###### DCPI 1367/2007

### IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1367 OF 2007

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##### BETWEEN

## WONG CHI WING Plaintiff

### and

#### LEUNG WING KEUNG Defendant

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Coram: H.H. Judge Chow in Court

Hearing dates: 3rd and 4th June 2008

Date of handing down Judgment : 15th August 2008

Judgment

1. In this action the Plaintiff claims against the Defendant for damages for personal injuries sustained by him in a traffic accident which happened on 22 July 2004. Interlocutory judgment was entered against the Defendant on 1 July 2007. The outstanding issue for this court to adjudge is the quantum of damages payable to the Plaintiff due to the injuries suffered by him in the accident.
2. On 22 July 2004 the Defendant was driving a public light bus, following another public light bus in which the Plaintiff was a passenger. The accident was caused by the Defendant’s public light bus colliding with that other public light bus. After the accident the Plaintiff was admitted to the Accident & Emergency Department of the United Christian Hospital (“UCH”). The medical reported compiled by UCH and dated 8 August 2005 states:-

“…… The physical exam revealed tenderness over right upper back and the X-ray films of the chest, cervical, thoracic and lumbar spines were unremarkable. He was given dologesic and stemetil upon discharge.

He was seen again on 25/07/2005 for persistent neck and shoulder pain and he was given sick leave from 22/07/2004 to 26/07/2004 in total.”

1. Both parties agreed that the amount of medical expenses to be awarded to the Plaintiff is $1,795. The remaining disputed items to be determined are: pain, suffering and loss of amenities (PSLA), , loss of earning capacity, loss of pre-trial earnings and tonic food.

PSLA

1. To prove his sick leave period, the Plaintiff adduced a bundle of sick leaves certificates, for the periods from 22-26 July, 17-20 August, 21-24 August, 25-28 August, 29-1 September, 2-5 September, 6-10 September, 11-14 September, 15-18 September, 19-22 September, 23-26 September, 27-30 September, 1-4 October, 5-8 October, 11-14 October and 18-21 October, 2004. On each occasion he was given sick leave for a few days only.
2. On 26 July 2004, he attended the Expert Healthcare Centre. He was given 7 days sick leave from 27 July 2004 onwards. On 4 August 2004, he attended the same Centre. He was given 12 days sick leave from 5 August 2004 to 16 August 2004.
3. On 2 August 2004 he attended the clinic of Dr. Clive Chui. Dr. Clive Chui gave him 2 days sick leave (from 3 August 2004 to 4 August 2004).
4. On 4 July 2005 he attended the clinics of Dr. William W.K. Kwan. Dr. Kwan gave him 2 days’ sick leave from 4 to 5 July 2005.
5. On 6 July 2005, he attended the clinic of Dr. Diana Chan. Dr. Diana Chan gave him 2 days’ sick leave, from 6 to 7 July 2005. On 22 July 2005, he attended the clinic of Dr. Diana Chan. Dr. Diana Chan gave him 2 days’ sick leave, from 21 to 22 July 2005.
6. On each occasion, the doctor gave him 2 days’ sick leave only.
7. On 29 July 2005, he attended the clinic of Dr. Wong Sheung Fan. Dr. Wong gave him 2 days’ sick leave, from 28 to 29 July 2005.
8. On the certificates issued by Dr. Diana Chan and Dr. Wong, it was stated that the Plaintiff is suffering from acute low back pain.
9. On 7April 2006, the Plaintiff attended UCH, he was given sick leave for that day only.
10. The Defence Counsel submits that apart from the medical certificates there is no medical report, notes or records from either the Kwun Tong Jockey Club Health Clinic or any of the private general medical practitioners to show the Plaintiff’s medical conditions in between the period of 25 July 2004 and 7 April 2006 (the date when the Plaintiff was medically assessed by his medical expert, Dr. Chan). This lacuna in the medical evidence cannot be filled up by the sick leave certificates because the issuance of sick leave certificates would be primarily because of the subjective symptoms reported to the doctors by the Plaintiff. I do not accept this submission. Before issuing the certificates the medical doctor will no doubt make an independent professional judgment on the physical conditions of the patient, so as to determine whether sick leave should be recommended for the patient, and if so, the length of the sick leave period to be recommended. The sick leave certificates no doubt reflect the conditions the Plaintiff was in at the material time.
11. The issuance of sick leave certificate varies from case to case. The Defence Counsel refers to the case of *Choy Wai Chung v Chun Wo Construction & Engineering Co. Ltd.* CACV No. 172 of 2004. I cannot see how that case can be helpful to the present case. Each case has its own factual situations.
12. The Plaintiff explained that apart from 23-24 July 2004 and 23 October 2004 he did not take any material sick leave under the sick leave certificates because he worried about losing his position and he did not want his medical conditions to be exposed to his employer, because that period of time subsequent to the SARS outbreak, the economy of Hong Kong was poor. He was the sole financial support of his family. He had a mortgage payment to make and his daughter was at school. I accept his explanations.
13. On 23 October 2004 he consulted a private medical practitioner. This is related to “gastroenlerities”. He said that this was caused as a result of the accident. I cannot see how this condition arose out of the accident as a result. If that had been the case, there should have been consultations on this condition shortly after the accident.
14. The sick leave certificates reflect the seriousness of the conditions the Plaintiff was in. After 18 October 2004 he did not attend any government outpatient general clinic. The reasonable conclusion that can be drawn is that his injuries, apart from headache and dizziness, hereinafter mentioned, had already recovered by October 2004.
15. The Plaintiff adduced 4 sick leave certificates issued by a private general medical practitioner in July 2005. They are related to “back pain”. The Plaintiff explained that it was caused at work by his loose grasp on a metal manhole cover due to the weakness of his right upper limb. I cannot see how this “low back pain” can be attributed to the accident. If his right upper limb was weak because of the accident he should have used his left hand to do it, or he should have asked to do it for him. When he made his witness statement on 12 October 2007, he did not include “low back pain” as one of his disabilities. Clearly this “low back pain” was not regarded as a disability caused by the accident.
16. Under paragraph 28 of the witness statement he mentioned an incident relating to his losing grip of a spanner because of a sudden pain and weakness in his right hand. But he did not mention about the incident relating to “low back pain”. If this “low back pain” as a disability had been caused by the accident he would have mentioned it in his witness statement.
17. I adjudge that the “low back pain” was not caused by the accident and it should not be considered in the context of PSLA.
18. The Plaintiff mentioned that he would still feel headache and dizzy if the minibus he was on board suddenly braked or if he was climbing on a wooden ladder. I accept his evidence.
19. The authorities cited by the Plaintiff do not assist the Plaintiff at all. He claims for $220,000. It is unjustified and is excessive. In my view a sum of $80,000 would be sufficient for PSLA, and I so order.

