## DCPI 1660/2010

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION No. 1660 OF 2010

\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

GURUNG KAMALA Plaintiff

and

HONG WEI LIMITED Defendant

\_\_\_\_\_\_\_\_\_\_\_\_

Coram: Deputy District Judge Harold Leong

Dates of Hearing: 13, 14, 15, 16, 17, 20 February and 2 March 2012

Date of Judgment: 26 March 2012

**JUDGMENT**

1. This is a personal injury case.
2. At the material times, the defendant was a company incorporated under the laws of Hong Kong carrying on business of foot and body massage beauty centre, and the plaintiff was employed as a cleaner by the defendant at one of the defendant’s place of business on 10/F, 38 Plaza, 38 Shantung Street, Mongkok, Kowloon (“the Beauty Centre”).
3. The plaintiff alleges that she has slipped, fell and injured herself during work at the Beauty Centre on 16 September 2009 due to the negligence of the defendant, and she is claiming under :-
   * + - 1. The Occupiers Liability Ordinance, cap 314;
         2. a common law duty of care; and
         3. an implied term under the plaintiff’s contract of employment.
4. The defendant denies the above.

*FACTS NOT IN DISPUTE*

*The basin outside room 5*

1. The crux of this case concerns a basin in the Beauty Centre outside massage room 5. This basin was built into what appeared to be a wooden veneered cabinet with a marble-look and “fiddled” top surface.
2. The design of the drainage system of this basin was rather peculiar in that there was no direct drainage pipe connected to the outflow of the basin. Instead, the waste water would run downwards into an open metal container. An electric pump would activate automatically when the water level reached a certain height. The pump would pump the waste water from the metal container to an outlet drainage pipe.
3. The metal container, pump and all the drainage system were placed inside the wooden cabinet below the basin. This area was accessible via two wooden veneered doors.
4. The peculiar design of the drainage system of the basin meant that if the pump failed or if the outlet drainage was in any way blocked, the waste water would accumulate in the metal container and, if the basin was still in use, overflow onto the floor inside the cabinet. If there were enough amount of overflowed water, it would be conceivable that the water would seep through the bottom of the cabinet walls and flood onto the floor around the basin.

*Preparation of “Hot Stone treatment”*

1. “Hot Stone treatment” was part of the massage service offered at the Beauty Centre.
2. The usual routine for such treatment was that the masseur would perform a body massage for a period time, say 15 to 30 minutes. Then hot stones would be placed on the client for a period of time, and the treatment would be finished with another session of body massage.
3. The stone heater machine was placed on a wheeled trolley located in the corridor between the entrances of massage rooms 4 and 5.
4. The stone heater machine consisted of a heating unit with an open metal container sitting on top. The metal container needed to be filled with water. Stones would be placed inside the container covered by water. The heater would be turned on and once the stones were heated up, they would be extracted from the hot water by a wooden spatula and placed in a plastic container to be delivered to the relevant massage room.
5. It is not in dispute that it was the duty of the plaintiff to prepare the hot stones though if she was busy, the masseurs might help out.

