wan Ho and was turning left onto the southbound of Oi Tak Street, the defendant, who was driving a private car bearing the registration number JP3839 (“the Private Car”), stopped along the nearside roadside on southbound Oi Tak Street near the junction of Oi Kan Road. When the plaintiff drove the Taxi past the Private Car, the defendant so negligently drove or controlled the Private Car that it collided with the Taxi, causing him some minor personal injury (“the Accident”).
3. As a result of the Accident, on 19 July 2019, the defendant was charged with and convicted of the offence of “careless driving” on his own plea, contrary to s 38(1) of the Road Traffic Ordinance, Cap 374 (“the RTO”). At the hearing at the Eastern Magistracy, the plaintiff pleaded guilty to the offence and agreed to the Brief Facts prepared by the prosecution in relation to the Accident. When asked by the magistrate of why he hit the Taxi, the defendant answered that he was “careless” (「不小心」).
4. In the statement of claim (“SoC”), the plaintiff has specifically relied on what happened during the Accident as well as the above conviction in support of his case of negligence against the defendant. The plaintiff further pleaded that the defendant has violated certain provisions in the Road User’s Code and was also was in breach of s 109(5) of the RTO.
5. In his statement of damages (“SoD”), the plaintiff claimed damages under pain, suffering and loss of amenities (“PSLA”); loss of pre-trial income (which was confined to a 3½ month period from 31 December 2018 to 12 April 2019 only); loss of earning capacity and special damages (which included medical fees, travelling expenses and cost of tonic food).

*The defendant’s case*

1. From the date the plaintiff has filed and served his SoC on 18 September 2020, the defendant has vigorously contested both the issues of liability and quantum in this case.
2. This is in spite of the fact that he has been convicted of the offence of careless driving on his own plea which of course would have the effect of shifting the burden of proof of showing the Accident was not caused by his negligence.
3. In the defence, the defendant essentially has raised 2 issues:-
4. the Accident was caused or contributed to by the negligence of the plaintiff in that: he was driving too fast; driving below the skill of a reasonably competent driver; failing to pay heed to the defendant’s presence; failing to stop; failing to avoid the accident; and/or failing to keep a safe distance: (See §§7(a) to 7(l) of the defence); and
5. the plaintiff cannot rely on the defendant’s conviction.
6. In respect of quantum, the defendant pleaded that the PSLA award should be around HK$30,000 to HK$50,000. As for special damages, like medical fees, travelling expenses and tonic food, the defendant pleaded that he may agree to them if “they are reasonable and supported by receipts”. However, the defendant disputed that the plaintiff is entitled to any loss of earnings or loss of earning capacity in this case.

