# DCPI 1453/2005

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 1453 OF 2005

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BETWEEN

## LEE HO CHUEN Plaintiff

### and

LAI WAI KEI Defendant

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Coram : Her Honour Judge C.B. Chan in Court

Dates of Trial : 23rd and 26th June 2006

Date of Handing down Judgment : 1st September 2006

**JUDGMENT**

1. This is an action for personal injuries suffered by the Plaintiff as a result of a traffic accident on 12 February 2003.
2. The Plaintiff was the driver of a taxi with registration No. KA 7465 (“the Taxi”) and the Defendant was the owner and driver of a private vehicle with registration no. JG 8751 (“the Private Car”).
3. The traffic accident occurred at the intersection of Tonkin Street and Lai Chi Kok Road. The Plaintiff’s case is that at about 10:10 p.m. on 12 February 2003, the Plaintiff was driving the Taxi with passenger on board along the 2nd lane of the north bound of Lai Chi Kok Road heading towards Mei Foo. At that moment, the Defendant was driving the Private Car along the 2nd lane of the westbound of Tonkin Street heading towards Tun Chau Street. At the intersection (“the Intersection”), the front of the Private Car collided into the offside rear section of the Taxi. As a result, the Taxi went into a spin when its rear part hit against the iron railings before it mounted onto the western pavement of Lai Chi Kok Road just north of the Intersection and came to a halt. The Private Car turned upside down just in front of the central light signals of Tonkin Road at the western part of the Intersection.

The Plaintiff’s Case

1. According to the Plaintiff, as he approached the intersection of Lai Chi Kok and Tonkin Street, the traffic light was green, so he proceeded into the Junction at about 40 kmph. After he travelled about a car’s length, he suddenly saw the Private car on his right. He immediately applied the brakes but he still could not avoid the collision.

The Defendant’s Defence

1. The Defendant claimed to have, at the time of collision, a green light in his favour. In effect, it is for the Court to determine who jumped the red light. However, apart from the Plaintiff and the Defendant, there was no eye witness to the accident.

The Issues

1. The dispute on liability is a simple one. From the agreed evidence the set of traffic lights at the junction was working properly at 22:10 on 12 February 2003 and the design was such that the two traffic lights controlling the North bound traffic on Lai Chi Kok Road (for the Plaintiff’s taxi travelling in that direction) and the West bound traffic on Tonkin Street (the Defendant’s private car travelling in that direction) must show one green and one red at the time. The question is which traffic light was red. It is clear that both of these traffic lights could not be green at the same time.
2. On the issue of liability, it is simply a question of credibility of which driver’s evidence the Court is going to accept. As Miss Wong Wing Sei (PW1) an Engineer from the Transport Department has meticulously explained, one of the drivers must have crossed against a red light at the time of the accident.
3. Apart from liability, there is an issue related to quantum.
4. Hence there are just two issues:

(1) Liability.

(2) Quantum.

