#### DCPI1378/2007

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 1378 OF 2007

BETWEEN

KHAN SHAFIQ Plaintiff

and

CHENG HIP MING Defendant

##### Before: H H Judge Chow in Court

Date of Hearing: 2 May 2008

Date of Judgment: 2 May 2008

## J U D G M E N T

1. This is an action instituted by the Plaintiff on 5th July 2007. On 17th January 2008, judgment was entered in favour of the Plaintiff against the Defendant with damages to be assessed.

The Accident

1. At about 12.30 pm on 12th July 2005, the Plaintiff was working at Tsing Lang Sze, near Sai Kung. He was instructed to unload cartons of yarns from a go-down and load them onto a truck located about a few metres away. In the course of lifting up one carton of yarns, the edge of the carton struck a wooden pallet on the ground, and his back was sprained because of that. He fell down and took a rest. Later on when he stood up, he found that he had no strength in his lower back when he tried to walk. Then in the company of a co-worker, he went away for medical treatment.

Injuries

1. In the medical report dated 22nd March 2007, Dr. Wong Kwok Shing made the following diagnosis:

“Mr. Khan sustained lower back sprain injury during the work accident. There was no bony lesion or neurological deficit documented. Subsequent MRI scan showed essentially early degenerative changes of the L5/S1 disc with mild bulging without nerve root compression. Disc bulging was recognised to be degenerative in origin, not caused by trauma. Therefore, Mr Khan essentially sustained sprain injury of soft tissues with aggravation of his pre-existing early degenerative L5/S1 disc.”

Causation : The back sprain injury Mr. Khan sustained was consistent with the mechanism of injury he described. There was no pre-existing lesion in his lower back except for the mild bulging and early degeneration L5/S1 disc...... Considering the above information and the MRI scan findings, Mr. Khan is expected to have mild residual back pain possibly with exacerbation from time to time upon heavy exertion or prolonged walking. Significant functioning impairment of his lower limb is unlikely. Lifting capacity will be reduced.”

The present employment status of the Plaintiff

1. The Plaintiff managed to find a job with Tree Limited as an operations assistant. His basic salary is $8500 per month. With overtime payments and bonuses after the first 6 months, he is able to make an average of $13,000 per month.

Pain, suffering and loss of amenities

1. The Plaintiff suffered pain on the day of the accident. He was admitted to the Tuen Mun Hospital from 26th to 30th August 2005. He is expected to have mild residual back pain. He is a young man and he must be losing some comfort in the rest of his life with the injury he suffered in his back.
2. I accept the Plaintiff’s submission that $200,000 should be awarded under this head, having regard to the case of *Lung Yui Man v Yee Hing Kee Plumbing Works Co. Ltd. & Another* HCPI923/1996.

Pre-trial Loss of Earnings

1. The Plaintiff’s sick leave is from 12.7.2005 to 19.5.2006. He managed to find a job with Tree Limited on 1st September 2006 and he is still working there.
2. His loss of earning for the daytime job is $99,790.75 ($7,000 x 13 20/31 x 1.05 - $500).
3. His loss of night-time job as a security guard is calculated as follows. Because of the injury, he took sick leave and he was therefore absent from night-time job and he was dismissed for that. He suffered a loss in this respect: the sum of $102,323.55 ($9,500 x 10 8/31 x 1.05). So the total pre-trial loss of earning is $202,114.3 ($99,790.75 + $102,323.55).

Loss of earning capacity

1. Due to the present back pain problem caused by the accident, the Plaintiff will suffer a certain extent of loss of earning capacity in the open market. I accept the Plaintiff’s submission that he should be awarded the sum of $245,700 ($13,000 x 18 x 1.05).

Special Damages

1. The Plaintiff incurred hospital expenses in the total sum of $2,200, but according to paragraph 12 of his witness statement, he was given $200 to see the doctor. So this sum of $200 has to be deducted from the sum of $2,200. So in this regard, I award $2,000 to the Plaintiff. The total award is $649,814.3 particularised as follows:

PSLA $200,000

Pre-trial loss of earning $202,114.3

Loss of earning capacity $245,700

Special damages $2,000

Total sum: $649,814.3

1. I order that the Defendant to pay, within 14 days from today, the sum of $649,814.3 to the Plaintiff with interests thereon; interests on the damages for pain, suffering and loss of amenities ($200,000) be calculated at 2% per annum from 12.7.2005 until today; interests on 204,114.3 (202,114.3 + $2,000) be calculated at 50% of judgment rate from 5th July 2007 until today. From 3rd May 2008 until satisfaction; interests on the sum of 649,814.3 be calculated at judgment rate.

(Discussion re costs)

Costs

1. Subject to the costs order made by Master Ko on 17th January 2008, I order that the Defendant do pay costs of this action to the Plaintiff, to be taxed if not agreed; the Plaintiff’s own costs be taxed in accordance with Legal Aid Regulations.

# (Chow)

# District Court Judge

Mr R M Clement, of Messrs Massie & Clement, for the Plaintiff

Defendant, in person, absent