DCPI 1651/2017

[2019] HKDC 1161

**IN THE DSTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 1651 OF 2017

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BETWEEN:

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| DIU CHUN MING | Plaintiff |
| and |  |
| LI MAN HA JUDY | Defendant |

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| Coram: | His Honour Judge Harold Leong in Court |
| Date of Hearing: | 13 and 14 August 2019 |
| Date of Judgment: | 28 August 2019 |

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JUDGMENT

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1. This is a personal injury claim arising out of a road traffic accident.
2. The accident occurred at the cross road junction between Connaught Road Central (“CRC”) and the road coming out from Shun Tak Centre (the “Side Road”) on 29 February 2016.

*Liability*

1. The plaintiff’s taxi was coming out from the Side Road and was crossing the eastbound CRC intending to turn right into the westbound CRC, but collided with the defendant’s car travelling on the fast lane (that is, the third or right-most lane) of the eastbound CRC.

*The traffic light control diagram*

1. The Transport Department has provided a traffic light control diagram (“the Diagram”) and Mr. Ma Chi Hung (“Mr. Ma”) from the Transport Department was called to give evidence. He has helpfully explained the Diagram to the court.
2. The Diagram shows every set of traffic lights governing the cross road junction in question. The relevant sets are set 1 (facing eastbound traffic of CRC), which governed the traffic on CRC eastbound where the defendant’s car was (“Set 1”), set 4 (facing the traffic on the Side Road) which governed the traffic on the Side Road where the plaintiff’s taxi was (“Set 4”) and set 5 facing eastbound CRC but situated further down the road of CRC eastbound (as identified by cross referencing the video taken by the plaintiff with the photographs taken at the scene and the Diagram) which, according to Mr. Ma, governed the cars coming out of the Side Road turning onto eastbound CRC (“Set 5”).
3. The Diagram is divided into 3 stages (“Stage A”, “Stage B” and “Stage C”) which correspond to 3 periods of time on how traffic was controlled with the signals in various sets of traffic lights and these stages ran repeatedly in the same sequence, that is, Stage A is always followed by Stage B and then Stage C, and then back to Stage A again, and so on and so forth.
4. At the beginning of Stage C, Set 1, Set 4 and Set 5 all showed red and this was the time when traffic was allowed to flow from Hiller Street into CRC eastbound.
5. However, later during Stage C, Set 4 and Set 5 would both turn green “in sync” to allow traffic to flow from the Side Road into CRC eastbound and westbound.
6. According to Mr. Ma, the purpose of Set 5 was to show “green light” to cars which have already turned left from the Side Street to continue onwards on eastbound CRC.
7. At the end of Stage C, Set 4 would turn red to stop traffic emerging from the Side Street. However, there is a “buffer time” of 2 seconds of “red light” at both Set 4 and Set 1 to allow more time for cars that has already emerged from the Side Street to turn into CRC (because cars might travel slower during the turns).
8. After the 2-second buffer, it is Stage A and Set 1 would turn from red to red and yellow (this sequence would take 2 seconds before the green light came on) and then green.
9. Crucially, all this time, despite Set 4 having turned red, Set 5 remained green. In fact, Set 5 would remain green all through Stage A and would turn yellow and red “in sync” with Set 1.
10. So in effect, Set 5 is rather strange that it would be “in sync” with Set 4 when turning from red to green at the beginning of Stage C but “in sync” with Set 1 when turning from green to red at the end of Stage A.
11. As stated above, Mr. Ma explained that, during Stage C, Set 5 showing green would allow cars already emerged (having turned left) from the Side Street joining the eastbound CRC to know that it could proceed. During Stage A, Set 5 would simply show that eastbound cars on CRC could proceed.

*The plaintiff’s case*

1. The plaintiff current case, as I understand it, was that the defendant arrived at the cross road on eastbound CRC sometime around or just before the beginning of Stage C when Set 1 was showing red but Set 5 (further down the road away from the junction) was turning green.
2. Set 5, as above, was intended to show that cars having emerged from the Side Road turning left could proceed down eastbound CRC, but the defendant had mistaken the green at Set 5 (located further down CRC) and thought that she could proceed (and she must have missed the red at Set 1 which was closer to the junction).
3. As Set 5 was at this stage in sync with Set 4 in turning from red to green, the plaintiff therefore emerged from the Side Road to turn right into westbound CRC, and thus crossing the path of defendant’s car. The right front of the plaintiff’s taxi impacted the left front of the defendant’s car.

