## DCPI 2072/2012

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 2072 OF 2012

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##### BETWEEN

MOHAMMED SAYEED Plaintiff

### and

LEIGHTON ROAD HOTEL

MANAGEMENT SERVICES LIMITED Defendant

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Before : Deputy District Judge Simon Ho in Court

Dates of Hearing : 21, 22, 23 & 26 May 2014

Date of Judgment : 21 October 2014

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JUDGMENT

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*Introduction*

1. This is a personal injury claim by the plaintiff against the defendant for damages arising out of an accident happened on 9 May 2011. At the time of accident, the defendant employed the plaintiff as a senior chef in the food and beverages section of their hotel – Crowne Plaza Hong Kong, situated at 8 Leighton Road, Causeway Bay, Hong Kong (“the Hotel”).
2. It was the plaintiff’s case that at about 3:15 pm on the date of accident while he was cutting a frozen lobster, his left ring finger was cut by his chef’s knife and injured. At all material times, the defendant provided him with no protective gloves for cutting lobsters.
3. In was pleaded in the Defence, among other things, that the plaintiff failed to wear cut-resistant gloves provided by the defendant when cutting lobsters. At trial, the defendant as represented by Mr Dennis Law submitted the defendant’s case thus: cutting lobsters into halves, after proper defrosting procedures, would be a simple and straight-forward task for an experienced chef like the plaintiff. The risk of injury would be low and cut-resistant gloves would not be reasonably necessary.
4. Originally, the plaintiff was legally represented, and the pleadings and witness statements for the plaintiff were prepared by his former solicitors, Chan & Lawyer. On 13 January 2014, his former solicitors applied to cease to act for him and leave was granted by Deputy District Judge D Ho on 30 January 2014. Thereafter, the plaintiff has been unrepresented and this remained so at the trial hearing.

*Liability*

*Plaintiff’s evidence*

1. At trial, the plaintiff adopted his witness statement and maintained that he was not provided with any protective gloves by the defendant for cutting lobsters on the date of accident. He further elaborated his case by telling this court that in average those lobsters he cut would be about 8 inches (head to tail) in length. As a matter of daily routine before the date of accident, after he returned to the Hotel, he would take out about 100 to 140 lobsters from the freezer about 4 hours (at first he said 6 hours and subsequently he corrected himself to 4 hours) before they would be served at the Hotel’s dinner buffet each evening. His daily working hours were from 2 pm to 11 pm.
2. After taking out the lobsters from the freezer, he would expose them to room temperature for about half an hour before he proceeded to cut them into halves. According to his estimate, it would take him about 1.5 hours to personally take out the lobsters from the freezer on 4th Floor of the Hotel, moving them to either the 1st Floor or 3rd Floor for cutting, and thereafter putting them into the refrigerator.
3. It is undisputed that the plaintiff had been assigned by the defendant to cut lobsters in the aforesaid manner for a few months before the accident. At trial, the plaintiff also gave evidence that his work pressure was great and his workload very heavy. Each day, after finishing cutting lobsters and putting them back to the refrigerator, he would also be required to prepare large quantities of curry food to be served at the curry counter for the dinner buffet.
4. When the accident happened, he was cutting the lobsters as part of his daily routine.
5. One Mr Durga, the plaintiff’s former colleague, attended court to give evidence for the plaintiff. Mr Durga already left the employment with the defendant and joined another hotel. It was undisputed that, at the time of accident, Mr Durga was the head of the curry section and plaintiff was his assistant.
6. Mr Durga adopted his witness statement dated 24 January 2014 prepared for this action. He testified that there was no ‘cut-resistant gloves’ or other protective gloves provided by the defendant at the time of the accident. There had been a long time lapse after the accident before the Executive Chef of the defendant provided cut-resistant gloves to the staff, including himself. That was the first time he saw and could have the chance to use cut-resistant gloves.

*Defendant’s disputes with plaintiff’s evidence surrounding the happening of accident*

1. In gist, the defendant’s disputes with the plaintiff’s evidence surrounding the happening of accident mainly lie in the following respects:-
   1. There were protective gloves placed at the oyster working area at the Hotel. (“Point 1”)
   2. There had been another chef working at the seafood section who cut lobsters together with the plaintiff. (“Point 2”)
   3. The plaintiff’s evidence given in chief that lobsters were taken out from the freezer about 6 hours before they were served at the dinner buffet did not match with his duty hours. (“Point 3”)
   4. It is incredible that the plaintiff took out the lobsters from the freezer and defrosted them for only half an hour before he cut them into halves as they would still be too frozen and hard for cutting. Mr Law submitted that the Plaintiff had actually taken them out from the refrigerator instead. (“Point 4”)

