###### DCPI 1426/2014

### IN THE DISTRICT COURT OF THE

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 1426 OF 2014

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##### BETWEEN

YUEN WAI YIP GAVIN 1st Plaintiff

CHONG SIK WAN 2nd Plaintiff

and

LEUNG CHI SHING Defendant

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Before : His Honour Judge Alex Lee

Date of Hearing : 8 July 2015

Date of Handing Down Judgment : 17 July 2015

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JUDGMENT

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*Introduction*

1. This is about the assessment of damages for the 2nd plaintiff relating to the injuries she suffered as a result of a traffic accident occurred on 3 July 2011. On 8 July 2015, I awarded a total of $65,000 to her which consisting of general damages ($50,000) and special damages ($15,000) together with interests and costs. I said that reasons would be handed down in due course. This I now do.

*Issues*

1. The 2nd plaintiff was the pillion passenger of a motorcycle driven by the 1st plaintiff. The defendant who caused the accident was the driver of a private car. The facts of the traffic accident are no longer important as the defendant has admitted liability with an interlocutory judgment entered on 16 July 2014. As regards the claim of the 1st plaintiff against the defendant, it was settled on the day before the assessment.
2. Moreover, the 2nd plaintiff and the defendant have agreed on the amount of special damages at $15,000. Therefore, the only issue before the court was the amount of general damages under the head of pain, suffering and loss of amenity (PSLA). The 2nd plaintiff asked for $80,000 but the defendant said it should be no more than $10,000.

*The evidence*

1. The 2nd plaintiff relied on (i) her witness statement which was clarified and supplemented by her oral evidence in court; (ii) the medical notes of the Accident and Emergence Department of Queen Elizabeth Hospital (“the Medical Notes”) concerning her condition immediately after the accident; and (iii) the Physiotherapist Report (“the Report”) prepared by her private treating physiotherapist. The defendant called and adduced no evidence for the assessment.
2. According to the Medical Notes, the 2nd plaintiff was reported to have felt pain over her right hip, left knee and left elbow. No bone fracture was shown after X-ray examination. The provisional diagnosis was contusion to right hip, left knee and left elbow. There was also left knee abrasion[[1]](#footnote-1). She was given analgesics and was discharged on the same day.
3. The 2nd plaintiff was aged 38 at the time of the accident and is now aged 42. According to her, on the day following the accident she still felt pain over the injured sites. Therefore, she consulted a private doctor, Dr Sammy Lee, and received following up consultation from the latter regularly up to 28 August 2011[[2]](#footnote-2). Dr Lee referred the 2nd plaintiff to receive physiotherapy[[3]](#footnote-3) and therefore she received a total of 15 sessions from Victor & Partners at their branches at Causeway and Admiralty from 4 July 2011 and 27 October 2011[[4]](#footnote-4). Although the 2nd plaintiff said in her statement that she had been given sick leave for two months from 4 July 2011 to 4 September 2011, she clarified in court that she had in fact returned to work a week after the accident, as her employer would not allow her to have such a long sick leave. She said, however, that she still asked for sick leave certificates from Dr Lee after she had returned to work in order to show her employer that she needed to attend physiotherapy and on occasions had to leave early for that purpose. Although the 2nd plaintiff has changed jobs since the accident, she has always been working as an account clerk.
4. The 2nd plaintiff said that before the accident she was in good health. As a result of the accident, she suffered acute intermittent and deep stretching pain over neck and shoulder area, aggravated by forward or side bending of neck; acute intermittent ache over both elbows, aggravated by palpation; acute intermittent ache over both hips, aggravated by walking; acute intermittent pain over right ankle, aggravated by walking, going upstairs and downstairs; and acute intermittent and deep pain over left ankle, aggravated by walking, going upstairs and downstairs. At present, she suffers residual pain on her neck and shoulder region. She will suffer dull ache and stiffness in her neck after keeping the same neck posture for over 30 minutes and she will need to take a rest. She said her neck condition has adversely affected her job performance as she needs to take more frequent rests. She said that she also suffers ache and discomfort over her right hip after prolonged walking say, for over an hour.
5. When she was cross-examined as to the absence of any reference to neck pain or injury in the Medical Notes or the referral letter by Dr Lee[[5]](#footnote-5), she said that she started to experience neck pain on the day of the accident after she had returned home from hospital. Before that, she did not have any neck pain. When asked about the comments in the report that her present neck pain could be related to her poor sitting posture at work, she answered that she has done her best to keep a proper posture but she will still suffer neck pain after prolonged work and that she has followed the physiotherapist’s recommendation to do neck stretches regularly. She said that she has not consulted Dr Lee now relating to the injuries and she no longer requires physiotherapy.
6. According to the Report, as at 19 October 2011 the 2nd plaintiff’s pain over neck and scapular area was said to have much decreased and that her pain over elbows, hips and ankles have subsided. An objective examination of the 2nd plaintiff showed that there was residual mild tenderness over bilateral cervical muscles, but the tenderness over hips, elbows and ankles had subsided. It was said that overall the 2nd plaintiff showed well progress and complete recovery over bilateral elbows, hips and ankles, without any pain during either walking or stairs walking. On the other hand, the neck pain deceased with improvements shown in both subjective and objective examinations and it was mainly provoked after prolonged computer work. This could be related to poor sitting posture. She was advised to do neck stretches regularly and was given postural education.

