#### DCPI 1795/2010

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO 1795 OF 2010

BETWEEN

ZHONG RUYIN (鍾汝銀) Plaintiff

and

FUK ON HOME OF AGED LIMITED Defendant

(福安老人院有限公司)

##### Before: Her Honour Judge H C Wong in Court

Date of Hearing: 21-23 September 2011 and 1 November 2011

Date of Judgment: 20 January 2012

## J U D G M E N T

1. The plaintiff claims against the defendant for injuries sustained at work on two occasions, namely 13 and 15 September 2009. The plaintiff was employed by the defendant as a care worker at the defendant’s home of the aged. The plaintiff’s claim is based on breach of common law duty of care, breach of statutory duty and breach of implied duty under the contract of employment.
2. There were no witnesses at the two incidents of accident, and the defendant denied liability and quantum.

*The plaintiff’s case*

1. The plaintiff, Madam Zhong, was employed to work as an assistant support staff at the defendant’s elderly home (‘the home’) on 23 August 2006. She was 59 years old at the time. Her duties included changing diapers, feeding and bathing the elderly and disable residents at the home and assisting the senior staff or nurses on work assigned to her. She claimed her usual daily duties in fact were general cleaning, washing dishes, moping the floor and accompanying the residents to hospital, pick up medications as well as distributing pamphlets of the home outside Caritas Medical Centre. She worked 6 days a week from 7 am to 7 pm at a monthly salary of $6,500.

*The first accident*

1. On 3 September 2009, Madam Zhong was assigned to work at zone 2B on the 2nd floor of the defendant’s elderly home joining the two care workers on zone 2B to look after the residents at the zone, her assigned duties on that occasion included washing faces, brushing teeth, dressing, helping residents at breakfast and shower.
2. Resident at the home would be given a shower every other day. It was the care worker’s duty to shower half of the residents requiring assistance on a daily basis.
3. At 8:30 am, Madam Zhong and the other two care workers at zone 2B were engaged in bathing the residents. It was Madam Zhong’s evidence that because of the shortage of manpower, in spite of her request for assistance from the other care workers at zone 2B, she received no assistance when she was helping a tetraplegia resident, Madam Luk Foon (‘Luk’), to move from her bed into the shower wheel chair. As a result, Madam Zhong sprained her back while trying to lift Luk into the wheel chair.
4. After the accident, Madam Zhong obtained treatments from a Chinese bone-setter. She was given 3 days sick leave. On 6 September 2009, she returned to work even though she had not fully recovered from the back injury.

*The second accident*

1. On 15 September 2009 at around 5:55 pm after the residents finished their evening meal, Madam Zhong was assigned dish washing duties together with a co-worker Madam Nip Ho Mui (‘Nip’). Because of her sprained back injury, Madam Zhong requested Nip to collect the dishes from the dining room while she did the washing up at the washing station. Madam Zhong claimed she had followed the home’s guideline practice and placed the clean dishes into a plastic container on top of a trolley inside the dish washing room after washing. After she finished washing the dishes, she found someone had moved the container of clean dishes onto the floor. As she was not able to find any assistance, she moved the heavy container of clean dishes from the floor to the top of the trolley by herself thereby further injuring her back in the process.
2. She sought medical treatment at the Caritas Medical Centre at 4 am the next day when the pain on her back became intolerable. She was followed up and continued to receive medical treatments physiotherapy and occupational therapy at the Caritas Medical Centre.
3. The Medical Assessment Board’s certificate of review of assessment on Madam Zhong of 1 November 2010 certified her to have sustained “back injury resulting in vertebrae L5 collapse” (p 199 of bundle). The period of sick leave approved by the Board was 16 September 2009 to 5 August 2010 and the loss of earning capacity permanently caused by the injury was 10%.
4. Madam Zhong sought multiple treatments at various clinics apart from the Caritas Medical Centre, they included Chinese herbal medicinal treatments and acupuncture. She claimed her back pain had persisted in spite of the various medical treatments received, and the pain extended from her back to her right lower limb. She claimed she required bed rest after standing or walking for 1 hour. She could not walk fast or squat down, she relied on the hand rail for assistance on the stairs. She could not carry weight or do the household chores and was dependent on her husband to take care of the daily housework.
5. Madam Zhong visited the home on 6 December 2010 requesting to return to work, it was rejected by the defendant’s Mr Chan who asked her to resign from the job. She was told she was no longer fit to work at the home.
6. She denied she handed in her resignation to the defendant on 11 August 2010 claiming she was told to sign the form on 13 April 2011 for she was told she would be paid the MPF after she signed the form. Subsequently, she went to the Labour Tribunal and lodged a claim against the defendant for her long service and leave pay.
7. She claimed it was the defendant’s failure to hire adequate staff and to provide a safe system of work at the home that led to the two accidents in September 2009 in breach of the employment contract. Furthermore, she claimed the defendant was negligent and in breach of its statutory duties for its failure to provide a safe system of work under S 6(2)(a) of the Occupational Safety and Health Ordinance Cap 509 (‘the Ordinance’) and S 6(2)(c) for failing to provide adequate training, supervision, and information to ensure her safety and health.