*DISCUSSION*

*LIABILTY*

*Defendant’s unexpected and last minute admission on liability*

1. As said, the plaintiff issued the writ in this case on 20 May 2020. A blank Form 16C (“Form 16C”) was attached to the writ as in every case issued in our courts these days. That was not filled in by the defendant and returned to the plaintiff at the time or during the entire proceedings up until the events described below.
2. The plaintiff filed his SoC on 18 September 2020.
3. The defendant filed and served his defence on 4 November 2020.
4. The plaintiff filed his witness statement which dealt with both the issues of liability and quantum on 29 September 2021.
5. The defendant’s filed his witness statement on 20 August 2021 where the defendant alleges that it was the plaintiff who had caused the collision and he only pleaded guilty at the magistrates’ court in order to save time rather than as an admission to liability. In this respect, I note that beside the defendant’s bare assertion, there is hardly any evidence adduced by the defendant in support of his case on liability. In fact, his assertion that *“there is no damage to both vehicles”* was flatly contradicted by the Brief Facts which was admitted by him in the magistrates’ court.
6. In any event, as the defendant insisted on disputing liability in this case, Master Matthew Leung, one of the PI Masters in the District Court, had by his Order dated 10 February 2022, allowed the action to be set down for trial (on both the issues on liability and quantum) in the Running List, not to be warned on or before 1 June 2022 with an estimated length of 3 days. That date was subsequently varied by Master Matthew Leung by his Order dated 8 April 2022 when he allowed the case not to be warned on or before 4 July 2022, after receiving representations from the solicitors on both sides by letters dated 30 March 2022. In the same Order, Master Matthew Leung ordered the plaintiff to serve the application to set down for trial by 3 May 2022. And upon setting down the case for trial, the plaintiff’s solicitors were asked to provide the listing clerk with a letter stating that all the directions have been complied with.
7. On 3 May 2022, the plaintiff’s solicitors filed an application to set down the case for trial as well as a notice of setting down.
8. In the morning of Wednesday, 6 July 2022, the listing office of the court informed the parties that the case has been warned for trial and the trial would be heard before me starting on Monday, 11 July 2022 at 9:30 am (with 3 days reserved).
9. At around 12:37 pm on Thursday, 7 July 2022, the defendant’s solicitors wrote to the plaintiff’s solicitors by way of an “open letter” stating that they had been *“instructed to admit liability leaving damages to be assessed to save court’s time and costs”*.
10. Then a few hours later, at around 4:12 pm on the same day, the defendant’s solicitors sent a letter to the plaintiff’s solicitors enclosing a duly filled in Form 16C where the defendant’s handling solicitor, one Mr Tsui Pui Hung (“Mr Tsui”), for and on behalf of WT Law offices, solicitors for the defendant, put a tick in the box next to the following sentence under *“Part A response the claim”* of the Form 16C, ie *“I admit liability for the claim and offer to pay HK$75,000 in satisfaction of the claim”*. I note that the figure of HK$75,000 was filled in by handwriting in the box provided.
11. Curiously, under Part B where it stated *“How are you going to pay the amount you have admitted? (tick one box only)”*, the defendant’s solicitors filled in the date in the first column as follows: *“I offer to pay on (date) 27 Jun 2022.”*
12. I note the date of 27 June 2022 put in by Mr Tsui under Part B does not make sense in the context because (i) the Form 16C was filled in by the defendant’s handling solicitor on 7 July 2022; and (ii) the “offer” to pay (which grammatically is in present tense and not in past tense) was unilaterally “backdated” to 27 June 2022. I further note that Form 16C does not provide a mechanism for any “backdated” offer of payment.
13. Incidentally, the court had only received the copy of the filled in Form 16C from the plaintiff’s solicitors (note: not from the defendant’s solicitors who filled in and signed the Form 16C) when they sent a copy to the registry under the cover of their letter dated Friday, 8 July 2022. It was received by the registry at 2:56 pm on that day. That of course was in the afternoon of the last working day before the commencement of the trial on Monday, 11 July 2022. For the record, this court had only received and seen the copy of the Form 16C for the first time much later in the afternoon on that day. In any event, in the plaintiff solicitors’ letter dated 8 July 2022 to the registrar, they pointed out that the Form 16C was “*inconformity*” (sic), by that I take it they meant it was not conforming to the rules under the relevant provisions of the Rules of the District Court, Cap 336H (“RDC”).
14. *The Form 16C Issue*
15. Ms Lorinda Lau (“Ms Lau”), counsel for the plaintiff, in her skeleton submission in response to the defendant’s last minute filing of the Form 16C, has succinctly summarized the legal principles and the application thereof.
16. I find her summary helpful, which in my opinion has accurately reflected the law and application governing the use of Form 16C. I would respectfully adopt her summary hereinbelow, with appropriate modifications of mine added.

*Legal principles governing admission under Order 13A*

1. Under Order 13A, rule 3, of the RDC:-

“(1) The period for filing and serving an admission under rule 4, 5, 6 or 7 is-

1. where the defendant is served with a writ, the period fixed by or under these rules for service of his defence (ie 42 days after the Writ counting from 20 May 2020); …
2. A defendant may file an admission under rule 4, 5, 6 or 7 –
3. after the expiry of the period for filing it specified in paragraph (1)(a) if the plaintiff has not obtained a default judgment under Order 13 or 19; …”
4. The defendant did not specify which sub-rule he is relying on but given the fact that he is only paying part of the unliquidated amount claimed by the plaintiff in the SoD, it is not unreasonable in my view to assume that he is relying on Order 13A, rule 7(1) of the RDC.
5. Order 13A, rule 7(1) states as follows:-