*Morning of 16 September 2009*

1. The plaintiff went to work as usual at around 9.30 am on 16 September 2009. At some point, she was informed by the manager of the Beauty Centre, Pak Ngai Kuen, Jessica (“Madam Pak”), to prepare “Hot Stone treatment” for a client in massage room 5.
2. At some point later, perhaps around 9.45 am or a little later, the plaintiff let out a cry which was heard by Madam Pak, the massage therapist Lou Kuoi Chun (“Madam Lou”) and her client, Chong Tsui Miu (“Madam Chong”). None of these three witnessed what caused the plaintiff to cry out: Madam Pak was at the counter at the reception area; Madam Lou and Madam Chong were inside massage room 5.
3. Some time after hearing the cry, Madam Lou went out of massage room 5 and found the plaintiff sitting on the floor of the corridor outside massage room 5. Madam Pak arrived at some later point and the plaintiff was taken to rest on a bed in massage room 6.
4. Madam Pak called her boss, Tsui Lap Kan (“Madam Tsui”) who instructed her to call an ambulance. The plaintiff was taken to the Accident & Emergency Department of Kwong Wah Hospital (“AED”) accompanied by Madam Pak.
5. The relevant Government hospital records and reports are agreed by the parties.
6. The AED records documented the plaintiff’s attendance at 11.46 am and the “History and Examination” was recorded as “Slip and fell backward today 9.45 am in office, fell backward, back and left buttock pain, no incontinence” etc X-ray of the lumbosacral spines and pelvis revealed no fracture.
7. The plaintiff was admitted to the Orthopaedics Department of Kwong Wah Hospital and was discharged the next day with medications and 5 days of sick leave.
8. The plaintiff attended AED for the second time at 10.03 am of 21 September 2009 (which was the morning that the sick leave would expire) complaining of back and left hip pain. She was treated with various analgesics and discharged with sick leave for 4 days.
9. The plaintiff attended AED for the third time at 8.20 am on 25 September 2009 (which was again the morning that the sick leave would expire) complaining of left ankle pain and swelling for one day with no history of trauma. She was treated and discharged with 3 days of sick leave.
10. The plaintiff attended AED for the fourth time on 10.48 am on 28 September 2009 (which was again the morning that the sick leave would expire) complaining of back pain. She was treated and discharged with 3 days of sick leave.
11. The plaintiff attended AED for the fifth time on 6.52 am on 1 October 2009 (which was again the morning that the sick leave would expire). This time, she has called an ambulance because of her persistent back pain. She was admitted to Orthopaedics ward for further management.
12. After admission, the plaintiff was treated with back physiotherapy and analgesics and was discharged on 7 October 2009.
13. The plaintiff was followed-up by the Orthopaedics Department as an out-patient with variable subjective improvement of clinical condition. Continuous sick leave was given until 29 March 2010, more than 6 months after the alleged accident.

*MATTERS IN DISPUTE*

1. Save as the above, there is surprisingly little in agreement between the parties.

*The Plaintiff's case*

1. The plaintiff’s case is that :-
2. The floor of the area around the basin has been wet and slippery most of the time due to the frequent malfunction of the pump of the basin despite some (but ultimately ineffective) attempts to repair the pump. This “flooded” area, as illustrated by the drawing produced and exhibited by the plaintiff during the trial, showed a large area that ran from the area in the immediate vicinity of the basin up the corridor to the entrance of room 5 and across the corridor to the back entrance of the Beauty Centre. This was, as the plaintiff stated, the extent of the flooding during the worst occasions.
3. This problem got worst since August 2009 when the pump failed very frequently, and that the pump has actually failed two to three days before the alleged accident. The flooding was so severe and frequent that the plaintiff would need to inspect the area every 20 minutes or so in order to do the mopping up if needed.
4. The plaintiff has complained to Madam Pak as well as Madam Tsui but no preventive measures were taken.
5. On the morning of the alleged accident, the plaintiff clocked in at work around 9.30 am and noticed the flooding in the area as stated. However, Madam Pak instructed her to prepare for “Hot Stone treatment” for a client at room 5 and further instructed, either explicitly or implicitly, that she should quickly do so before carrying out her daily cleaning and mopping duties.
6. The plaintiff, as taught by the previous cleaner who was her auntie, proceeded to prepare the hot stones by removing the metal container from the stone heater. She filled the container with water and was carrying the container, filled with water, along the corridor to the stone heater when she slipped on the water on the floor near the entrance of room 5. She fell on her back and was in great pain.
7. The plaintiff cried for help and Madam Lou, who was inside room 5, came out to see her. Madam Pak also arrived and both she and Madam Lou helped her to rest on the bed in massage room 6.

*The defendant's case*

1. In contrast, the defendant’s case is that :-
2. The basin and pump have always functioned properly although there were one or two occasions in the year before the alleged accident that the drain became blocked by grease or dirt.
3. These blockages were fixed without problems.
4. The company policy was that the basin should only be used for preparing and washing hot stones, and there was a specific ban for washing lunchboxes in it (which would clog up the drainage with grease and dirt).
5. There was no incident of flooding of water out onto the floor around the basin and beyond at all. There was no water on the floor whether before or at the time when the alleged accident occurred.

*Other matters in dispute*

1. There are other disputed issues like whether :-
2. there were guidelines for “Hot Stone treatment” preparation and whether a Mr. Lee of the defendant’s company had instructed the plaintiff of this;
3. the plaintiff had been following such guidelines at the time of the alleged accident;
4. there was a company policy against wearing beach-type flip-flops (because it was not of a non-slip design);
5. the plaintiff was wearing such at the time of the alleged accident;
6. the yellow sign placed next to the basin was the result of frequent flooding or as a precautionary measure because possible splashing of water from the basin; and
7. various anti-slip mats were present or absent at the time of the alleged accident, and the reasons why these were placed.
8. Nevertheless, these issues are of minor nature :-
9. if the finding of this court is that there was no water on the floor on the morning of 16 September 2009, then these disputes are irrelevant since the plaintiff did not slip on water as she alleged, irrespective of what she was wearing, how she prepared the stones or what signs and mats were placed there.
10. Conversely, if the finding is that there was such flooding and the plaintiff did slip on the water in the manner she alleged, then clearly no instructions or precautionary measures taken by the defendant were adequate to prevent this accident. Only then would the court need to examine these issues to see if there was contributory negligence.