*The defendant’s case*

1. The supervisor/manageress of the home Madam Ng Lai Wun (‘Madam Ng’) admitted the plaintiff was employed as a care worker in August 2006. The plaintiff’s duties as a care worker included taking care of the elderly residents’ daily activities, bathing, changing diapers, feeding, washing dishes and general cleaning at the home. She was also required to carry bags of rubbish to the disposal area outside the home.
2. Madam Ng confirmed that each of the residents at the home was bathed every other day with the assistance of the care workers after breakfast. That each morning, care workers were required to help the residents clean their faces, brush their teeth and have breakfast. After breakfast, care workers would clear the breakfast trays, clean the tables and chairs, help with the residents’ exercise routine before serving lunch. They were required to feed lunch to residents who required assistance, clean the floor after lunch before changing diapers of the residents and mobilise residents who were bed bound. Care workers would then have lunch at 12:40 pm.
3. Madam Ng claimed there was sufficient manpower at the home to carry out the aforesaid routine work at the home at the material time. As there were only 35 residents at zone 2B, only half would bath each day and some of them could shower on their own without assistance, therefore, the 4 staff on duty at zone 2B were required to assist 12 to 13 residents on the day of the accident. She disagreed there were only 3 care workers including the plaintiff on duty, claiming a new care worker Chan Sai Lan was assigned to work at zone 2B in addition to the plaintiff, Lee Kit Wah and Luk Sau Han. She said it only took 10 to 15 minutes for each resident to be showered, the work should take no more than 1 hour 15 minutes to finish bathing the 12-13 residents at zone 2B. She denied there was a rigid or strict time table for care workers to complete the work, but asserted bathing duties would usually finish by 10:30 am.
4. According to Madam Ng, all care workers received training in the care of elderly residents, that training would be conducted once a month by nursing professionals and physiotherapists. There were also notices posted at the washing area bringing the staff’s notice to take care when bearing weight at work. In addition, she claimed she would verbally warn the staff to take precaution at work. There were also daily briefing sessions to all staff. There was a standing instruction at the home requiring staff to work in pairs when moving disable residents.
5. Madam Ng claimed that at the material time there were only 140 residents at the home served by 50 to 60 staff, therefore, there were adequate manpower at the home which has capacity for 237 residents.
6. As to the 15 September 2009 accident, Madam Ng claimed there were proper equipments such as trolleys and plastic containers provided with full instructions to the staff on washing duty. There was no need for any staff to place a plastic container of dishes on the floor, in any event, it was not permitted by the home. As there were 8 staff at the home assigned to clear away and clean the dining utensils at the material time, the plaintiff should have asked for assistance if she required it whether the work involved was bathing the residents or cleaning and clearing dishes after meals.
7. The defendant casted doubts on the plaintiff’s accidents because they were not witnessed by any staff of the defendant.