“This rule applies where-

1. the only remedy that the plaintiff is seeking is the payment of money;
2. the amount of the claim is unliquidated; and
3. the defendant-
4. admits liability; and
5. offers to pay a liquidated amount of money in satisfaction of the claim.”
6. Under Order 13A, rule 7(3) of the RDC:-

“(3) Within 14 days after the copy of the admission is served on him, the plaintiff shall-

1. file in the Registry a notice in Form No 16E in Appendix A, stating whether or not he accepts the amount in satisfaction of the claim; and
2. serve a copy of the notice on the defendant.

(4) If the plaintiff does not file the notice in accordance with paragraph (3), the claim is stayed until he files the notice.”

*Application of Rules*

1. I agree with Ms Lau that, by operation of Order 13A, rule 7(3) of the RDC, the plaintiff must be given 14 days to file with the registry a notice contained in Form 16E, seeking judgment to be entered on liability as well as stating whether he accepts the amount in satisfaction of the claim.
2. Given the defendant has chosen to file the notice and the Form 16C on 7 July 2022, which was one working day before the first day of trial (albeit he had all along been represented by the same firm of solicitors and had pleaded guilty to the charge of ‘careless driving’ as early as in 2019); and further given the fact that it was implied in the rule that the plaintiff should be given 14 days to consider his position, I agree with Ms Lau that the defendant cannot deny the plaintiff’s right of 14 days to consider his position which is specifically provided for under the rules.
3. Further, by reason of the defendant’s inexcusable and unexplained late filing of the Form 16C and admission of liability (more than 2 years from the service of the writ), in order not to unfairly deprive the plaintiff’s 14 days right to consider his position and in accordance with the spirit of Order 13A rule 7(3) of the RDC, the 3-day trial would have to be adjourned had it not been for the fact that the defendant had, on the same date as filing the Form 16C, sent an “open letter” to the plaintiff to admit liability.
4. To top all that, rather curiously, while the defendant’s Form 16C was dated 7 July 2022, instead of informing the plaintiff when (on a date after 7 July 2022) the defendant would pay the plaintiff, the defendant wrote on the same form that he “offer” (sic) to pay on “27 June 2022”. This is totally absurd and illogical as the Form 16C provides a mechanism to admit liability and to pay on a future date but not to allow a party to “backdate” his payment. If the defendant is trying to use this as a tool to refer to a sanctioned payment he might have made on that date (which of course this court would not know and not supposed to know), then I would certainly consider that as amounting to an abuse of process.