*Consideration*

1. Mr Ng for the defence submitted 3 points:-
2. the injuries sustained by the 2nd plaintiff were minor and she has fully recovered. As soon as PSLA is concerned, nothing was said in her witness statement as to show how her daily life and hobbies, if any, have been affected by the injuries;
3. there is no medical evidence to show that the neck injury was caused by the accident; and
4. even assuming that the neck injury was caused by the accident, it is likely that it had completely healed and that her present neck problem is, as stated in the Report, due to poor posture rather the accident.
5. As regards (i), based on the evidence before me, I accept and I find that the injuries of the 2nd plaintiff cannot be said to be serious. Moreover, she has fully recovered from some of those. In this regard, I note that she has no present complaints about her elbows and ankles. As far as general damages (PSLA) are concerned, I note that she had taken 7 days sick leave before returning to work. Moreover, the neck pain apart, four years after the accident she is still complaining about hip pain and discomfort after prolonged walking. It is reasonable to infer that she must have suffered some inconvenience in her daily activities. Nevertheless, as she said, she no longer requires any medical attention or treatment.
6. As regards (ii), Mr Ng does not deny that the 2nd plaintiff suffered neck pain. His submission is that there is no evidence to show that her neck problem was caused by the accident. With respect, I am unable this submission. The 2nd plaintiff said that she had no neck problem before the accident and there is no reason for me to doubt this. I have not ignored the fact that the 2nd plaintiff is no medical expert and her evidence as to the cause of her neck pain cannot be given too much weight. However, given the proximity of time and in the absence of any evidence to the contrary, the inherent probability is that the neck pain which she began to experience shortly after the accident was related to and caused by the accident. The fact that the Medical Notes contains no reference to any neck injury or pain is, in my view, neutral. It is clearly stated in the Medical Notes that the diagnosis by the Accident and Emergency Department was only “initial” and “provisional”. It is also not uncommon that there may be injuries sustained in an accident which are not apparent or noticed immediately. On the other hand, the Report shows that as early as the day after the accident there was a record of tenderness over the 2nd plaintiff’s neck and scapular region when the 2nd plaintiff was subject to subjective and objective examinations.
7. As regards (iii), the Report says that the residual mild tenderness over the 2nd plaintiff’s bilateral cervical muscles, which was mainly provoked after prolonged computer work as required by her job, “could be related to [her] poor sitting posture at work”. By that, I do not understand the physiotherapist to mean that the accident was not a cause to the neck pain altogether. I understand the physiotherapist to mean that the 2nd plaintiff’s poor sitting posture could be a cause, though not necessarily the sole cause of the residual neck pain.

*Findings*

1. Based on all of the above, I am satisfied and I find that the 2nd plaintiff has proved on balance of probabilities that:-
2. the injuries which the 2nd plaintiff suffered cannot be said to be serious;
3. she was granted 2 months’ sick leave but she chose to return to her work after having rested for 7 days;
4. after 15 sessions of physiotherapy, the condition of the 2nd plaintiff had improved substantially;
5. the traffic accident was a contributing cause to her present neck pain; and
6. the pain (including neck and hip pain) which the 2nd plaintiff is still suffering is not likely to be serious, at least not serious enough to require medical attention or treatment.