*FINDINGS ON LIABILITY*

*First accident*

1. The defendant produced the care workers’ day shift time-table between 6:45 am and 6:45 pm for work to be carried out at the home (p 92 of the bundle). The time-table did not specify bathing duties; instead, between 8:15 am and 11 am, care workers were required to wash clothes, dishes and cutleries, specifying the work should be carried out in pairs. In addition, there were other duties care workers were required to do without specification of time, these included daily cleaning of the refrigerator, monthly cleaning of electric fans and the air-conditioning filters, quarterly cleaning of curtains.
2. It is obvious that the p 92 time-table was subject to the instructions and assignment by senior staff or the supervisor. It was the case on 3 September 2009 when the plaintiff was assigned to zone 2B and to bathing duties after she helped the residents to clean up, brush teeth and breakfast.
3. The plaintiff claimed those were not her normal duties for she was usually assigned to cleaning and washing duties, and she was not used to bathing elderly disable residents. On 3 September, when she could not obtain assistance from other staff at zone 2B in spite of repeated requests, she decided to pick up Madam Luk by herself. In so doing, as Madam Luk was a tertraplagic and had slumped after she was held up from her bed, the plaintiff injured her back trying to lift her singlehandedly.
4. The defendant denied there was inadequate manpower on 3 September 2009 at zone 2B. In spite of the plaintiff’s claim that there were only 3 care workers assigned to work at zone 2B on the day of the accident, the defendant asserted there was a fourth care worker, Chan Sai Lan who started working at zone 2B on 1 September 2009. The defendant referred to p 97 of the bundle, the duty roster in September 2009 in support of its claim that there were sufficient manpower and the staff was not under time pressure to complete the duties assigned.
5. It was revealed at the trial that there were, in fact, 42 residents at zone 2B on 3 September 2009, not 35 originally claimed by Madam Ng, it follows the number of residents requiring bathing assistance exceeded 12-13 on 3 September 2009. Even if some of the residents were able to shower unassisted, and the remaining requiring help from care workers working in pairs, with 15 minutes required to shower each resident, it would take over 1.5 hours for 4 care workers to finish bathing 12-13 residents. If the number of elderly residents requiring assistance exceeded 12-13, care workers would have to either shorten the bathing time for each resident or work alone to keep to the time-table. After the shower, according to the time-table, residents would be engaged in physical exercise by 10 am with assistance from care workers (p 181).
6. Based on the evidence of the plaintiff and supporting documentary evidence produced, I am satisfied that the plaintiff’s usual duties were cleaning and washing rather than working at zones A and B on the first and second floors of the home. The p 92 time-table was indeed the time-table the plaintiff was required to adhere to. The time-table at pp 92 or 181 failed to specify bathing duties, it is in support of the plaintiff’s claim that she was assigned to work at zone 2B on 3 September 2009 to perform duties which were not her usual duties of cleaning and washing. Clearly, her assignment to zone 2B was due to shortage of staff on 3 September 2009. Even if the defendant’s claim was accepted that Madam Chan Sai Lan was a new staff working at zone 2B since 1 September 2009, she was not known to the plaintiff and her presence was not even noticed by the plaintiff. As a result of the plaintiff not getting help from other colleagues at zone 2B, contrary to the defendant’s guidelines, she had to lift Madam Luk by herself from the bed to the wheel chair when she injured her back.