*The defendant’s case*

1. The defendant’s case is that she was on the 3rd (right most) lane of CRC and saw the traffic light in front turning from red to green. So she moved off. She did not notice the plaintiff’s car until the impact. The front of the plaintiff’s taxi collided with the defendant’s car just above the left front wheel.
2. The defendant claimed that the traffic light she was following was the one shown in the upper photograph of page 136 of the Trial Bundle, which was the Set 1 traffic lights situated on the right side of CRC just beyond the junction.
3. Crucially, the defendant gave an account that when she was moving off, the traffic on the two slower lanes on her left did not move off. She was consistent when giving this evidence to the police (in the police statement (trial bundle page 95), in her witness statement (trial bundle page 87) and also under cross examination in court.
4. She gave various possible explanations as to why: the traffic in the two lanes could have saw the plaintiff’s taxi running a red light so they remained stationary, or that they saw stationary traffic ahead beyond the Yellow Box. But the defendant confirmed under cross examination that there was no traffic stationary inside the Yellow Box. By only giving various possibilities, it was clear that she did not know the exact reason why the other vehicles remained stationary.
5. Under cross examination, the defendant also admitted that she was looking ahead and that she was aware that further along CRC, a little beyond the traffic light on the right side of CRC beyond the Yellow Box, there was another traffic light (that is, Set 5).
6. However, the defendant also admitted that she was not aware that this traffic light was “in sync” with the traffic light on the Side Road when turning from red to green. Thus, it appeared that she was not aware, even now, that the traffic lights further along the CRC was not intended for her.

*Discussion*

1. It is striking that, in this case, each parties’ case was that each was waiting as the first car in line before the junction, and each claimed seeing the traffic light in front turning from red to green before moving off. Further, both parties, of course, did not see what the other party’s light was at the relevant time and, understandably, assumed that that the other party had run a red light.
2. However, as shown in the Diagram and as stated in the evidence of Mr. Ma, Set 1 and Set 4 would never turn green at the same time.
3. In the defendant’s scenario, if the plaintiff had run a red at Set 4, in order to cause this accident, he would have run the light after it had turned yellow for 3 seconds (when he should have stopped) and after it turned red for another 4 seconds (there was a 2-second “buffer” “all red” zone, and then there would be another 2 seconds for Set 1 to change from red to green).
4. Thus, this would have been around 7 seconds after the green first turned to yellow which, to me, appeared to be an unlikely long length of time for anyone to attempt to run a traffic light.
5. Further, as the plaintiff was turning right in the junction, if he was running a red, not only that he had to run the gauntlet of crossing 3 lanes of eastbound traffic on CRC, he also had to run the gauntlet of running into the path of the westbound traffic of CRC (which would have been green at this point of time).
6. The plaintiff’s comment on this possibility was that it would be “suicidal” for him. I agree.
7. The other possibility was that the plaintiff might have failed to pay any attention to the traffic lights when driving off from the Side Road. I would think this rather unlikely given that it must be obvious to any driver that the Side Road was entering a major 3-lane road in a busy cross road junction. Further, the timing of the accident showed that it was likely that both vehicles drove off at roughly the same time, which supported the likely scenario that both parties must have thought that they saw the traffic lights turning green at the same time before driving off from their position (as they both claimed in their evidence).
8. On the other hand, in the plaintiff’s scenario (that is, the defendant ran a red light), there was a clear point of time in the Diagram that Set 5 further down the CRC was turning from red to green which was “in sync” with the plaintiff’s lights (Set 4) whilst Set 1 was still showing red.
9. This point of time, as stated above, was at the beginning of Stage 3.
10. In fact, this would be the only point of time in the Diagram that any set of traffic lights facing each of the parties (that is, Set 1, Set 4 and Set 5) were turning from red to green (as evidenced by both parties) at the same time.
11. I note that the defendant gave evidence that she was looking at the traffic lights shown on the upper photograph of page 136 of the Trial Bundle. This would have been the correct set of lights for her (Set 1).
12. However, the plaintiff’s case is that the defendant was not looking at this (Set 1) but had mistaken the Set 5 traffic lights further down CRC as the lights for her.
13. I have perused the photographs (e.g. Trial Bundle page 137 upper photograph, page 138 upper photograph and page 142 photograph on the left) and the video produced by the defendant at length. I note that the Set 5 traffic lights in question was behind the Set 1 just further down CRC. From the angle looking down the road from a car on the eastbound CRC (that is, where the defendant was), this Set 5 traffic lights would appear to be right next to the Set 1 traffic lights.
14. Thus, if the defendant had been looking down the road and saw a light turning green (and, as stated above, with her not being aware that this light would turn green “in sync” with Set 4), it would be entirely conceivable that she could have mistaken that this was the lights for her (when the Set 1 lights nearer to her was still showing red).
15. I would think that between the two scenarios above, the plaintiff’s version is all the more probable. This would explain why the defendant all along believed that her lights were green. This also explains why (in the defendant’s own evidence) the vehicles in the two lanes on her left did not move off despite her seeing a “green light”: the likely reason was that their drivers were not confused by the green light on Set 5 and were aware that Set 1 was still showing red.
16. On balance, therefore, I find that the accident was caused by the defendant running a red light because she had mistaken Set 5 as the traffic light controlling her travel.
17. Much has been asked during cross-examination about the position of impact on each vehicle, the speed that each party thought they were traveling, their “personal belief” regarding the cause of the accident, or whether there were skid marks.
18. I think these are all irrelevant to the issue of liability.
19. The point of impact would be dependent on trivial matters like which car moved first, at what speed each was traveling, and the (different) distances they travelled before the impact.
20. Further, each party clearly could not see what the other party’s light signals were at the time of the accident (and both gave evidence saying so). Therefore, whatever each party “believed” was the cause of the accident would always be a matter of speculation and should not be a matter of credibility.
21. The speed each party *thought* they were travelling, whether there was any attempt to swerve, and whether there were any skid marks were also irrelevant. I could hardly think that each driver would be looking at their speedometer at the moment of the accident, and the parties were clearly not road traffic accident forensic experts, suffice to say that there was no allegation that either were speeding.