*Analysis of the evidence*

1. From the evidence, the court notes that design of the basin drainage system is such that even if the pump has malfunctioned or the drainage is blocked, water will not overflow unless the basin is still being used.
2. If the flooding problem was as bad as the plaintiff alleged, that is, requiring inspection and mopping every 20 minutes or so, the basin must have been in continuous use, and most likely not by just the odd staff, but by many.
3. However, if there was such bad flooding problem, the problem with the basin must have been obvious to any user. Indeed, if the metal container was overflowing with waste water, every time the basin was used, that person would likely see the waste water literally seeping out at (or at least near) his or her feet.
4. It would take someone with an exceptional anti-social personality to continue to use the basin under such circumstances. To cause an almost continuous flooding as alleged by the plaintiff, many of the staff at the Beauty Centre would be displaying such personalities. This would be rather implausible.
5. Further, even if many of staff were behaving as such, it would be even harder to believe that neither the management of the Beauty Centre nor the plaintiff did anything to prevent the continuous use of the basin. A simple measure would be to place a board over the basin to cover it: the tap was above the basin so could conceivably still be used to full up the “Hot Stone treatment” metal container.
6. Instead, the court is asked to believe that both the plaintiff and the management were behaving like passive by-standers: for such flooding to occur as the plaintiff described, both must have been simply observing the staff continuously using the basin, noting the flooding with the plaintiff mopping the water up and suffering in silence?
7. There are further problems with the plaintiff's case: since this flooding occurred first thing on the morning of 16 September 2009, the night shift cleaner (who must have taken a similar passive by-stander stance) must have neglected her duty to clean up before closing up, or that some antisocial staff was using the basin after the night shift cleaner left, or someone must have been using the basin that morning before the plaintiff arrived. None of these were supported by evidence.
8. For the plaintiff's case to occur as alleged, the management of the beauty Centre would have to be bordering on diabolical. This is highly unlikely given that Madam Tsui has been running three such beauty centres for many years.
9. In fact, the evidence has shown that Madam Tsui ran an exceptionally “tight ship” at the Beauty Centre. Her measures like putting towels at various places in the Beauty Centre, putting up warning signs, installing CCTVs immediately after this alleged accident etc were bordering on an obsessiveness. It would be highly unlikely that Madam Tsui would tolerate such serious flooding problems and anti-social behaviour of the staff with a passive stance.
10. The plaintiff has also introduced new evidence during the trial regarding the water leakage. She now alleged the metal container was also leaking because it was rusty.
11. The court did not hear any evidence as to how one could test to trace the source of leakage as such when the flooding was allegedly so severe from the overflowing already, but the plaintiff then stated that water leakage from this source was not severe and could be controlled by the towel placed on the floor. As such, since the plaintiff’s evidence was that the flooding on the morning of the alleged accident was severe, it would not have been due to this alleged source so this new evidence was, in any case, irrelevant.
12. The plaintiff also alleged during the trial that the severe flooding has caused the bottom edges of the wall of the wooden cabinet to be rotted. This has resulted in an impromptu visit by both parties’ lawyers to the Beauty Centre to take photographs of the current state of the wooden cabinet.
13. A series of photographs of the wooden cabinet are then presented to the court. It is clear from these photographs that there is no evidence of any severe water damages to the bottom edges of the wall of the wooden cabinet. The wooden cabinet appears to be of a common construction made of plywood covered by veneer. It is clear to anyone that this construction is particularly vulnerable to damages when there is prolonged contact with water: the plywood would absorb the water, expand and rot, causing the veneer surface to debond and curl outwards. None of these signs were obvious from the photographs.
14. There may be signs of minor water egress (discoloured grouting) but it is entirely consistent with the defendant's case that there has been a few occasions of blockages of the drainage before.
15. In any case, the photographic evidence is neither here nor there without opinion from an water-leakage expert.
16. The plaintiff called Lee Mei Kuen (“Madam Lee”) as a witness. Lee was a masseur who had worked at the Beauty Centre from 2004 until she resigned sometime after the alleged accident.