*The second accident*

1. It was the plaintiff’s case that because of the back injury sustained at the first accident on 3 September 2009, she had informed the supervisor, Madam Ng, when she returned to work on 6 September 2009 that her back was hurting and could not raise her arms to clean the ceiling fans and windows. She had also asked Madam Ng to assign another co-worker to work together with her as a team instead of Madam Nip Ho Mui because Nip had left the cleaning of ceiling fans and windows to her. Unfortunately, her request was ignored by Madam Ng. She had to seek assistance from two other cleaning workers at the home to do the work because of her 3 September 2009 back injury.
2. On 15 September 2009, at around 5:55 pm after the evening meal was served, when the plaintiff and Madam Nip were performing dish washing duties, because of her back pain, the plaintiff asked Madam Nip to collect the dishes and plates from the dining room and she would wash the dishes at the washing room. She said she had placed the dishes after washing in a plastic container on top of the trolley. After she finished washing, she turned to find the container full of clean dishes had been left on the floor. As it was unhygienic to leave clean dishes on the floor and because she was not able to find help either inside or outside the washing room, the plaintiff lifted the container back onto the trolley by herself. It resulted in further injures to her back. As in the first accident, no one witnessed the second accident.
3. Even though the defendant’s nursing staff may have run the occasional training classes for care workers, and even if the defendant may have devised a system of work at the home or posted safety warnings at the home (p 187), there should be close supervision of the care workers to ensure safety guidelines were adhered to. The accident on 3 September 2009 took place at around 8:30 am, before Madam Ng, the supervisor, returned to the home for work. It is obvious that there was no supervision at the time the residents took their showers after breakfast.

*Legal principle*

1. In the CFA case of *Cathay Pacific Airways Ltd v Wong Sau Lai* [2006] 2 HKLRD 586, Ribeiro PJ held:

“*Single duty*

24. Of course the duty of care owed by employers to employees at common law is a single duty to take reasonable care for his employees’ safety. This is so even though it is convenient to think of the duty as involving the provision of safe co-workers, a safe place of work, safe equipment, a safe system of work, proper instructions and supervision and (where called for) adequate training. As Lord Keith put it in C*avanagh v UlsterWeaving Co Ltd* [1960] AC 145 at p 165, “[t]he ruling principle is that an employer is bound to take reasonable care for the safety of his [employees], and all other rules or formulas must be taken subject to this principle”.”

1. In para 11-66 of Charlesworth and Percy on Negligence 12th ed at p 831, the authors stated:-

“**Meaning of “system of work”.** This is the term used to describe: (i) the organization of the work; (ii) the way in which it is intended the work shall be carried out; (iii) the giving of adequate instructions (especially to inexperienced workers); (iv) the sequence of events; (v) the taking of precautions for the safety of the workers and at what stages; (vi) the number of such persons required to do the job; (vii) the part to be taken by each of the various persons employed; and (viii) the moment at which they shall perform their respective tasks. Further:

“it includes … or may include according to circumstances, such matters as the physical layout of the job – the setting of the stage, so to speak – the sequence in which the work is to be carried out, the provision in proper cases of warnings and notices, and the issue of special instructions. A system may be adequate for the whole course of the job or it may have to be modified or improved to meet circumstances which arise. Such modifications or improvements appear to me equally to fall under the head of system.” (per Lord Green in *Speed v Thomas Swift Co Ltd* [1943] K B 557 at 563, 564)

1. Other than prescribing a safe system of work, the employer must make sure it is followed. In para 11-76 of Charlesworth and Percy on Negligence on p 835, the authors said:-

“**Checking that the system is followed.** The factof prescribing a safe system of work does not sufficiently discharge an employer’s duty, unless it is also accompanied by steps reasonably to ensure it is followed, such as, for example, inspection and supervision. …… Supervision is particularly required when someone is given a task beyond their competence and initiative. On the other hand, an experienced man does not need any warnings or advice about risks, with which he is thoroughly familiar. …… Merely giving written instructions, which set out and explain the system, and then telling the workman to comply with them, without doing more, was held to be insufficient to discharge the employer’s duty. An employer does not discharge his duty by establishing a system and turning a blind eye to its breach. (McGregor v A.A.H. Pharmaceuticals 1996 S.L.T. 1161)”