The 1st Issue

1. The Plaintiff called Ms. Wong Wing Sei a traffic engineer of the Transport Department to give evidence. She referred to a Sheet prepared by the Transport Department at page 237 of the Bundle of Documents (“BD”). This is a record kept by the Transport Department of the operation of the traffic lights at the Intersection. The Sheet shows the operation of the traffic lights in 4 phases at 22:10 on 12 February 2003. Phase B refers to the phase when the lights controlling the flow of northbound traffic along Lai Chi Kok Road is green. At that point the lights for traffic going north turning west and east into Tonkin Street from northbound lanes of Lai Chi Kok were green. It showed that at that point the traffic light that controlled traffic turning south into Lai Chi Kok Road from the westbound lane of Tonkin Street was also green. Whilst the light signal controlling traffic going north along Lai Chi Kok Road was green, the light signal controlling traffic going west along Tonkin Street at the Intersection was red.
2. The time span for Phase B should be 34 seconds. In Phase B, the green light signal controlling northbound traffic of Lai Chi Kok Road would show green for 35 seconds. This is because the same green light would still show green for 2 seconds as it enters into Phase C. If the Plaintiff’s evidence were true, he would have seen the green light controlling northbound traffic of Lai Chi Kok Road at the Intersection during Phase B at this time.
3. Phase C is the phase when the light signals controlling westbound traffic at Tonkin Street showed green for 8 seconds for westbound traffic and for traffic turning south and north into Lai Chi Kok Road from westbound lanes of Tonkin Street at the Intersection. Within this phase, the signals controlling traffic to turn south and north into Lai Chi Kok Road from westbound lanes of Tonkin Street at the Intersection also shows green at the same time. If the Defendant’s evidence were correct, that he drove his vehicle into the Intersection to go west along Tonkin Street when the light signal controlling the flow of traffic for westbound traffic in Tonkin Street showed green, the traffic lights should be at Phase C. The entire time length for Phase C should be 20 seconds.
4. It is clear therefore that if the Plaintiff’s evidence were true, the traffic lights controlling traffic at the Intersection should be in Phase B. If the Defendant were correct, the traffic lights controlling traffic at the Intersection should be in Phase C. If the Plaintiff’s evidence is correct, the Defendant’s version of facts could not be true. If the Defendant’s evidence were true, the Plaintiff’s evidence could not be true.
5. It is not in dispute that in Phase B, the light signal controlling westbound traffic of Tonkin Street at the end of the Intersection in the middle of Tonkin Street namely the traffic lights no. 6 as shown in the diagram showing Phase B at the bottom left of the Sheet, has 4 lights. These are red, yellow, green and a green arrow for traffic turning south from westbound land of Tonkin Street into southbound lane of Lai Chi Kok Road. The left arrow light would show green at the time span in Phase B when the light signal controlling northbound traffic along Lai Chi Kok Road would show green. The Plaintiff’s Counsel submits that the Defendant could have seen the left arrow light showing green when he looked at the traffic lights no. 6 during Phase B and mistakenly thought that the light signal controlling westbound traffic showed green. He drove through the Intersection west along Tonkin Street in Phase B and collided into the Plaintiff’s vehicle, the Taxi.

The Plaintiff’s Evidence

1. The Plaintiff stated that he was driving an automatic gear vehicle along the second left lane of Lai Chi Kok Road towards Mei Foo in the northbound direction at a speed of about 40 km/hr when he got to the Intersection. When he arrived at a distance of about 50 meters before the white stop line at the Intersection, he saw that the traffic light governing northbound traffic along Lai Chi Kok Road was green. So he maintained the speed of about 40 km/hr to drive ahead. When the Taxi arrived at the white stop line, the traffic light controlling the flow of northbound traffic was still green so he continued to drive ahead.
2. When the Taxi crossed the white stop line and went into the Intersection for a distance of about one private car’s length, suddenly the Private Car driven along Tonkin Street westbound traffic drove into the Intersection and after it was about one private car space from the Taxi, the Plaintiff suddenly stopped the Taxi abruptly and swerved to the left to avoid collision by the Private Car. Unfortunately, the Private Car was too close and the front of the Private Car collided into the right rear portion of the Taxi. After the collision the Taxi was caused to turn from left to right for about 360 degrees from the force of the collision. The rear portion of the Taxi rushed towards the pavement on the left of the eastbound lane of Tonkin Street and crashed the iron railing on the side of the road. The Taxi mounted the pavement before coming to a halt.
3. He stated that the Defendant could not have paid attention to the traffic lights on the road at the time and he also did not notice that the Taxi had passed the beyond the Intersection when the Defendant crossed into the Intersection along the westbound lane of Tonkin Street. He reiterated that at the time when he drove the Taxi into the Intersection, the traffic lights governing the northbound traffic along Lai Chi Kok Road was green. There was no possibility for the light controlling westbound traffic along Tonkin Street to show green at the same time.
4. The Police Sketch at page 88s of the Bundle showed the Intersection and the lights controlling the traffic at the Intersection and where the location where two vehicles ended after the collision.