*Defendant’s evidence*

1. Mr Yeung Chi Wing (“Mr Yeung”) was the defendant’s sole witness. He prepared two witness statements for this action. The first one was dated 11 April 2013[[1]](#footnote-1), and his supplemental witness statement was dated 5 March 2014[[2]](#footnote-2).
2. According to Mr Yeung’s evidence, the defendant employed him as the cold kitchen’s section head of the Hotel in 2009. At that time, his main job duties included handling cold meat, salad, etc. After the accident in April 2012, he was promoted to the post of Junior Sous Chef and became the departmental trainer of the food and beverage department.
3. In his witness statement, Mr Yeung said that the Hotel had provided protective gloves to the kitchen staff to use whilst handling high-risks jobs, in particular, for opening oysters. He further said although the chopping of lobsters is considered low-risk, if the staff thinks necessary, he could wear protective gloves when chopping lobsters. At paragraph 4 of his supplemental witness statement, Mr Yeung tried to refute Mr Gurga’s evidence on the absence of protective gloves by saying that:-‘According to my knowledge, the defendant had provided protective gloves for the staff to use prior to Mohammed Sayeed’s accident. However, because the Executive Chef responsible for those protective gloves has resigned, the defendant could not provide the relevant documentary receipt(s) to show those protective gloves were in fact purchased by the defendant prior to Mohammed Sayeed’s accident’.
4. In his witness statement, Mr Yeung also said that he recalled that in early 2011, the Executive Chef of the Hotel assigned the plaintiff to work in the seafood department of the open kitchen mainly to assist chopping lobsters into halves. At that time, a chef of the seafood department chopped lobsters with the plaintiff[[3]](#footnote-3). Apart from chopping lobsters in the seafood department, the plaintiff also prepared curry food in the main kitchen.