17. Madam Lee was not present at the time of accident. She only arrived at work around noon or 12.30 pm. Thus, the most support she could give to the plaintiff’s case was that she has noticed “many times” that the floor around the basin was wet and slippery due to frequent malfunction of the pump, and further that she recalled that the pump was out of order for 2-3 days prior to the alleged accident and that water was leaking causing the floors to be wet and slippery around this time.
18. However, when giving evidence in court, Madam Lee was a most extraordinarily unreliable witness.
19. When Madam Lee was asked about who informed her of the plaintiff’s accident, she shifted her reply from “I cannot tell you because I don’t want to “drag them into the water”” to “I cannot remember their names” and back to “I can remember their names but I do not want to tell you” without so much as a blink of an eye, so as to say. This was all the more incredible because the question was raised by the plaintiff’s counsel in evidence-in-chief and not under cross-examination.
20. Under cross examination, Madam Lee admitted that she could not remember that the pump had in fact malfunctioned for 2-3 days prior to the date of the alleged accident.
21. Further, when asked about how she heard about the plaintiff’s difficulties in coping with her job, or about the incident surrounding her resignation from the Beauty Centre and whether she held a grudge against the defendant, Madam Lee became incredibly evasive and defensive.
22. It would not be worth going into all the details of Madam Lee’s evidence but suffice to say, the court found Madam Lee totally unreliable as a witness and rejected her evidence.
23. For the defendant’s case, perhaps the strongest evidence came from Madam Chong who was the client of Madam Lou on the morning of 16 September 2009. Madam Chong was having a body massage at the time of the alleged accident in room 5 and was the intended recipient of the “Hot Stone treatment”.
24. Madam Chong was an infrequent client of the Beauty Centre and thus should not share mutual interest with the defendant. She also did not know the plaintiff personally. So she should be as close an independent witness as one could find in this case.
25. Indeed, Madam Chong’s demeanor in court was in complete contrast with Madam Lee’s. Her replies to both Counsels’ questions were direct and precise and the court has no hesitation to accept her as an honest witness.
26. The most remarkable aspect of Madam Chong’s evidence was that all she heard from outside the room was a cry. She did not hear any crashing sound of metal container against tile floor or water splashing. This was despite the fact that the alleged accident occurred just outside the door of room 5 and that the door (a sliding door) was open at the time with the doorway covered by a curtain screen.
27. This evidence was also echoed by Madam Pak and Madam Lou and it was consistent.
28. If the accident had happened as the plaintiff alleged, she would have been carrying a metal container filled with water (as illustrated by a series of rather well drawn cartoon attached to her witness statement) weighing, as stated in her own witness statement, “about 30 kg”. Even catering for some degree of exaggeration, the weight of the metal container filled with water is not insignificant.
29. If this was dropped from a height of 3 or 4 feet to a hard tile floor, there would definitely be an almighty crashing sound and, most likely, be significant damages to both the floor tiles and the metal container. Anyone who has been to a gymnasium when some inconsiderate body builder decided to throw down a weight would appreciate what noise a heavy dumb-bell would make even when dropped from a modest height onto a carpeted floor.
30. Madam Chong’s evidence was that she continued to lie in the massage bed after the cry. This was entirely consistent because if someone had thrown down a heavy weight right outside the door, one would logically expect Madam Chong to jump up in shock (perhaps thinking that a bomb had gone off or the like) and she would have at least gone out to investigate.
31. Madam Chong was also adamant that she did not see any water on the floor when entering room 5 and she did not see any when she left.
32. Again, such evidence was echoed by Madam Pak and Madam Lou, and it would be utterly unbelievable for any staff to allow a client to use room 5 at all on the morning of the alleged accident when the flooding outside the room was as described by the plaintiff, especially when none of the other massage rooms were in use.
33. There is also a lack of evidence from the plaintiff regarding the mess created on the floor after the alleged accident. One would expect that someone had to spent some time cleaning up the mess (according to the plaintiff, the floor was flooded in the first place and now, there would be even more water spilled from the metal container). Of the four persons present at the time, Madam Pak was with the plaintiff, Madam Lou returned to continue her massage on Madam Chong. As such, one would wonder whatever happened to the mess.