The Defendant’s Evidence

1. The Defendant has had 7 years driving experience. He has never been involved in any traffic accident. He states that he has never been prosecuted by the Police in relation to any traffic accident.
2. He states that on the day of the accident, at about 10:10 p.m. he was driving the Private Car, the handbrake, footbrake and engine of which were in good working order, and intended to travel from Shamshuipo to Jordan. Before the Accident, he did not consume any alcohol or take any drug.
3. Before the accident, the weather was fine, road was dry and traffic was smooth. He was travelling along the 2nd lane counting from the left of Tonkin Street (westbound) in the direction of Tung Chau Street at a speed of about 45 km in automatic D gear. When he reached a location about 6 ordinary private car lengths from the white stop line at the Lai Chi Kok Road junction, he saw that a private vehicle in front with unknown registration mark with its left indicator light turned on. It was travelling along the 2nd lane at a very slow speed. Therefore, he slowed down slightly, shifted into the 3rd lane, overtook this private car and then returned to the 2nd lane.
4. At this moment, his car was just about 3 ordinary private car lengths from the white stop line. He also saw that the set of traffic lights governing vehicles travelling in the direction in which he was travelling was showing green light, so he continued travelling forward and intended to drive straight across the Lai Chi Kok Road intersection. On his right side was the southbound carriageway of Lai Chi Kok Road. When he was travelling on the southbound carriageway of Lai Chi Kok Road, there was no vehicle travelling towards him on the southbound carriageway of Lai Chi Kok Raod. However, when he reached the centre of Lai Chi Kok Road or thereabouts, he saw that a taxi (later he learnt that its registration mark was KA 7465 (“the Taxi”) was travelling along the northbound carriageway of Lai Chi Kok Road. At that time he saw that the Taxi had already passed the white stop line or thereabouts and had no sign to stop. Therefore, he immediately braked his car but could not do so in time. The front of his car collided with the offside rear door of the Taxi. It was only when the Private Car had overturned in the collision that it came to a complete stop. Subsequently he climbed out of his car under the assistance of the firemen.

Analysis of the Evidence

1. I have to consider which version of evidence is more likely to be true as well as the credibility of the respective parties.