*Whether Form 16C was appropriate means to dispose the issue of liability?*

1. As Ms Lau has rightly pointed out, the defendant had plenty of opportunities to file the Form 16C before the case was warned for trial on 6 July 2022. However, the defendant did not do so until 4:12 pm on 7 July 2022 (presumably after they had received the notice of the hearing from the listing office for the trial) when they faxed a signed copy of the Form 16C to the plaintiff’s solicitors and at the same time “offered” to pay HK$75,000 in full and final settlement of the whole of the plaintiff’s claim.
2. In this regard, I find the defendant must be fully aware of the fact that he could have admitted liability under Order 13A much earlier on because a blank Form 16C was attached to the writ when it was issued back in May 2022. In other words, the defendant had almost 2 years and 2 months to admit liability by making use of the Form 16C attached to the writ. Yet for unexplained reasons, they had failed to do so.
3. I agree with Ms Lau that it must be blindingly obvious to the defendant that he has no defence open to him on the issue of liability in this case. Not only he had admitted his “guilt” to the police at the scene, he had also agreed to the Brief Facts prepared by the prosecution when he pleaded guilty to the charge of ‘careless driving’ at the Magistracy. He further frankly admitted to the magistrate that he was “careless”（不小心）after the Brief Facts were read to him.
4. Under such unequivocal circumstances, I really do not understand why the defendant could not have admitted liability much earlier in these proceedings. By filing a Form 16C at the “11th Hour 59th Minute” prior to the commencement of the trial (which was reserved for both issues), the defendant literally had waited until the very last moment before the trial commenced in an attempt to dispose of the issue of liability by using a mechanism which was designed to allow parties to settle a case at a very early stage of the proceedings. In my view, the Form 16C is designed to help the parties to save costs by letting a defendant to admit liability and offer to pay a specific amount to settle the claim *after* receiving the writ and *before* filing of the defence. Of course, by the time when the defendant’s solicitors filed the Form 16C and informed the plaintiff’s solicitors in the late afternoon of 7 July 2022, the defendant had already prepared his opening submissions which covered both the issues of liability and quantum. Thus, this last minute attempt to admit liability by using an inappropriate mechanism not only had distracted the parties’ and the court’s preparation for the case but also added unnecessary time and costs on all parties concerned.
5. Apart from the very late filing of Form 16C in this case, in my judgment, the Form 16C signed and filed by the defendant’s solicitors was also defective.
6. The reason being that, under Part B of the Form 16C and under the heading of *“How are you going to pay the amount you have admitted?* *(tick one box only)”,* the defendant’s solicitors wrote down the date of *“27 Jun 2022”* in the box next to the sentence of “*I offer to pay on (date)”*. However, the defendant’s solicitors failed to put the tick next to the box as requested. No explanation was given as to why the date of the “offer” was backdated to almost 2 weeks earlier instead of a future date as the form has designed.
7. In my judgment, such “unconventional” filling in the form was clearly defective in the scene that the Form 16C does not provide a mechanism for the defendant to “back date” the offer. The Form 16C was “signed and declared” by the defendant’s solicitors on behalf of the defendant on 7 July 2022. It was filed on the same day. The defendant could not try to “offer” to pay on a date prior to the declaration. Grammatically, the phrase is put in the “present tense” rather than the “past tense”. In my view, it was not opened for the defendant to “offer” to pay 2 weeks before the form was made and filed. If the defendant wished to protect themselves on costs, they could have made this under the well-established sanctioned payment mechanism under Order 22 of the RDC.
8. Hence, I find the Form 16C filed by the defendant’s solicitors on behalf of the defendant on 7 July 2022 was defective in that they could not retrospectively “offer” to pay a sum on a date before the date of making admission on liability. To borrow a lawyer’s phrase, it was “void *ab initio”*.
9. I find what is so absurd and peculiar about this whole Form 16C issue is the fact that, unbeknown to the court, the defendant had, on the same day of filing the Form 16C, by way of an “open letter” sent to the defendant’s solicitors by fax at 12:39 pm, stated that they were “*instructed*” to admit liability “*leaving damages to assess (sic) to save court time and costs*”. This “open letter” was sent to the defendant just a few hours before the Form 16C was sent to them and filed with the registry.
10. At the beginning of the trial before me on 11 July 2022, Mr Jack Chan (“Mr Chan”), counsel for the defendant, who was instructed by the defendant’s solicitors to appear on behalf of the defendant for the trial, submitted to the court that there was simply a “*misunderstanding of the operation of the rules under Order 13A for the Form 16C*”. And that they had “*overlooked the consequence of the matter*”. In any event, as Mr Chan has submitted, the defendant’s solicitors had by way of the “open letter” admitted liability on the same day. They thought that since they had filed the defence, in order to indicate to the court that they were not disputing liability anymore, that Form 16C needed to be filed.
11. I regret to say that I do not accept such pathetic and incoherent explanations provided by a qualified solicitor at all as they simply do not make any logical sense.
12. I stood down the case for Mr Chan to take further instructions from his solicitors and lay client as to what they proposed to do with the Form 16C in light of their earlier “open letter” admitting liability in this case.
13. After taking instructions from his solicitors and lay client, Mr Chan returned to the court room and stated that, while it was not satisfactory, the filing of the Form 16C, in the defendant’s submission, did not amount to “*an abuse of process, having taken into account of objective of the rules*”, albeit there was a more “*proper and binding way of admitting liability*”.
14. Ms Lau, the plaintiff’s counsel, refuted that submission by stating that the Form 16C filed in this case was improperly filed based on 2 grounds. First, the defendant had already sent them an “open letter” in admitting liability at 12:39 pm and a Form 16C was only faxed to the defendant’s solicitors 3 hours later. Second, in the Form 16C, the defendant’s solicitors had inappropriately mentioned the figure of HK$75,000 which they “offer” (sic) to pay on 27 June 2022. As a result thereof, Ms Lau says that the plaintiff “*may be prejudiced by this*”.
15. Further, Ms Lau submits that the plaintiff was not given the mandatory 14 days under the rule to consider his position and the trial would not be able to proceed if the plaintiff insisted that the Form 16C was validly served.