1. It is clear that at the defendant’s home, little supervision of the care workers was provided. Though some of the care workers were assigned to a particular zone to work, other care workers such as the plaintiff were required to give assistance and work at different chores at a different station whenever a particular zone was short staffed. This was the case on 3 September 2009 at zone 2B. As the plaintiff was taken out of her usual cleaning duties and assigned to zone 2B performing duties she was not familiar with, even though she might have received some sort of training previously on handling disable residents at bathing, it was incumbent on the defendant, to supervise her work closely. The 1st accident could have been avoided by pairing her with an experience care worker at bathing disable residents. Unfortunately, this was not done.
2. The plaintiff attributed the lack of assistance in helping Madam Luk to the wheelchair to the shortage of staff at the home; the defendant denied it, claiming the plaintiff should have asked for help before proceeding to lift Madam Luk. I am not convinced that any worker would prefer to work unassisted if there was help available. Had the defendant provided a system of work that required care workers bathing disable residents to work in pairs, with strict instructions to one of the 2 experienced care workers at zone 2B to work with the plaintiff on 3 September 2009 with close supervision to make sure the system of work was followed, the plaintiff would not have been left to handle Madam Luk alone. Had the home allowed care workers flexibility instead following the time-table rigidly and had there been sufficient staff to take up the duties, bathing duties would be performed by care workers in pairs even though it may take a little longer to finish bathing all 21 residents at zone 2B each day. I am not persuaded by Madam Ng’s evidence on the exact number of residents not requiring assistance at showering was 9; her evidence is unreliable, she had mistakenly claimed the number of residents at zone 2B on 3 September 2009 was 35 when it was in fact 42. Furthermore, even with 13 residents to shower by 4 workers in pairs on 3 September 2009, it would take more than 1.5 hours to bathe all of them.
3. On the plaintiff’s claim of Madam Nip’s mischief by placing the container of clean dishes on the floor, Madam Nip denied in court she had done so. There is no way to find out if she did so or not as there was no independent witness produced. The medical records from Caritas Medical Centre Accident and Emergency Department however supported the plaintiff’s case, they indicated it is highly likely the plaintiff did aggravate her back injury on 15 September 2009 at work. From the evidence adduced I believe the plaintiff did injure herself at the two accidents at the home. I am satisfied the defendant was negligent and had failed to provide a safe system of work under s 6(2)(a) of the Occupational Safety and Health ordinance Cap 509.
4. On the other hand, I agree the plaintiff should have taken more care in performing her duties. She had been working at the home since 2006, she had received some training in the care of disable residents and dish washing duties and she was not an inexperienced worker at the home. There were also warning notices posted at the home requiring workers to work in pairs and to exercise care, the plaintiff should have taken care when performing such duties and complied with the guidelines and instructions. Consequently, I find the plaintiff contributed 20% to the two accidents.