Assessment of the Plaintiff’s Credibility

1. In relation to the Plaintiff, he is a man in his 50’s and has been driving taxis since 1998. Before he drove a taxi, he worked as a maintenance technician with Canadian Airlines. He retired from that position and began driving taxis.
2. Upon cross-examination by the Defendant’s Counsel, he was asked as regards whether he has been convicted of any traffic offences. The Plaintiff stated that he has been convicted of the offence of jumping red lights 3 to 4 years ago before the date of this accident. The offence occurred when he was driving a taxi during the night shift. He had a passenger in the taxi. There was no accident. He was fined $450 and had 3 points deducted. In the 5 years he has been convicted of speeding once or twice. On one such occasion he had 3 points deducted and not on the other. Apart from the aforesaid, he did not have any other traffic offences.
3. The Defendant’s Counsel submitted that the Plaintiff having once jumped a red light signal is likely to do the same again. As he has been convicted of speeding on two previous occasions, he is likely to have exceeded the speed limit when he drove past the Intersection on the day in question. The Plaintiff denied that he exceeded the speed limit or that he jumped the red light signal on the occasion in question. There is no evidence to point to the fact that the Plaintiff had exceeded the speed limit when he drove through the Intersection. I find there to be no basis for me to conclude that the Plaintiff did so.
4. The Defendant’s Counsel also submitted that the Plaintiff was not credible because the information he gave the Neurologists in the joint medical report did not clearly state all the details of his post accident employment. He told them that he worked as a locum taxi driver working 1 or 2 days a week in January 2006 whereas in his Statement of Damages dated 21 October 2005, he stated that he stated that as a result of the accident he can resume his pre-accident work but with reduced efficiency and capacity. He had to rest from time to time to ease his headache. His average monthly income was reduced to HK$7,000.00 from a pre-accident monthly earning of $11,200.00.
5. In his oral evidence in Court he stated that after the accident, a few weeks after the sick leave period, he was able to work as a locum driver. In his Statement of Damages he did not mention anything about being a locum taxi driver but he stated therein that after his sick leave expired he went back to work as a taxi driver with a reduced income of $7,000.00. Under cross-examination, he stated that at the time he worked part time in a fabric company owned by his friend earning $3,000.00 per month. Together with his work as a locum taxi driver he earned about $7,000 p.m. He could not remember what he told his lawyers or the Neurologists who prepared the Joint Medical Report.
6. The Defendant’s Counsel submitted that the above discrepancy in his evidence showed that the Plaintiff was not a truthful witness. Further, the Defendant’s Counsel in cross-examination referred the Plaintiff to a letter from the Motor Transport Workers General Union Taxi Driver Branch which showed the average daily earnings of a night and day shift taxi driver operating in the city working 8-9 hours per day. The daily earning for the period from 1 – 3 January was $220 per day. The Defendant’s Counsel challenged the Plaintiff’s allegation of his average daily earnings before the accident being $400 per day. The Plaintiff stated that the normal working hours of a taxi driver per shift is 12 hours with a one-hour break for a meal. Hence the earnings for 8-9 hours do not show the accurate earnings per day of a taxi driver.
7. Having considered the submissions of the Defendant’s Counsel, I found as follows:

(1) The Plaintiff has had a previous conviction of jumping a red light. However, he disclosed that fact under cross-examination. He did not seek to hide from it. It happened 3-4 years ago over a 5-year span of working as a taxi driver before the accident. Although this shows that the Plaintiff has jumped red lights once, it however does not show that he has a propensity to do that as it was one incident in 3-4 years of constant driving as a taxi driver for 11 hour shifts per day 26-28 days a month. Having thoroughly considered this, I find that it cannot be an indication that he jumped the red light on this occasion without consideration of all other factors and circumstances of the case. The fact that he admitted to the conviction shows that he is honest.

(2) The Dr. Yu in the Joint Medical Report of the Neurologists who examined the Plaintiff stated that the Plaintiff is at present working as a locum taxi-driver working 1 to 2 days a week. However, it is clear that when the Plaintiff gave evidence in Court he did not attempt to state that to be the case. In fact, paragraph 23 of the Statement of Damages stated that he now work as a taxi driver earning $7,000 per month. It seems to me that as he had worked as a locum taxi driver a few weeks after his sick leave expired, the Plaintiff may have given confusing information to the Neurologists and caused them to think that he was still working as a locum taxi driver. The Plaintiff’s evidence is that he is able to work 20 days or so a month but he is not able to earn as much because he has to rest every 2 hours or so. He did not present a case to the Court that he is not able to work full time. This shows that he did not try to deliberately lie to the two Neurologists in order to present a case that he is not working full-time.

(3) As regards the other submissions of the Defendant’s Counsel on the Plaintiff’s credibility, I have considered them but was not persuaded that these pointed to the lack of credibility on the Plaintiff’s part when he gave evidence.

(4) I formed the impression that the Plaintiff was credible.