*The defendant’s withdrawal of the Form 16C*

1. After the court further stood down the case for the parties to consider their respective position in relation to the defective Form 16C, Ms Lau returned to court and asked for judgment be entered with costs on indemnity basis based on the document filed by the defendant which indicated that they clearly had no defence in the matter. They were prepared to agree to the defendant’s proposal to withdraw the Form 16C provided that they would be indemnified on the basis that the defendant could have admitted liability much earlier on in the proceedings but not after the written opening submissions on both issues of liability and quantum had been prepared and just before the case was warned for trial.
2. Mr Chan on the other hand submits the defendant was entitled to argue on the issue of contributory negligence on the fact of the case and therefore it was opened for them to file the Form 16C as a “tool of document” to represent his client’s stance in the matter.

*The Court’s findings*

1. I find the way in which the defendant has filed the Form 16C on 7 July 2022 was totally incoherent and against the rules. In my judgment, it was an abuse of the mechanism and was invalid. It just added unnecessary time and costs to this otherwise very straightforward case. It was a complete waste of both the court and the parties’ time and of which the defendant or his legal representatives must be responsible for the wasted costs involved.
2. After hearing further submissions from counsel, I made the following findings which were read out to the parties at the hearing:-

“(1) It is very unsatisfactory that just less than 2 working days before the case was warned for trial, the defendant saw fit to file a Form 16C under Order 13A of the Rules of the District Court. This is despite the fact that earlier on the same day, ie on 7 July 2022 at 12:37 pm the defendant wrote to the plaintiff’s solicitors by way of an open letter to admit liability.

(2) The Form 16C has very inappropriately mentioned a figure of HK$75,000 which the defendant offered to pay on 27 June 2022 which was over a week before the date of the Form itself. Mr Chan for the defendant did not offer any explanation as to why that figure and date were mentioned in the form.

(3) Ms Lau for the plaintiff has in her written submissions dated 10 July 2022 in relation to this matter set out the plaintiff’s views very clearly. In particular, at §§22 to 23 of her submissions, she has set out the reasons why this could amount to an abuse of the process of the court.

(4) I agree with Ms Lau’s submissions as set out by her in those paragraphs and find that the use of Form 16C was not a mere oversight or misunderstanding on the part of the defendant but was used as a tool to exert pressure on the plaintiff who is not legally aided to accept a very later admission of liability as well as offer of settlement by the defendant.

(5) I so find it was an abuse of the process to file the Form 16C at such a later stage which potentially could have caused an adjournment of the trial as the defendant would be entitled to have 14 days to respond to the Form.

(6) However, given the fact that the plaintiff has now applied to withdraw the Form, their very late admission on liability and the potentiation small sum of damages involved in this case, I am minded to give leave to the defendant to withdraw the form 16C because I do not want to see an adjournment of the trial fixed for today which would only be going to add on further costs to this very simple and straightforward case. However, I would make an order to require the defendant’s solicitors to show cause as to why they should not be made personally liable to pay for the wasted costs due to the late filing and now withdrawal of the Form 16C. Hence, pursuant to O 62 r 8A of the RDC and PD 14.5, I direct the defendant’s solicitors to show cause within 28 days (with copy to the defendant) as to why the costs wasted in retaliation to the filing of Form 16C should not be borne by them personally and on an indemnity basis, with certificate for counsel.