*LIABILITY*

1. In view of above, this court finds that the actual events on the morning of 16 September 2009 could not have occurred as the plaintiff alleged.
2. The logical conclusion from the evidence is that there could not have been any flooding on the floor on the morning of 16 September 2009 and the plaintiff could not have been carrying the water-filled metal container and fell in the manner she has described.
3. As such, the court finds no negligence, breach of duty as occupier, breach of statutory duties, breach of common duty of care or breach of contract of employment on part of the defendant and the plaintiff’s claim must fail.

*DAMAGES AND OTHER ISSUES*

1. This would rather raise a question on the credibility of the plaintiff.
2. The only witness to the alleged accident is the plaintiff herself and if her credibility is in question, this begs the question: did the plaintiff actually fall but subsequently "drummed up" the evidence to "improve her case", or did the plaintiff “stage” the whole accident altogether?
3. This is an issue that requires careful consideration since the court notes that the plaintiff has received a total sum of HK$115,225 being the monthly payment from the defendant during her sick leave and an additional settlement sum under Employees’ Compensation. The plaintiff is not be entitled to such if she is not injured in the first place.
4. It is a rather unsavoury thought to try to imagine that an employee may sort to “staging” an entire accident in order to obtain compensation but there is at least some suspicion in this case: if the plaintiff did fall and suffer an injury, there was little objective evidence to support any injury. The court notes that the X-rays and neurological examinations (sensation, power and jerks/reflexes) have always been normal. There was no documentation of even a skin bruise or laceration.
5. Complaints of pain and tenderness are subjective. “Straight leg raising” is a test limited by complaints of pain so this can also be subjective.
6. As the plaintiff herself pointed out under cross examination: “Only I myself can feel the pain and you cannot know”.
7. Nevertheless, these are only circumstantial evidence and the defendant’s case does not go this far.
8. On the other hand, there are very strong evidence to show that even if the plaintiff has suffered a fall, the pain and other symptoms she complained have an “non-organic” element (which means that her complaints, to a certain extent, have no identifiable physical cause).
9. In the Agreed Joint Medical Reported prepared by Dr Chun Siu Yeung (“Dr Chun”) for the defendant and Dr Wong Chin Hong (“Dr Wong”) for the plaintiff, even Dr Wong, as the plaintiff's own expert, stated that the plaintiff “did show certain degree of over expression of symptoms and signs”.
10. Despite this, Dr Wong “believed” that the plaintiff did have genuine pain and tenderness, stating that this was consistently documented by various medical officers and therapists throughout her course of therapy.
11. However, when reading medical documents like records and reports, the court must be aware that it is not the usual duty of the attending doctors (and therapists) to judge whether a patient’s subjective complaints (e.g. pain and tenderness) are truthful or not. A doctor is bound by “doctor-patient trust” and it is not a doctor’s role to “test” the evidence or to “cross-examine” the patient, so as to say, to ascertain their truthfulness.
12. Of course, one would expect a doctor to document such if there were glaringly obvious inconsistencies of complaints which could not be explained by any known scientific medical knowledge. However, most of the time, in the absence of such inconsistencies, a doctor would most likely record what he or she was told by the patient as the “medical history”.
13. Thus, the “medical history” of a patient is essentially subjective and may be treated, under the proper circumstances, as no more than hearsay evidence as what the patient has informed the doctor at the time of consultation.
14. The court may often be in a better position to assess the truthfulness of any subjective medical history in that it can, amongst others, review all available evidence and hear the opposing Counsels “testing” the evidence.
15. The same argument applies for Sick Leave certificates. In *Tam Fu Yip Fip v Sincere Engineering & Trading Co Ltd* [2008] 5 HKLRD 210, it was held that :-

“Sick leave certificates are no more than a piece of evidence that has to be evaluated in light of all the available evidence including medical evidence before the court.”