Loss of earning capacity

1. The Plaintiff was 49 at the time of the accident, and is now 53. Being a maintenance officer in property management, he has to climb up ladders and do physically demanding job. He was in this job for several years after the incident. His headache and dizziness cannot be serious, otherwise he could not have discharged his duties, which included the climbing up of ladders.
2. In *Moeliker v A Reyrolle & Co. Ltd.* [1977] 1 WLR 132, the Court said: -

‘Where a plaintiff is in work at the date of the trial, the first question on this head of damage is: what is the risk that he will at some time before the end of his working life lose that job and be thrown on the labour market? I think the question is whether there is a “substantial” risk or is it a “speculative” or “fanciful” risk … If the court comes to the conclusion that there is no “substantial” or “real” risk of the plaintiff losing his present job during the rest of his working life, no damages will be recoverable under this head.’

1. The Plaintiff’s neck and right shoulder injuries have already been healed in October, 2004. Dr. Chan assessed that he has lost 5% in his earning capacity. He returned to his job after taking 2 days’ sick leave.
2. There is no real or substantial risk that he will be handicapped in the general labour market by reason of his injuries. No award will be made under this head.

Loss of pre-trial earnings

1. The Plaintiff has abandoned the claim under this head.

Tonic food

1. The Plaintiff’s claim is unsupported by any documentary evidence. He has not provided particulars of the tonic food consumed by him. I would award a sum of $3,000.
2. The total award made in favour of the Plaintiff is $84,795 ($1,795 + $80,000 + $3,000). I order that the Defendant do pay the Plaintiff the sum of $84,795 within 14 days from today, with interest on the sum of $80,000 at 2% from 22.7.2004 until 15.8.2008, and at ½ judgment rate on $4,795 ($3,000 + $1,795) from 4.7.2007 until 15.8.2008, and from 16.8.2008 until satisfaction, at judgment rate on $84,795.

Costs

1. I make an order nisi for costs, to be made absolute in 14 days’ time, that the Defendant do pay costs of these proceedings to the Plaintiff, to be taxed, if not agreed, with certificate for Counsel.

(S. Chow)

District Judge

The Plaintiff : represented by Mr. Vod K.S. Chan, instructed by Messrs. T.K. Cheng & Co., Solicitors.

The Defendant: represented by Mr. Edward Shum, instructed by Messrs. Y.T. Chan & Co., Solicitors.