*Assessment*

*General damages*

1. Ms Chu for the 2nd plaintiff referred me to the following cases on assessment of damages:-

*Chan Mei Ling v Wong Wing Kwong[[6]](#footnote-6)*

*Lo Yim Fong v Ho Po Yin & Anor[[7]](#footnote-7)*

*So Cho Yin v MTR Corporation Ltd[[8]](#footnote-8)*

1. Mr Ng for the defendant referred me to the following cases:-

*Wong Shing Kam & Anor v Leung Ming Kwong*[[9]](#footnote-9)

*Cheung Yu Tin Alvin v Ho Hon Ka*[[10]](#footnote-10)

1. I recognise that it is in the interest of justice and the public interest that there should be some consistency in the court’s approach regarding assessment of damages, so that similar amounts should be awarded for similar cases. On the other hand, I remind myself that previous decisions on assessment of damages are of reference value only and they are not supposed to the strait-jackets to be followed regardless of the facts of the case before court. Also, when considering older cases, the court should take into account the effect of inflation over the years and any other societal changes which may be relevant.
2. The 2nd plaintiff has not produced any expert medical report and there are no photographs showing her injuries. Having considered the facts of the present case and the case authorities cited by the parties, especially *Chan Mei Ling v Wong Wing Kwong* and the cases quoted at paragraph 37 of that judgment[[11]](#footnote-11) (some of which already referred to by the parties), doing the best I can I am of the view that the general damages for the 2nd plaintiff for PSLA should be $50,000.

*Special damages*

1. As aforesaid, the amount of special damages is agreed at $15,000.

*Interests*

1. The general damages shall carry interest at the rate of 2% per annum from 27 June 2014 (date of the writ) to 8 July 2015 (when the award is made) and thereafter at the judgment rate until full payment.
2. The special damages shall carry interest at the rate of 4% per annum from 3 July 2011 (date of the accident) to 8 July 2015 and thereafter at the judgment rate until full payment.

*Costs*

1. At my request, Ms Chu prepared a statement for the purpose of summary assessment of the 2nd plaintiff’s costs. Ms Chu claimed a total of 11 hours and 45 minutes for her work at the hourly rate of $2,600 which is the “standard” rate of a solicitor of 10 years professional standing or above. I note that Ms Chu has over 20 years of post-admission experience and she was the only fee-earner mentioned in the statement. Besides legal costs, there were also claims for filing fees of $3,000 and reimbursement of $70 for the Medical Notes.
2. Mr Ng had no qualms about the total time spent. However, he queried that the 2nd plaintiff’s case could have been handled by someone with less experience than Ms Chu.
3. I have regard to the general principles stated at paragraph 62/App/22 of Hong Kong Civil Procedure 2015. I see no question why the 2nd plaintiff should not have an experienced solicitor of at least 10 years’ professional standing experience to handle her case. Moreover, Ms Chu was not claiming any mechanical tasks which could be delegated to a more junior colleague. There being no dispute about the total time spent, I allowed the whole of $33,620 and this is the amount which the defendant has to pay to the 2nd plaintiff as her costs.

( Alex Lee )

District Judge

Ms Anne Chu of So, Lung & Associates, for the 2nd plaintiff

Mr Michael C W Ng of Liu, Chan & Lam, for the defendant

1. See the Medical Notes at pp 143-147. [↑](#footnote-ref-1)
2. See the receipts by the doctor at pp 166 -170. [↑](#footnote-ref-2)
3. See the referral letter at p 148 [↑](#footnote-ref-3)
4. See the receipts by the physiotherapist at pp161-165. Although the Report says that the session on 19 October 2011 was the “7th session”, it seems that the physiotherapist had omitted those sessions which the 2nd plaintiff had received at the Admiralty branch. The 2nd plaintiff also gave evidence in court saying that her last session of physiotherapy was on 27 October 2011 as shown by the relevant receipt, not on 19 October 2011 as stated in the Report. The 2nd plaintiff did not know why the physiotherapist had got those areas wrong. However, no point was taken by the defence about these apparent discrepancies. [↑](#footnote-ref-4)
5. The referral letter simply stated that the 2nd plaintiff had “multiple injuries”. [↑](#footnote-ref-5)
6. DCPI 675/2012 [↑](#footnote-ref-6)
7. DCPI 654/2010 [↑](#footnote-ref-7)
8. DCPI 1069/2006 [↑](#footnote-ref-8)
9. DCPI 171/2005 [↑](#footnote-ref-9)
10. DCPI 853/2004 [↑](#footnote-ref-10)
11. Namely, *Cheung Yu Tin Alvin v Ho Hon Ka* (DCPI 853/2004); *Wong Shing Kam & Anor v Leung* *Ming Kwong* (DCPI 171/2005); *Yip Tung Fung & Ors v Pun Chi Leung* (DCPI 2149/2006); *Mohammed Ashaq v Royal Honour Industrial Ltd* (DCPI 586/2007); and *Jackson Ivan O’Neil Amrol, a minor, claiming by his mother and next friend Melissa Lippencott Amrol v Marisol Rivera* [2008] 4 HLRD 110. [↑](#footnote-ref-11)