*Damages*

*PSLA*

1. The plaintiff attended the AED of Queen Mary Hospital (“QMH”) on 29 February 2016 with neck and lower back sprain. X-ray showed degenerative changes with no fracture. He was admitted to orthopaedics unit and was discharged on 3 March 2016.
2. He underwent physiotherapy and at the follow-up by the orthopaedics out-patient at QMH on 27 May 2016, it was noted that pain had subsided with physiotherapy and analgesics with only complaint of numbness with no neurological signs, no back tenderness and negative SLR test. The doctor noted that the plaintiff *“requested for continuation of sick leave”* but only 3 days of sick leave was granted (that is, until 30 May 2016).
3. The plaintiff was discharged from his physiotherapy sessions on 22 June 2016 but, besides numbness, there were apparently residual back pain, tenderness and deterioration of SLR tests.
4. He then underwent occupational therapy and on work capacity evaluation on 30 August 2016, he again *“self-reported”* pain over lower back pain etc.
5. The plaintiff resumed work in September 2016.
6. In the follow-up at QMH orthopaedics clinic on 25 November 2016, it was noted: *“pain improved, leg numbness similar, not taking analgesics.”*
7. In the Joint Medical Report, both experts agreed that the plaintiff had neck and back sprain on 29 February 2016 (and *possibly* lower lumbar nerve entrapment) with *“good”* and *“satisfactory”* recovery.
8. I have perused various precedents presented by both parties. I think that the injury in the current case is not comparable to *Muhammad Saddiq v Cheung Chi Keung* HCPI 1018/2006 which is more serious (with a whiplash injury to the neck as well as a sprained back caused by two rear-ended impacts during a road traffic accident), and also not comparable to *Fu Chuen Sing v Ryan (HK) Limited* DCPI 2135/2009 which is less serious (*“extremely mild”* lower back pain caused by a back sprain during an attempt to *“stop falling papers”*). The current accident and injury is more comparable to *Kong Kam Yuen v Yim To Keung and Anor* HCPI 1971/2013.
9. As such, I would award HK$120,000 under this head of claim.

