#### DCPI 1436/2016

[2018] HKDC 985

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 1436 OF 2016

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##### BETWEEN

TANG YUET YI, a minor by TIU KWAI KING,

her lawful and natural mother and next friend Plaintiff

### and

LEUNG MAN CHOW Defendant

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Before: His Honour Judge MK Liu in Court

Date of Hearing: 13 August 2018

Date of Judgment: 16 August 2018

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JUDGMENT

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*Introduction*

1. In these proceedings, the plaintiff sues the defendant for damages for injuries suffered by the plaintiff as a result of an incident (“the incident”) occurred at about 7:25 pm on 9 October 2015 at Fan Leng Lau, Fan Leng Lau Road, Fanling, New Territories, Hong Kong (“the scene”). The plaintiff was bitten by an Atika Dog (“the Dog”) at the scene at that time.
2. The defendant was and is a resident of G/F, No 22B, Lane No 2, Fan Leng Lau, Fanling, New Territories, Hong Kong. At the time of the incident, the defendant was the owner and keeper of the Dog, which was around 1 meter in length. The Dog was kept at No 23, Fan Leng Lau, Fanling, New Territories, Hong Kong.
3. No notice of intention to defend has ever been filed. Interlocutory judgment on liability was entered against the defendant on 18 October 2016.
4. This is the assessment of damages for the injuries sustained by the plaintiff as a result of the incident.