Assessment of the Defendant’s Evidence

1. In my view, the Defendant was not a careful driver from the manoeuvres that he described of overtaking a vehicle in front of his vehicle in a relatively short distance before the Intersection. He drew a plan showing how his vehicle overtook the vehicle that was being driven at a slow speed and had a left indicator light on. The plan drawn by him is attached to his Police Statement at page 234 of the BD.
2. Even though his estimation of the distance between his vehicle and the vehicle he overtook, and the distance between that vehicle and the white stop line at the Intersection may not be accurate, yet the distances that the Defendant sought to describe were very short distances.
3. The Defendant stated that he drove at about 45 km per hour along Tonkin Street. When he reached about 6 – 7 vehicle spaces from the vehicle in front, he saw it was driven slowly with left indicator light on. He slowed down a bit and drove into the third lane to overtake it. He then drove back into the 2nd lane before he reached the Intersection. He stated his vehicle was about 3 vehicle spaces before the Intersection at the time he drove back into the second lane. He stated that he did not look at the traffic signals on the left and right of the westbound carriageway of Tonkin Street that are before the Intersection but he looked at the light signals controlling westbound traffic of Tonkin Street at the centre of the road beyond the Intersection. He saw that it was green.
4. From the aforesaid, it seems that the Defendant had to do the above manoeuvres within a relative short distance and before he reached the Intersection he was in no position to slow down before the Intersection because he was overtaking a vehicle, even though the vehicle was moving slowly. It is normal for a driver of a vehicle when overtaking to pick up speed.
5. It must be noted that in the manoeuvre of overtaking the Defendant had to keep his eyes on:

(a) the vehicle in front

(b) and also as he moved out onto the 3rd lane to see no vehicles are on the 3rd lane

(c) the steering of his vehicle from the 2nd lane to the 3rd lane

(d) the steering back to the 2nd lane again.

(e) the remaining distance between his vehicle and the stop white line of the Intersection

(f) the traffic signals that control his carriageway at the Intersection.

1. He had to carry out these manoeuvres in a very short space of time. He stated that it was upon the completion of the overtaking exercise when he saw that his vehicle was about three vehicles space from the stop white line before the Intersection that he looked at the traffic lights controlling traffic for his carriageway. It is obvious that he was too busy to look at the traffic lights controlling traffic for his carriageway for crossing into the Intersection before the overtaking manoeuvres. He stated that he did not look at the traffic signals on either side of his carriageway but looked at the column of traffic light signals at the far side of the junction on the centre of Tonkin Street. It seems to me that by the time he looked at the traffic lights his vehicle might well have shot past the position where he could comfortably look at the traffic lights on either side on Tonkin Street as he approached the Intersection. It is highly likely that the speed at which he was driving was fast for the impact on the Plaintiff’s vehicle caused it to spin and the impact caused his vehicle to turn upside down.
2. It is extremely easy in the midst of doing so many manoeuvres in such a short space of time and within such a short distance, for the Defendant to make a mistake when he looked quickly at the traffic lights at the far side of the junction in the centre of Tonkin Street and in the split second saw the green arrow light and thought it was a green light.
3. Another factor which is an added factor in support of the finding is that according to the Road Users’ Code issued by the Transport Department the Stopping Distance for a vehicle driving at 40 km/h is 20m. This comprises a thinking distance of 10m and a braking distance of 10m. The Defendant might well have driven at about 40 km/h. After the overtaking the Defendant’s vehicle may have been less than 20m from the white stop line before the Intersection. He simply would not have been able to stop in time before the white stop line if he had to stop. For three vehicle spaces would be less than a distance of 15m.
4. I find that in all probability when the Defendant stated that he saw that the traffic light controlling the traffic for westbound traffic on Tonkin Street was green, he was either entirely mistaken, having seen the green arrow rather than the green light being the 4th light on that traffic light column or he was totally mistaken in relation to the traffic lights and shot through red light signals.
5. I therefore find that the Defendant is liable for the accident and he drove through the Intersection when the traffic light that controlled traffic on his carriageway was red.