(7) For the issue of liability, I will order judgment on liability be entered against the defendant pursuant to their admission by his open letter dated 7 July 2022 with costs in favour of the plaintiff with certificate for counsel. As to the basis of taxation for the costs on the issue of liability, I shall leave that to the end of the assessment of damages for the parties to make further written submissions to the court on the matter.”

1. After having spent 2 hours on the Form 16C issue and having disposed the issue of liability in the above way, the court then proceeded with the assessment of damages.
2. *Assessment of damages*
3. The only witness who gave evidence for the assessment of damages in this case was the plaintiff himself. His evidence was clear and straightforward. Despite of the fact that he was cross-examined by the defendant’s counsel extensively, I find the plaintiff as an honest and truthful witness whose evidence I accept without reservation.
4. As the defendant has not produced any evidence, whether factual or by expert, to contradict the plaintiff’s case on both of his injuries and loss of earnings, basically the plaintiff was put to strict proof of his claims on quantum only.

*The injuries*

1. The parties did not appoint any medical experts to prepare an expert report on the rather minor injuries sustained by the plaintiff in the Accident in this case. Hence, the plaintiff is only relying on the medical reports from the government hospitals to prove the extent and the results of his injuries. It is clear from those reports that the plaintiff has only suffered from a “*neck sprain which was comparable with a whiplash injury*”: see for example report from the Department of Family Medicine and Primary Healthcare (“DFMPH”) of Ruttonjee & Tang Shiu Kin Hospital (“RTSKH”) dated 25 September 2019, report from the Physiotherapy Department (“PD”) of RTSKH dated 23 September 2019; and report from a private doctor which the plaintiff has consulted in Ap Lei Chau, namely, Dr Poon Man Kay (“Dr Poon”) dated 7 April 2022.
2. I accept that the plaintiff’s neck injuries were of a mild nature as reported by the Accident & Emergency Department (“A&E”) of RTSKH dated 31 December 2018 and the Department of Prosthetic (“DOP”) of RTSKH dated 15 March 2019.
3. There is no evidence to suggest that the plaintiff has suffered any permanent impairment as result of the accident. He also does not require any long term specialist treatment.
4. The plaintiff was first admitted to A&E of RTSKH on 31 December 2018, ie within 24 hours after the occurrence of the Accident. He was treated and discharged with 1 day of sick leave given to him only. There was no follow-up treatment required. However, a few days later, on 3 January 2019, due to the pain that he had experienced, he consulted Dr Poon in Apleichau.
5. On 8 January 2019, the plaintiff, on the recommendation of a friend, he consulted Dr Yen Chi Hung (“Dr Yen”), a specialist in orthopaedic and traumatology whose clinic is located in Mongkok. On this occasion, the plaintiff complained of “persistent pain of the neck, chest and both shoulders”. He also had occasional numbness of middle, ring and little fingers of the right hand. Although the plaintiff was recommended to undergone the MRI, he has defaulted the scan and the follow-up treatment with Dr Yen. 20 days of sick leave was given to him by Dr Yen.
6. On 1 March 2019, the plaintiff attended the DFMPH of RTSKH for “neck pain”. Physical examination showed tenderness over C6-7 praspinal muscle. The range of motion was reported to have been produced due to the pain. There was no upper limb and sensory deficit he could walk unaided. The diagnosis was “sprained neck”. Analgesics were prescribed and physiotherapy and occupational therapies were arranged. Sick leave was also granted.
7. According to the medical notes prepared by Dr Tse Chi On of RTSKH on 22 March 2019, there was lots of “cervical lordotic curve” but there was no fracture found on this occasion. C6/7 spondylosis changes were seen. There was however no significant, narrowing intervertebral foramina. The disc spaces appeared to have been preserved. There was no abnormal prevertebral soft tissues swelling being detected.
8. The plaintiff attended 3 sessions of physiotherapy from 2 May 2019 to 18 June 2019.