*Pre-trial loss of earnings*

1. The plaintiff claimed that he earned on average HK$800 a day and HK$17,600 per month. He was granted 168 days of intermittent sick leave from 29 February to 4 September 2016, thus claiming HK$107,946.67 under this head of claim.
2. When challenged by the defendant regarding the cash deposits in his bank statements, he explained that his income was in cash and he might not have deposited all the income in the bank.
3. I would accept that the plaintiff earned HK$17,600 per month as claimed.
4. There was a dispute between the medical experts regarding sick leave: Dr. Lam Kwong Chin (instructed by the defendant) was of the view that 3 months *“should be adequate”*, whilst Dr. Fu Wai Kee (instructed by the plaintiff) endorsed all the sick leave granted.
5. As mentioned above, the orthopaedics doctor reported *“pain subsided…no back tenderness…SLR negative”* as early as 27 May 2016. Rather tellingly, the doctor only granted 3 days of sick leave despite a *“request for continuation of sick leave”*.
6. Subsequently, both the physiotherapist and the occupational therapist appeared to document rather significant deterioration.
7. If this was at all genuine, one would expect a reasonable person to be very worried because it would appear that he was well on his way to recovery but his condition suddenly deteriorated (in the time of less than 1 month).
8. In the current case, the plaintiff was clearly not worried because there was no evidence that he immediately sought medical treatment. In fact, the medical records showed that the next orthopaedics follow-up was on 25 November 2016. Indeed, the doctors again recorded *“pain improved”* and further that he was “*not taking analgesics.”*
9. I would therefore doubt that there were any serious deteriorations or, indeed, residual problems that the plaintiff suffered after May 2016. I therefore agree with Dr. Lam that 3 months of sick leave *“should be adequate”*.
10. I would therefore award HK$17,600 x 3 = HK$52,800 under this head of claim.

*Future of loss of earnings*

1. The plaintiff had returned to work since September 2016. Both experts agreed that he should be able to do so but he might have “mild” adverse effect at work (according to Dr. Lam) or “reduced” working efficiency.
2. However, both experts agreed that the plaintiff suffered from pre-existing back degeneration and apportioned some degree of loss of earning capacity to this.
3. Of course, as I have stated in other judgments before, a person who is not at 100% fitness does not necessarily always translate to any actual loss of income: we often suffered from mild pains and minor ailments (e.g. some coughs and colds, a “hangover” or “jet-lag”), and we know ways to cope with these and could still function reasonably well at work. To assess whether any such disabilities translates to actual loss of income, the court needs to look into the circumstances in each case, including the nature of the job, how the disability may affect the performance, and the “work system” (perhaps regarding the demand of the job and whether there was any “leeway” to work around the disabilities) etc.
4. Further, under cross-examination, the plaintiff fairly conceded that he could work and he could find ways to rest and stretch every now and then for his leg numbness, and that there were no impediments for him to work full time.
5. I would therefore give no award under this head of claim.

*Loss of earning capacity*

1. I agree with the submission of Mr. Gidwani, Counsel for the defendant, that this is not applicable in the current case because the plaintiff is self-employed so there is no risk of him “losing his employment” and thus taking more time to regain employment due to his disabilities.
2. Any compensation due to any disabilities, under the circumstances, should be an award in future loss of earnings instead, and, as stated above, I have found that the plaintiff was able to cope well without any loss of income despite any alleged residual symptoms.

*Special damages*

1. The plaintiff is claiming reimbursement of HK$4,470 as medical expenses, HK$3,000 as tonic food and HK$4,500 as travelling expenses to and from treatment.
2. However, the plaintiff’s receipts for medical treatment produced to the court only came to some HK$3,530, and he has failed to produce any other receipts or breakdown of the other expenses.
3. As such, I would award a global sum of HK$8,000 to cover all such expenses under this head of claim.
4. Quantum in summary:

HK$

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| --- | --- |
| PSLA | 120,000 |
| Pre-trial loss of earnings | 52,800 |
| Future loss of earnings | 0 |
| Loss of earning capacity | 0 |
| Special damages | 8,000 |
| Total: | 180,800 (plus interest) |

*Interest*

1. Interest will be awarded at 2% per annum on general damages from date of service of the writ until the date of judgment and half interest rate on special damages from the date of the accident until the date of judgment.

*Costs*

1. There be an order *nisi* for the costs of this action to be paid by the defendant to be taxed if not agreed, with certificate for counsel.

(Harold Leong)

District Judge

Mr Jeremy Cheung, instructed by B Mak & Co, for the plaintiff

Mr Victor Gidwani leading Mr Jethro Pak, instructed by Yu & Associates, for the defendant