Quantum

PSLA

1. After the accident, the Plaintiff was sent by ambulance to the Accident and Emergency Department of Caritas Medical Centre right after the accident. Upon examination, it was found that he had a haematoma at the right parietal scalp and superficial abrasion on his right knee. He was treated and discharged. He re-attended the Accident and Emergency Department of Caritas Medical Centre several times for symptoms of headache and nausea and was admitted to hospital for two days.
2. Due to his persistent headache and repeated vomiting, he attended the Accident and Emergency Department of Tang Shiu Kin Hospital on 27 February 2003 for treatment. He was then referred to the Department of Neurosurgery of Pamela Youde Nethersole Eastern Hospital (“PYNEH”) for further treatment.
3. Urgent Computerized Tomographic scan of his brain revealed right sided chronic subdural haematoma. Burr hole drainage for chronic subdural haematoma was performed on the same day. According to the Medical Report prepared by Dr. Ng Wing Kit dated 27 May 2004, the burr hole drainage for chronic subdural haematoma lasted for 5 hours. After discharge, he was required to attend follow up treatment at an outpatient clinic PYNEH.
4. The Plaintiff complains of the residual symptoms of persistent headache and insomnia, weakness of both lower limbs, on and off dizziness with post-concussion eye discomfort, and a scar on his scalp.
5. Dr. Yu in the Joint Medical Report assess the Plaintiff to be suffering 3% Permanent Impairment of the whole person as a result of the symptoms complained of which he states is compatible with post concussion syndrome. Dr. Woo on the other hand gives the diagnosis of a mild post-concussion syndrome and assess 1% impairment of the whole person according to the American Medical Association Guide.
6. The Plaintiff’s Counsel referred to a number of authorities to support his claim for PSLA in the sum of $250,000.00. The ones, which I find helpful, are:

(1) Ip Shuk Hing v Yuen Yuk Wai HCPI 216 of 1999 (HH Judge McMahon as he then was, 11 August 2000). The Plaintiff suffered hairline fracture on the skull from a blow in the head, which resulted in haematoma and loss of consciousness. Mild post-concussion syndrome and mild post-traumatic stress disorder resulted. There were symptoms of headaches, instability and dizziness. $240,000.00 was awarded for PSLA.

(2) Tsui San Yau v Tsang Wai Hong HCPI 657 of 2003 (Suffiad J; 26 April 2005). The Plaintiff sustained scalp laceration, facial swelling and left shoulder abrasion. He was diagnosed with anxiety and post-traumatic stress disorder. Post-concussion syndrome was also diagnosed because of headache and dizziness. The Court found that there was a mild head injury and an adjustment disorder. $200,000.00 was awarded for PSLA.

1. Having regard to the operation lasting 5 hours which was performed on the Plaintiff for burr hole drainage for chronic subdural haematoma, the residual symptoms suffered by him, the obvious effect on his everyday life, and having regard to the authorities referred to, I am of the view that PSLA in the sum of $220,000.00 is appropriate.