*The Court’s findings on quantum*

*On the plaintiff’s injuries*

1. In my opinion, the plaintiff has suffered from a simple “sprained neck” which is consistent with a “whiplash injury” in the Accident only. It only required a short period of sick leave and physiotherapy treatments for a few months.

*Award for pain, suffering and loss of amenities (“PSLA”)*

1. Both Ms Lau and Mr Chan have referred me to a number of decided cases for comparison purposes in deciding what is an appropriate award for PSLA.
2. In my opinion, the plaintiff’s injuries are more akin to the cases referred to the court by Mr Chan in his opening submissions:

“(1) In *Li Ho 對何美玲另一人* [2021] HKDC 1425 (per Master Matthew Leung), as a result of a traffic accident, the plaintiff therein suffered neck and lower back pain, was hospitalized for 3 days, and received physiotherapy afterwards. Neck collar was required. PSLA in the sum of $150,000 was awarded.

(2) In *Leung Yiu Wing v Wong Lan Fun and Others* [2008] HKCFI 1040 (per Master de Souza), as a result of a traffic accident) rear-ended twice), the plaintiff therein (a taxi driver) suffered a neck sprain. He was discharged with just 2 days’ leave. He also complained about neck and back pain. The court found that the plaintiff suffered minor soft tissue injury to his neck and lower back, and there was no neurological deficit. 3 months of sick leave was considered reasonable. The plaintiff exaggerated his symptoms. PSLA in the sum of $100,000 was awarded.

1. In *Au Suk Man v Chan Chi Wai* [2015] HKDC 97 (per DDJ W K Wong), the plaintiff suffered a whiplash injury in her neck in a traffic accident. She had to put on a neck collar for 2-3 months. The experts agreed that there was only soft tissue injury. The court found that the accident cased the pre-existing degeneration in the plaintiff’s C5/6 intervertebral disc to become symptomatic, but most symptoms were resolved by trial. PSLA in the sum

of $80,000 was awarded.

1. In *Lai Ka Yin v Chan Yiu Kei* [2009] HKDC 193 (per HHJ Mimmie Chan, as Mimmie Chan J then was), as a result of a traffic accident (rear-end collision), the plaintiff therein suffered from whiplash injuries to her neck and back, was hospitalized for 3 days, and received physiotherapy afterwards. Both orthopaedic experts agreed that Madam Lai suffered from soft tissue injury to the neck and back with no evidence of any more serious injury. PSLA in the sum of $50,000 was awarded.”
2. With greatest respect to Ms Lau, I consider the cases that she has referred me to in her submissions which gave a range of HK$80,000 to $250,000 are very much on the high side and they are not compatible to the relatively minor injuries suffered by the plaintiff during the Accident in this case.
3. In my judgment, an appropriate PSLA award in this case should be at HK$80,000 only.

*Pre-Trial loss of Earnings*

1. It is not disputed the plaintiff has suffered a second traffic accident on 14 April 2019 where he had also injured his neck. Although the injury according to the plaintiff was a lot milder in the second accident when compared to those sustained by him in the Accident, there was no medical evidence to support that at all. Very fairly, the plaintiff has decided not to pursue any claim for loss of pre-trial loss of earnings after the date of the second accident on 14 April 2019.
2. In my opinion, this is very reasonable and sensible concession on the part of the plaintiff and his legal representatives.
3. In my judgment, the evidence to support the sick leave given to the plaintiff between 31 December 2018 and 9 April 2019 is plentiful. This was of course prior to the date when he met with the second accident. He was granted sick leave for a total of 84 days during that period.
4. I consider that as a reasonable period resulting from the Accident.
5. For the income of a taxi driver, the plaintiff was able to produce his taxi rental contract to show that he was indeed the taxi driver at the time of the Accident. Of course, the fact that when the Accident happened he was driving his taxi also shows that it was his job at the time. I just do not understand why the defendant still wanted to dispute this obvious fact during the trial.
6. The letters from the Transport Department dated 4 June 2019 and 17 December 2021 show that a taxi driver (2-shift mode of operation) would be earning an average of HK$1,340 per every 2 shifts and would be able to operate 26.7 days per month on average.
7. Although the plaintiff claims that sometime he worked on “special shifts” in about 8 days per month, I do not accept that this was a regular enough event which would warrant an “additional” award for loss of income.
8. Hence, I would allow the loss of earnings for the 84 days of leave sick based on the figures provided by the Transport Department as follows:-