*The facts*

1. Both the plaintiff and her mother have given evidence in this trial. Their evidence is not challenged by the defendant. I am satisfied that both the plaintiff and her mother are honest and reliable witnesses. I accept their evidence.
2. The plaintiff has shown the resultant scarring on her face and her body while she is giving evidence. Both this court and the defendant have clearly seen those scars.
3. The plaintiff has also produced a medical report prepared by Dr Chow Sik Kuen (“Dr Chow”) dated 27 March 2017. Pursuant to the order made by the court on 25 August 2017, Dr Chow’s report is deemed to be evidence in this trial.
4. Based upon the evidence given by the plaintiff and her mother, I make the following findings of facts:-
5. The plaintiff was born on 23 March 2006. She was 9 years old and a primary 4 student at the time of the incident. She is now 12.
6. At the time of the incident, the Dog was wandering at the scene without any leash or supervision. The plaintiff was walking home with her elder sister and passed the scene. Suddenly, the Dog started chasing the plaintiff and repeatedly attacked the plaintiff. As a result of the attack, the plaintiff suffered physical injuries and psychological trauma, including being afraid of all kinds of dog and other animals including cats and birds.
7. Based upon the documents produced by the plaintiff, I find that as a result of the incident, the plaintiff sustained the injuries and underwent the treatments mentioned in paragraphs 10 to 14 below.
8. After the incident, the plaintiff was sent to the Accident & Emergency Department of North District Hospital (“AED of NDH”). Radiographs were taken. No fracture was found. She was then sent to Department of Surgery of the Prince of Wales Hospital (“PWH”) for further treatment.
9. According to the medical report prepared by Dr Chan Tat Chun Howard of AED of PWH dated 3 December 2015, physical examination revealed that the plaintiff’s airway was patent. There were head laceration at right parietal region, left sided facial laceration, no bony tenderness, and good range of movement of the neck. Her chest wall showed deep laceration with exposure of soft tissue, but there was good air entry into her chest. There were left shoulder bruising, tender soft tissue, but her left elbow and left wrist were normal. The diagnosis was serious dog attack with multiple soft tissue injury. She was granted 20 days of sick leave from 10 October 2015 to 29 October 2015.
10. It is stated in the medical report prepared by Dr K H Lee of Department of Surgery of PWH dated 31 December 2015 that the plaintiff had multiple dog bite wounds over: her left face (measuring 2 x 1 cm in size), left chest wall (measuring 6 x 2 cm in size down to muscle level), left posterior shoulder (measuring 4 x 2 cm in size down to deltoid muscle) and right occiput scalp (measuring 3 x 0.5 cm in size down to subcutaneous layer). Imaging included chest, shoulder, skull radiographs and computed tomography of brain revealed no associated fractures or cerebral injury. Emergency operation for wounds toileting and suturing was performed on 10 October 2015. Postoperative recovery was smooth with daily wounds dressing and packing performed. A course of antibiotics and rabies vaccinations were completed during her hospital stay. Ophthalmologist was consulted and examination revealed no scleral or conjuntival injury. Clinical psychologist was consulted and assessment showed no significant acute stress reaction. She was fit for discharge on 17 October 2015 with continuation of wounds dressing at general outpatient clinic. She was last seen on 9 December 2015 with all wounds healed well.
11. It is recorded in the medical report prepared by Dr Ko Wai Shan dated 8 February 2017 that the scars of the plaintiff were found hypertrophic. She was put on pressure therapy with pressure garment and cica care. The hypertrophic scars responded fairly with treatment. Upon her latest return for assessment, most scars were flat and maturing. There was no functioning impairment by the scar. She was advised to continue with silicone and massage till the scars were mature.
12. According to the occupational therapy report dated 3 August 2017, the plaintiff was provided with pressure jacket with padding and mepliform sheet. Final assessment of the Plaintiff’s condition showed that her hypertrophic scars over left arm and chest areas were improved that closely resembled the colour of the rest of the body, normal capillary refill rate, flat, without pain nor itchiness with remaining minimal resistance upon manual pressure only. The plaintiff was recommended to apply mepliform on scar area by self at the time of discharge.
13. On 27 February 2017, the plaintiff was examined by Dr Chow. Dr Chow’s report was issued on 27 March 2017, in which Dr Chow provided the following opinion:-
14. The plaintiff has obvious scars and deformities on various parts of her body due to the incident and the subsequent surgical procedures.
15. The plaintiff does not appear to have any pre-existing condition of injuries.
16. Her injuries and scars were solely caused by the incident and the subsequent surgical procedures.
17. Her current medical condition and her symptoms/complaints are all attributable to the incident and the subsequent surgical procedures.
18. The sick leave granted is appropriate.
19. The plaintiff does not need further medical examinations but when she grows up she will be more concerned with her cosmetic appearance, fashion and find that she cannot wear certain types of clothes, and may have psychological disturbance.
20. The scars cannot be removed. The plaintiff would have permanent scars on the face, shoulder and left clavicular regions. She would have restrictions in the choice of her clothes in order to cover up the scars. She might also be prejudiced when she seeks employment; and
21. The plaintiff has about 3% cosmetic disability and an associated 10% loss of earning capacity.
22. In view of the plaintiff’s injuries, Dr Chow makes the following recommendations in his report:-
23. The raised hypertrophic scars can be improved with intralesional steroid injections that the plaintiff needs about 10 injections at intervals of four weeks to three months.
24. The plaintiff may benefit from topical application of silicone gel.
25. The hyperpigmented scars can be improved with laser. The plaintiff needs about fifteen sessions of laser treatment.
26. The depressed scars can be treated with laser. The plaintiff needs treatment at two to three months’ interval for about 15 sessions.
27. The hairiness scar on the scalp can be improved by excising the scar under local anesthesia when she reaches skeletal maturity at the age of 18.
28. The plaintiff needs skin care products to alleviate itchiness of the scars for about two years.
29. I accept Dr Chow’s opinion, save and except one matter. I am unable to agree with Dr Chow that by reason of the scars on the plaintiff’s body, the plaintiff would suffer prejudice when she seeks employment in future. The plaintiff was only 9 years old at the time of the incident, and by now is only 12. It is not known she would continue her studies up to which level. It is also not known her talents and interests are in which areas. With all these unknowns, it would not be able to say whether the incident has indeed had any adverse impact on her future choices of careers. In my view, on the materials now available, it would be difficult to conclude that the plaintiff has suffered any loss of earning capacity as a result of the injuries sustained in the incident.