*QUANTUM*

*Injuries and treatments*

1. According to the medical reports from Caritas Medical Centre where the plaintiff received treatments after the 2nd accident and follow up treatments and the joint medical report of Drs. Hung Siu Lun Tony and Chun Siu Yeung, specialists in orthopaedic surgery, the plaintiff told the doctors she did not have any pre-existing back problem before the two accidents. There may have been some mild pain before but she did not require medical consultation prior to the accident.
2. Since the accidents in September 2009, the plaintiff said she suffered from back pain lasting the whole day. That the pain would increase with walking and stair climbing after 15 minutes. Since October 2009, she had also developed right knee pain. She also had 3 occasions of bowel stress incontinence since October 2010 and she had to use an implement to help her clean herself after toilet and shower. She claimed she no long did any housework due to her health condition after the accident.
3. Drs Hung and Chun had the benefit of viewing the August 2010 surveillance video before the report was prepared. At the joint physical examination in September 2010, the doctors observed the plaintiff walked into the consultation room with a walking stick, she was not limping and could sit normally. She could not stand on tip toes nor walk on tip toes or heels, she could not squat down but could kneel down and get up with support. The doctors found no lower back deformity, abnormal swelling, muscle spasm or scar. There was tenderness over the midline from L4 to S1 levels, right paraspinal tenderness from L3 to L5 levels and left paraspinal tenderness from L2 to L5 levels.
4. It was Dr Hung’s opinion taking into consideration the medical records and history of the plaintiff that her injury was compatible with the circumstances of the accidents described by her and that the condition was not pre-existing. Dr Chun, on the other hand, disagreed. He pointed out the MRI taken in mainland China on 15 November 2009 showed no signal change of the L5 vertebrae to suggest a fresh fracture. This indicated the plaintiff did not sustain a fracture of the L5 vertebrae at the two accidents, he believed the L5 ‘fracture’ therefore should be pre-existing at the time of the accident. Dr Chun also concluded the degenerative changes of the other vertebrae and osteoporosis were all pre-existing and not caused by the injuries. He referred to medical journals to support his opinion that in 85% to 90% of patients with back pain the doctors could not find any explanation for and that work activity has not been conclusively shown to cause back pain as the majority of suffers were not involved in employees compensation claims. He concluded that it is highly likely the plaintiff would have low back pain in the absence of the two accidents in any event.
5. Dr Hung pointed out that osteoporosis itself seldom showed any symptoms to patients, it would only cause back pain when there was also a fracture of the vertebrae, that the L5 vertebrae collapse in the plaintiff supported his opinion. He did not consider the MRI taken in a mainland hospital to be reliable and was of the opinion that the healing process in each patient to be different, therefore, disagreed with Dr Chun. In his opinion, a sick leave period of 1 year is appropriate, while Dr Chun considered 6 weeks to be sufficient. Both doctors agreed the plaintiff exaggerated her condition and that the bowel incontinence and knee pain were unrelated to the accidents.
6. Both doctors agreed the plaintiff had reached maximal medical improvement and she may need intermittent symptomatic treatments in future for her lower back pain. Though she should avoid carrying heavy objects, she is able to carry on with independent daily activities without requiring continuous attention. Dr Hung assessed the plaintiff to have suffered 7% impairment to the whole person and 7% loss of earning capacity, while Dr Chun, on the basis the collapse of L5 and degeneration was pre-existing, considered she sustained 1% whole person impairment and 1% loss of earning capacity. Both agreed she should be able to return to her pre-accident job as a cleaner and carer in an elderly home.