HK$1,340 ÷ 2 x 84 days = HK$56,280

*Special damages*

1. The plaintiff claims medical expenses from the date of accident up to 12 April 2019 only. They have been summarized on the table which appeared in the trial bundle at [p180] at HK$3,165 which included his treatments in both the private and public sectors. As those treatments are all supported by receipts or medical notes from the treating doctors, I consider they are reasonable and would allow the sum in full.
2. For the tonic food, in the absence of any documentary evidence, I would allow a nominal sum of HK$1,000 only, given the rather minor nature of the injuries. For travelling expenses, in the absence of any detailed breakdown of the figure, I would allow a sum of HK$1,000 only.
3. Hence, in the circumstances, I would allow a total of HK$5,165 as special damages in this case.

*Interest*

1. The plaintiff would be entitled to usual interest for both general and special damages. For interest on the PSLA award, it would be at 2% from the date of issue of writ to the date of trial and thereafter at judgment rate. For the interest on the special damages, it would be awarded at half of the judgment rate at 4% from the date of the accident to the date of the assessment and thereafter at judgment rate.

*Summary of calculation*

1. Based on the above discussions, I would make a total award of damages at HK$141,445 in this case (HK$80,000 + HK$56,280 + HK$5,165).

*Costs*

1. Costs will follow the event.
2. Since the defendant is clearly the losing party in this case, I would award costs of the action, ie on both the issues of liability and quantum (save for the costs resulting from and wasted as a result of the Form 16C application which was discussed in §§13 to 55 above) against the defendant, such costs to be taxed if not agreed with certificate for counsel. Further, given the fact that there was absolutely no defence to the plaintiff’s claim and the defendant did not admit liability until the last possible minute, I order that such costs on the issue of liability be taxed on an indemnity basis. I would make the above costs order on a *nisi* basis. In the absence of any application from the parties to vary the same within 14 days after the handing down of this judgment, the above costs order will become absolute.
3. For the erratic and absurd way of trying to “short circuit” the issue of liability by filing a defective Form 16C, I do not consider it was the defendant (who is a layman) who has caused the unnecessary wastage of time and costs resulting from the absolutely unnecessary and totally misconceived application. This must have been done on the advice of his solicitors. I simply cannot see how a qualified solicitor who properly study Order 13A could have misconstrued the rules in such a blindingly obvious way. I find the only reason he did so was to try to assert pressure on the plaintiff to accept the sum of HK$75,000 which likely was a referral to the sanctioned payment previously made by the defendant. This was not only improper but in my view amounted to an abuse of the process. Such conduct on the part on an officer of the court should not be ignored and must be condemned as it will only lead to unnecessary arguments, adding time and costs of the parties to the proceedings; and wasting of the limited resources of the courts. These are matters all going directly against the underlying objectives of the Civil Justice Reform introduced in our jurisdiction some 13 years ago which a lot of practicing lawyers seem to have forgotten.

1. I do not see why the defendant’s solicitors in this case should not be made liable to pay for the wasted costs resulting from the Form 16C application and the 2 hours or so of arguments on the first day of trial. I therefore will make an order under Order 62, rule 8 of the RDC to direct the solicitor in charge of the case in the defendant’s solicitors firm to show cause within 14 days as to why those wasted costs in relation to the Form 16C issue and the time spent on the subsequent arguments on the first day of the trial in court should not be borne personally by the defendant solicitors on an indemnity basis, to be summarily assessed on paper by this court and to be paid forthwith.
2. I so make the above costs orders in this case.
3. Lastly, I would like to thank Ms Lau for her helpful submissions on the Form 16C issue.

( Andrew SY Li )

District Judge

Ms Lorinda Lau, instructed by LKC Lawyers, for the plaintiff

Mr Jack Chan, instructed by WT Law Offices, for the defendant