*Pain, suffering and loss of amenities (“PSLA”)*

1. Ms Percy Yue, counsel for the plaintiff, submits that the appropriate award under this head should be HK$300,000.00.
2. Ms Yue has referred me to various authorities. I am of the view that the scenarios in the following cases are similar to the situation in this case:-
3. In *Chum Hok Ching & Another v Chung Lai Ching*[[1]](#footnote-1), the 2nd plaintiff sustained injuries in a traffic accident. As a result, she had post-concussion syndrome; a bald spot at the left posterior scalp measured 20 x 15 mm, smooth flat and the hair was void; several abrasion scars over the dorsum and proximal wrist of the left hand; a linear irregular scar at the radial surface of the proximal wrist of her left hand measured 20 x 3 mm; 2 round spots over the mid and ring fingers of the knuckle area of her left hand measured 10 x 10 mm and 7 x 7 mm respectively which was slightly raised and firm; pain, numbness and weakness over her left hand; a round scar over the wrist of the right hand measured 8 x 10 mm; a round scar over the knuckle area of the right finger of her right hand measured 10 mm in diameter; pain and numbness over her right hand; loss of the fingernail of the left middle finger; and pain and numbness over the neck. The scar on her scalp did not need treatment and the scars on her hands could be improved by plastic surgery in the form of excision revision. The court accepted that though the 2nd plaintiff was not suffering from permanent cosmetic disability for the abrasion over her face, there were pain and suffering sustained by her as a result of the abrasions over her face. Having considered the authorities and medical evidence, the 2nd plaintiff was awarded a sum of HK$320,000.00 for PSLA.
4. In *Lo Ka Yue v Leung Chun Kit & Another*[[2]](#footnote-2), the plaintiff was bitten by a dog and was found to have a 2 cm long laceration lateral to the left eye and four 1 cm lacerations on the left cheek. Her wounds were irrigated and cleansed with anti-septic solution and suturing was done. The stitches were removed 5 days later as outpatient. Her scars were found to be pinkish in colour and were not elevated. The medical expert observed that at a distance of 3 feet, there were 3 visible scars, one on the left temporal region, hypopigmented and slightly depressed, measuring 2 cm; one below the lateral part of the left eyebrow and was hypopigmented, measuring 0.8 cm; and one on the left upper cheek with no colour change but noticeable depression, measuring 0.4 cm x 0.3 cm. On closer examination at a distance of 1 foot, another scar was found below the outer edge of the left eye, measuring 0.5 cm and was slightly hypopigmented without depression. At a distance of 8 feet, the medical expert observed the 2 eyelid folds were obviously different on the 2 sides. The court considered that the experience of being bitten by a dog in the face would without doubt have a profound effect on the plaintiff’s psychology if not social life. If she were able to establish liability against the defendants, she would be awarded a sum of HK$300,000.00 under PSLA.
5. In *Yip Kwan Cheung & Another v Chim Hong Wing[[3]](#footnote-3)*, the 1st plaintiff was cut on the forehead by broken glass. The 3-cm wound was sutured with 5 stitches and left a scar. He was also struck on the leg by debris and suffered bruising. The 1st plaintiff developed post-traumatic stress disorder that was manifested in the form of nightmares, flashbacks, fear of road traffic, irritability, social anxiety, poor sleep, absent-mindedness and withdrawal. The court awarded him a sum of HK$250,000.00 for PSLA.
6. In my view, Ms Yue’s position is well supported by the authorities. I accept Ms Yue’s submissions and award the plaintiff HK$300,000.00 under this head. There should be pre-judgment interest on this award at 2% per annum from the date of the writ to the date of this judgment.

*Loss of earning capacity*

1. Ms Yue submits that there should be HK$80,000.00 under this head. Ms Yue refers me to *Chiu Pan Mong v Tam Tak Kong*[[4]](#footnote-4), *Ho Tze Ho v Chui Chung Wah & Another*[[5]](#footnote-5), *Lee Nga Lai v Kong Man Pui and Others*[[6]](#footnote-6), and *Lam Chor Mun v Ho Tin Wah & Another*[[7]](#footnote-7). In each of these cases, notwithstanding that the claimant was a young person, the court still awarded a sum for loss of earning capacity. Relying on these cases, Ms Yue invites me to make an award under this head, notwithstanding my view as set out in paragraph 17 above.
2. Ms Yue has fairly drawn my attention to an authority which is not in her favour, *Man Kwok Ngai v Fong Hok Wong & Another[[8]](#footnote-8)*. In that case, the claimant was a 7 years old boy. He was injured in an incident in which a large quantity of hot soup was spilt over him. Seagroatt J ruled that the claim for loss of earning capacity was too speculative and refused to award any sum under this head.
3. Having considered all these cases, with respect to Ms Yue, I prefer the view expressed by Seagroatt J in *Man Kwok Ngai*. For the reasons set out in paragraph 17 above, I am unable to give the plaintiff any award under this head.