1. The court therefore does not agree that previous consistent medical documentation of complaints of a patient should, by itself, necessarily supports that the complaints were genuine and organic. If a patient has been exaggerating the symptoms, he/she can certainly do so in a consistent manner.
2. In other words, just like sick leave certificates, a doctor's record of a patient's subjective complaints is also no more than a piece of evidence that has to be evaluated in light of all the available evidence before the court.
3. In any case, the defendant’s Dr Chun did find inconsistencies. He stated that the plaintiff’s “site of local tenderness was not consistent with the initial injury on the left paraspinal muscle region”.
4. Further, both Dr Chun and Dr Wong agreed on positive findings on Waddell’s simulation tests and distraction tests. This was the reason why both experts agreed that there was evidence of an element of over-expression/exaggeration of symptoms or inappropriate illness behaviour.
5. It was perhaps telling that under cross examination, the plaintiff told the court that the “shoulder pressure” test (allegedly done by Dr Chun) has caused her severe pain and that this, amongst other alleged behaviour of Dr Chun, has caused the unfavourable findings in the joint examination.
6. Perhaps, even now, the plaintiff is not aware that the “shoulder pressure” test is part of Waddell’s tests for “non-organic” pain. Her inappropriate complaint of pain was precisely what the test was set out to show. Her evidence in court simply affirmed this finding.
7. Nevertheless, the court accepts that Waddell’s simulation tests and distraction tests are not, by themselves, proof of malingering or exaggeration.
8. One further evidence of inappropriate illness behaviour is that the record of AED re-attendance by the plaintiff. The medical report and records shows that the plaintiff has re-attend AED on each occasion on the morning when her sick leave certificate was running out.
9. Logically, one expects that a patient who is keen to get better and to return to work will return to seek medical help as quickly as possible once he/she realises that the medications are not helping the illness and he/she is not getting better. One might even expect the patient to demand a change of medications (“They don’t work, doctor, give me something stronger!”), more investigations (“It is still painful, I want a scan!”), a referral to a specialist, or even question the doctor whether the diagnosis was correct. If, instead, the patient chooses to wait out the period of sick leave in full before returning to an Accident and Emergency Department, there is at least some suspicion that this consultation is less for seeking an emergency consultation but more for seeking an extension of sick leave.
10. When the plaintiff was asked as to why she re-attended AED, she was adamant that this was because of increased pain on the morning or the night before on each occasion.
11. It would therefore appear that the plaintiff suffered a worsening of her illness at precisely the time the sick leave would run out on each of the 4 occasions when she re-attended AED.
12. Such a coincidence was possible but inherently unlikely.
13. Further, according to medical reports, the plaintiff has been informing the doctors that she had recovery of 70- 80% subjectively until 5 May 2010 when this deteriorated to only 50% according to the Occupational Therapy Rehabilitation Outcome Report. The plaintiff instructed lawyers to commence Employee Compensation action around May 2010.
14. Of course, this may also be entirely coincidental.
15. Nevertheless, when all the evidence is viewed as a whole: the question on the plaintiff’s credibility, the lack of objective evidence of injury (or at least to the severity as claimed), the positive Waddell’s simulation tests and distraction tests, the opinion of both Orthopaedic experts and the above mentioned coincidence, this court must conclude, on balance of probability, that even if the plaintiff has suffered a fall, the pain and other symptoms she complained of at the relevant time (and even now) were entirely unreliable and grossly exaggerated.
16. Therefore, even if the court is wrong on the issue of liability, it is not convinced that the plaintiff has suffered any serious injury at all.
17. The court would accept, at the most generous for the plaintiff, Dr Chun’s opinion that this was a minor soft tissue injury which should have recovered within a short period of times in terms of a few weeks, and a reasonable sick leave would be 4 weeks.
18. The plaintiff’s injury thus falls far short of the serious injury category and an award HK$50,000 under PSLA would be more than adequate (see *Tam Yuen Hoi v Chan Muk Sing & Ors* [2003] HKLRDK16).
19. As for the claim for loss of earnings, the parties have agreed that the plaintiff’s earnings at the time of the incident was HK$7,756.25. The defendant has submitted in its Closing Submission that the loss of earning should be only for two months, or an award of HK$15,512.50 under this head of claim. This is generous given Dr Chun’s opinion.
20. There is clearly no loss of earning capacity.
21. Special Damages is agreed at HK$4,100.
22. Therefore, the total damages should be no more than HK$69,612.50 plus interests.
23. The plaintiff has already received a total of HK$115,225 under Employees’ Compensation payment (consisting of HK$50,225 as pre-payment by the defendant during the plaintiff’s lengthy “sick leave” and the additional HK$65,000 as settlement sum). Therefore, even if liability was found, this claim is more than adequately covered by the Employees’ Compensation.

*ORDER*

1. The plaintiff’s claim is dismissed with an Order Nisi for costs to the defendant to be taxed if not agreed and for the plaintiff’s own costs to be taxed according to Legal Aid regulations.

Harold Leong

Deputy District Judge

Mr Kevin Leung, instructed by Messrs MCA Lai & Co assigned by Department of Legal Aid for the plaintiff

Mr Ashok Sakhrani, instructed by Messrs Cheng, Yeung & Co for the defendant