Pre-Trial Loss of Earnings

1. The Plaintiff stated that before the accident he was earning on average at a daily wage of about $400 per day working 28 days per month. He stated that his monthly earning was about $11,200.00 per month.
2. This is challenged by the Defendant’s Counsel who referred to the letter from the Motor Transport Workers General Union Taxi Driver Branch at page 265 of the BD. This states that the average daily earnings of a taxi driver for an 8 – 9 hours shift for January to March was $220 per day. The Plaintiff stated that the shift of each taxi driver was 12 hours. One hour was spent for a meal. He stated that the work of a taxi driver per shift was more than 8 – 9 hours. The earnings per shift is higher than that stated in the letter.
3. The Defendant’s Counsel submitted that February 2003 was the time when SARS cases were being reported in Guangdong. It was also a period when the economy was in recession. The income of taxi drivers was affected by this. He submits that a taxi driver was earning somewhere between $270 and $350 per day before February 2003 and he states that probably a figure of $340 per day will be a fair reflection. Assuming that a taxi driver works 26 days a month, he is likely to have earned the monthly average income of $8,840.00 ($340 x 26).
4. The Plaintiff’s Counsel submitted that during the SARS period the daily earnings of taxi drivers was likely to be $150 per day and probably up to November/December 2004, the situation did not improve and the average daily income ranged between $150 - $340. In relation to the Plaintiff’s pre-trial loss of earnings therefore, the Court has to take into account the earnings that the Plaintiff actually would have made had it not been for the accident and factors that affect income such as SARS for the months following the accident has to be taken into account.
5. According to the letter from the Motor Transport Workers General Union Taxi Driver Branch at page 265 of the BD, as stated earlier the monthly earning of taxi drivers working an 8-9 hour shift was $220 between January to March 2003 and between March and May it was $150 per day. Between May and July it was $200 per day. Between August and December 2003 it was around $290 to $300 per day. Having regard to the fact that these figures were for 8 – 9 hour shifts, and on the evidence of the Plaintiff that he worked 10 – 11 hours per shift, for the period when the Plaintiff was not working during his period of sick leave and before he was able to resume work in June 2003, I grant him loss of earnings of $240 per day when multiplied by 26 days comes to $6,240 x 4 months = $24,960.00.
6. Thereafter, the Plaintiff stated that he worked part time as a locum and part time as a clerical worker in his friend’s fabric factory earning $6,000 per month. He then worked as a taxi driver full time working 20 days per month at a reduced income of $280 per day. His income thereafter was $6,000 per month. I take the average monthly earnings of a taxi driver as submitted by the Defence Counsel at $8,840 per month in calculating the Plaintiff’s loss of earnings for the remaining months of the pre-trial period which comes to $8,840 -$6,000 x 1105/30 months = $104,606.66. Pre-trial loss of earnings the sum of $24,960.00 + $104,606.66 = $129, 566.66.

Post-Trial Loss of Earnings

1. Having regard to the Plaintiff’s injuries and its residual effects, I accept that the Plaintiff’s working capacity is reduced and has to take periodic rests in between driving. He states that he now only able to work 20 days a month and has to rest every 2 hours. He is able to work full time but at a reduced capacity. However as the it seems that resting in between driving could easily be taken in between passengers, perhaps the actual loss of earnings is not as great as is stated. I find a 20% loss of income from his work at a reduced capacity.
2. The Plaintiff is now 56 years old. Were it not for the accident, he would be expected to have worked until the age of 65 years. I accept that an appropriate multiplier for calculating this head of damages is 6. I calculate his future loss of earnings at $8,840 x 12 x 6 x 20% = $127,296.00.

Special Damages

1. The Plaintiff has pleaded total medical expenses of $864 and travelling expenses of $2,500 to attend follow-up treatment. He states he spent HK$5,000.00 on tonic food and rental deposit of Taxi at $6,000.00 and had to pay $2,000.00 to the Government to repair the torn railing on the road. These expenses I find to be reasonable and I grant him the total of these at $16,364.00.

Loss of Earning Capacity

1. As taxi drivers are self-employed, it is unlikely that there will be any loss of employment as a result of his reduced work capacity. I do not find it justified awarding any damages under this head.

Interest

1. The Plaintiff is entitled to interest at 2% per annum on general damages from date of issue of Writ and is entitled to interest at half judgment rate on special damages from the date of the accident.
2. Total damages comes to $220,000.00 + $129,566.66 + $127,296.00 + $16,364.00 = $493,226.66.
3. Judgment for the Plaintiff against the Defendant in the sum of $493,226.66 together with interest at 2% on $220,000.00 from date of Writ to date of judgment and at half judgment rate from date of accident on the sum of $16,364.00 to date of judgment and thereafter at judgment rate on the judgment sum until payment. I grant an order nisi for the Plaintiff for costs of the action to be paid by the Defendant to be taxed if not agreed with Certificate for Counsel.

C.B. Chan

District Judge

Representation:

Mr. Erik Shum instructed by Messrs. Huen & Partners for the Plaintiff.

Mr. Andrew Li instructed by Messrs. Munros for the Defendant.