*Future medical costs*

1. Based on Dr Chow’s recommendation in his report, the plaintiff claims future costs of medication and medical consultations of a semi-private patient (second class) to be treated in private hospital/clinic with the following breakdown:-
2. Laser for all pigmented scars:

HK$5,000.00 x 15 HK$75,000.00

1. Steroid injections for hypertrophic scars:

HK$3,000.00 x 10 HK$30,000.00

1. Silicone gel HK$2,000.00
2. Laser treatment for depressed scars:

HK$5,000.00 x 15 HK$75,000.00

1. Revision surgery for the scalp
   1. Surgeon: HK$30,000.00
   2. Hospital Charges: HK$9,000.00
2. Skin care products for two years:

HK$200.00 x 24 HK$4,800.00

1. Follow-up Consultations:

HK$1,000.00 x 45 HK$45,000.00

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Total: HK$270,800.00

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1. In my view, the claim under this head is justified. I would award HK$270,800.00 to the plaintiff under this head.

*Pre-trial loss of special damages*

1. Ms Yue submits that the plaintiff claim under this head is as follows:-
2. costs of a new pair of glasses HK$750.00
3. scar treatment products HK$5,347.70
4. travelling expenses HK$1,100.00
5. tonic food HK$5,000.00

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Total: HK$12,197.70

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1. Ms Yue submits that the first two items are supported by the relevant receipts, but there is no receipt for the travelling expenses and the tonic food expenses. Ms Yue submits that the calculation of the travelling expenses is based upon the number of visits to hospitals and clinics, which are documented. In respect of tonic food, Ms Yue relies upon *Yu Ki v Chin Kit Lam & Another*[[9]](#footnote-9) and *Tsang Hing Yuen v Nishimatsu Kumagai Joint Venture (a firm)*[[10]](#footnote-10) and submits that the court may award a reasonable sum for food even no documentary proof has been produced. I accept these submissions.
2. I agree with Ms Yue and would award HK$12,197.70 to the plaintiff under this head. There be pre-judgment interest on this award at half of the judgment rate from the date of the incident to the date of this judgment.

*Disposition*

1. In my judgment, the plaintiff succeeds and is entitled to the sums and the pre-judgment interests as set out in the above. I award those sums and interest to the plaintiff. For avoidance of doubt, all the awarded sums carry post-judgment interest at the judgment rate immediately after the date of this judgment until full payment of the judgment sums.
2. There be a costs order nisi that costs of this action, including all costs reserved (if any), are to be paid by the defendant to the plaintiff, to be taxed if not agreed. In respect of the trial, there be a certificate for counsel. The plaintiff’s own costs are to be taxed in accordance with the Legal Aid Regulations.
3. I further direct that upon the defendant’s request (if any), this judgment be interpreted to the defendant by a court interpreter at a mutually convenient time in the District Court.
4. I thank the parties for the assistance provided to this court. In particular, I thank Ms Yue for her fair and helpful submissions.

( MK Liu )

District Judge

Ms Percy Yue, instructed by B Mak & Co, assigned by the Director of Legal Aid, for the plaintiff

The defendant appeared in person

1. DCPI 887/2011, 10 January 2014 [↑](#footnote-ref-1)
2. DCPI 1562/2012, 6 July 2015 [↑](#footnote-ref-2)
3. DCPI 475/2006, 26 February 2007 [↑](#footnote-ref-3)
4. DCPI 39/2001, 7 January 2002 [↑](#footnote-ref-4)
5. DCPI 994/2004, 8 June 2005 [↑](#footnote-ref-5)
6. DCPI 268/2004, 14 July 2006 [↑](#footnote-ref-6)
7. DCPI 1093/2005, 14 March 2007 [↑](#footnote-ref-7)
8. HCPI 1033/2001, 26 March 2003 [↑](#footnote-ref-8)
9. [1981] HKLR 418 [↑](#footnote-ref-9)
10. HCPI 906/1998, 17 March 2000 [↑](#footnote-ref-10)