*Pain, Suffering and Loss of Amenities*

1. After viewing the surveillance video, I agree with the two experts that the plaintiff had exaggerated her disability resulting from the accidents. I am satisfied she did injure her back at the first accident, and the second accident aggravated her condition.
2. It is by no means clear if the accidents was the cause of the collapse of the L5 vertebrae given that the two experts Drs Hung and Chun had such a diverse opinion on the L5 vertebrae collapse. Nevertheless, it is clear the plaintiff did not complain of back pain prior to the two accidents, if the L5 vertebrae collapse was pre-existing she would have sought medical treatments before the two accidents. The medical evidence showed, after the two accidents the back pain became a major concern, it is possible that her condition was aggravated and only became a concern after the accidents. Even though Dr Chun is of the view that the degeneration would eventually worsen given time even without the accidents, the fact remained it was only after the accidents that the plaintiff experienced constant low back pain. In spite of the medical journal statistics produced by Dr Chun, I have difficulties with Dr Chun’s theory that the plaintiff would have developed back pain eventually and that it was not work related in her case.
3. I accept there is a certain amount of exaggeration on the part of the plaintiff of her condition, in that she was found by the two specialists to be independent in her daily living activities with no personal hygiene problems. Contrary to her claim, she was seen in the surveillance video to have gone out shopping with a trolley and walked without a limp on a number of occasions in August 2010. Both doctors agreed she could return to her previous job provided she is not required to carry heavy weight and is given time to rest intermittently.
4. The plaintiff’s case is similar to the case of *Wong Wai Man v Yi Wo Yuen Aged Sanatorium Centre Limited* HCPI 77/2007 (judgment date 15 August 2008) where Suffiad J held, in spite of the exaggeration of disability of the plaintiff in that case and the pre-existing degeneration of the plaintiff’s spine, an award of $250,000 to be a reasonable compensation under PSLA.
5. In the case of *Chan Chung Keung v Greenroll Limited t/a Conrad Hong Kong* HCPI 275/2005 (judgment date 20 December 2005), Deputy Judge Carlson awarded the sum of $180,000 under PSLA to the plaintiff who suffered a soft tissue injury which exacerbated a pre-existing weakness caused by natural aging process.
6. In the present case, the plaintiff’s condition is more severe than those suffered by the plaintiffs in *Mohammed Ashaq v Royal Honour Industrial Ltd* DCPI 586/2007 and *Sulakhan Singh v Federal Securities* *Limited & Anor* DCPI 231/2007 where I found the two plaintiffs had exaggerated their disabilities when one was malingering and the other had returned to work full time for the employer a few months after the accident. Their loss of earning capacity was 2% and 5% respectively.
7. The MAB certificate of review of assessment of 18 November 2010 accepted the plaintiff had suffered back injury resulting in the L5 vertebrae collapse and her sick leave to be from 16 September 2009 to 5 August 2010 with a loss of earning capacity caused by the injury assessed at 10%, an increase from the 6% original assessment on 19 August 2010. It is apparent the MAB did not have the benefit of the surveillance video taken in August 2010.
8. My assessment of the plaintiff’s loss of earning capacity as a result of the injury is 6% and the appropriate award under this head to be $180,000.

*Loss of Earnings*

1. The plaintiff was born on 25 April 1947, she will be 65 in April 2012, the usual retirement age for someone engaged in manual work. Her monthly wage at the time of the accident was $6,500.
2. The plaintiff did make a request to return to her pre-accident job but it was rejected by the defendant in spite of the two specialists’ recommendation. She had stopped working since the accident on 15 September 2009. It is understandable for a person with little formal education and over the age of 62, who cannot carry heavy weight, to find it difficult to return to gainful employment.
3. For the aforesaid reason, it is reasonable to award a compensation for loss of earnings of 32 months after the injury in September 2009. The calculation is :

$6,500 x 32 = $208,000

MPF benefits: $208,000 x 5% = $10,400

*Special damages*

1. The plaintiff claimed medical expenses for follow up treatments at $23,065.70, travelling expenses at $1,275.70 and $3,000 for tonic food. The defendant agreed to the last two items and medical expenses at $4,000.
2. I have considered the items of medical expenses set out in the revised statement of damages and took into account the medical records exhibited, I am satisfied the expenses were incurred by her. I therefore allow the medical expenses claimed at $23,065.70. The special damages allowed amounts to :

$(23,065.70 + $1,275 + $3,000) = $27,340.70

*Summary*

1. PSLA $180,000.00

Loss of earnings

(including pre & post trial loss) 208,000.00

MPF 10,400.00

Special damages 27,340.70

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$425,740.70

Less 20% contributory negligence 85,148.14

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Total $340,592.56

1. The judgment sum to the plaintiff is $340,592.56, with interests on general damages from the date of writ to the date of judgment at half judgment rate, interests on special damages from the date of accident to date of judgment at 2% per annum and thereafter at full judgment rate until full payment.
2. Costs nisi – Costs to the plaintiff to be taxed if not agreed with certificate for counsel. The plaintiff’s own costs to be taxed in accordance with Legal Aid Regulations. Should there be no application on costs within 14 days hereof, the order will be made absolute.

(H.C. Wong)

District Court Judge

Mr Cheung Yiu Leung, instructed by Yip, Tse & Tang, assigned by Director of Legal Aid, for the plaintiff

Mr Kent Yee and Mr Wilson Hui, instructed by Winnie Leung & Co, for the defendant