*Analysis of evidence*

1. My general observation is that the plaintiff’s evidence as to how the accident happened and the surrounding circumstances was largely unchallenged and some of which was even admitted by Mr Yeung at trial.
2. First of all, Mr Yeung did not witness how the accident happened, and he learnt from this colleagues that the plaintiff had cut his finger whilst cutting lobsters. The plaintiff’s case that he sustained cut injury while cutting lobsters at work was corroborated by the medical certificate issued by Ruttonjee & Tang Shiu Kin Hospital (“RTSKH”) on 9 May 2011[[4]](#footnote-4) and the physical examination conducted by the A&E Department on that day which revealed a 1 cm cut wound over the plaintiff’s left ring finger tip. The two medical experts appointed by both parties in this action agreed that the plaintiff’s injury was consistent with the history and mechanism of the accident described by the plaintiff[[5]](#footnote-5).
3. In his re-examination, Mr Yeung also admitted that the plaintiff had been assigned to cut lobsters on daily basis for the Hotel’s dinner buffet for a few months before the accident. Mr Yeung’s such evidence is consistent with his own witness statement[[6]](#footnote-6). But he was unclear about the number of lobsters the plaintiff was required to cut each day. Although the number as put by Mr Law to the plaintiff during cross-examination was about 100 each day, the plaintiff disagreed and his evidence was more than 100, about 100 to 140.
4. In the light of the aforesaid, I find the plaintiff did sustain a cut injury at his left ring finger whilst at work cutting lobsters on the date of accident. Further, I accept the plaintiff’s evidence that the number of lobsters he cut daily was about 100 to 140. And, when the accident happened at about 3:15 pm on 9 May 2011, the plaintiff was cutting lobsters as part of his daily routine.
5. I now turn to my analysis of the defendant’s disputes over the plaintiff’s evidence set out in Paragraph 11 above.
6. As for Point 1, although Mr Yeung testified that the defendant had provided protective gloves for the staff to use prior to the plaintiff’s accident and such protective gloves were placed at the oyster working area, it transpired after trial that:-
   1. he did not know whether protective gloves were available at the oyster working area on the date of accident;
   2. he never handled oysters before, and he did not use any protective gloves himself;
   3. he did not know whether anyone in the food and beverage department had ever instructed the plaintiff to wear protective gloves when cutting lobsters; and
   4. on the question of receipts for the purchase of protective gloves, Mr Yeung revealed at trial for the first time that he did not personally know what kind of gloves was actually purchased by the Executive Chef as referred to in his supplemental witness statement. According to him, that Executive Chef was one Mr Dick Wong.
7. In answering the questions raised by this Court, Mr Yeung also revealed for the first time that his colleague, Michelle (who was the manageress of the food and beverage department and worked for the defendant for a long time) knew about the details of purchase of gloves better than he did. But he did not know why the defendant had not arranged Michelle or anyone from their accounting department to give evidence on the purchase of gloves.
8. Further, in the course of giving his evidence at trial, Mr Yeung said he had chance of cutting lobsters for preparing salad on ad hoc basis. However, he only wore rubber gloves to cut lobsters, but they were not protective gloves, and he described those gloves as similar to those used by surgeon and would be disposed after use. During cross-examination, Mr Durga also gave evidence that in handling chicken, lamb, etc, rubber gloves would be provided by the defendant. Again, he said the rubber gloves were not protective gloves.
9. Given such a state of evidence, one would raise a legitimate doubt - if there were really any ‘cut-resistant gloves’ or ‘protective gloves’ other than the rubber gloves (as referred to by Mr Yeung and Mr Durga) in the Hotel and they had indeed been provided by the defendant to their kitchen staff (including the plaintiff) to use for cutting lobsters or opening oysters before the accident, the defendant could have easily arranged any of their kitchen staff who had actually used such ‘cut-resistant gloves’ or ‘protective gloves’ to testify in court to that end. Yet, no evidence of such kind was ever produced in this trial, and Mr. Yeung admitted he himself did not use any protective gloves.
10. In these circumstances, it appears very strange that Mr Yeung would find such a convoluted way to justify his evidence about the existence of the protective gloves in the Hotel before the accident by asserting that the Executive Chef (Mr Dick Wong) responsible for the purchase of these protective gloves has resigned and the defendant could not provide the relevant documentary receipt(s) for such purchase.
11. As a matter of fact, when Mr Yeung was asked by this court how did he know the gloves purchased by Mr Dick Wong was protective gloves but not rubber gloves, at first, he said he had heard about that from his colleague who had already left the Hotel. Upon further questioning, he then said Michelle had made enquiries with Mr Dick Wong about such matter over the phone. But he qualified his answer by saying that he was not present during that phone conversation. Ultimately, he admitted that he did not personally know what types of the gloves (protective gloves or rubber gloves) had actually been purchased by Dr Dick Wong.
12. In contrast, this court observed that the plaintiff gave evidence on the absence of provision of protective gloves by the defendant in a straightforward manner and his evidence remains unshaken after cross-examination. His evidence in this regard was also corroborated by Mr Durga, whose evidence likewise stood firm after cross-examination.
13. In the light of the above analysis, on the issue of protective gloves, I accept the plaintiff’s evidence that the defendant did not provide him with any cut-resistant gloves or other adequate protective gloves for cutting lobsters at the time of accident. I also reject Mr Yeung’s evidence that the defendant had made available protective gloves in the oysters working area before the accident. I find his evidence revolving around this issue highly dubious, evasive and unreliable.
14. Regarding Point 2, Mr Yeung gave evidence at trial that he did not know about the name of the seafood chef who chopped lobsters with the plaintiff (as he alleged in his witness statement) and this seafood chef may be a part-time casual worker. The first time he saw such person was around early May 2011. However, he did not know of any particular reason why such person was employed by the defendant working part-time to cut lobsters.
15. Mr Yeung further admitted that he did not know whether there was any kitchen staff cutting lobsters together with the plaintiff on the date of accident. However, the plaintiff was adamant there was none and he denied he had been assisted by any person to cut lobsters before the accident. All along, he cut the lobsters alone. I also find such aspect of plaintiff’s evidence intact after cross-examination.
16. I prefer the plaintiff’s evidence to that of Mr Yeung and I reject Mr Yeung’s evidence on this point. I observe that the plaintiff’s evidence is inherently credible and accords with his description about his heavy workload and the need to work under great pressure. On the other hand, I observe that Mr Yeung was not frank on this point. In his witness statement, he said a seafood chef chopped the lobsters with the plaintiff at that time, which might be referring to early 2011 according to the context of his witness statement[[7]](#footnote-7). Yet, it now turns out he only saw the seafood chef for the first time around early May 2011, and he did not actually know whether the defendant had assigned any person to assist the plaintiff to cut lobsters on the date of accident.
17. Having carefully considered the relevant evidence on this point, I find that the defendant had not assigned any person to cut lobsters together with the plaintiff on or before the date of accident.
18. As for Point 3, according to the evidence revealed at trial, the plaintiff’s act of taking out the lobsters 4 hours (instead of 6 hours) before dinner buffet was served would seem better match with his duty hours since he started work at 2 pm each day. However, the evidence of 4 hours or 6 hours before the start of the evening buffet is quite immaterial for determining the material issues in dispute between the parties. During the re-examination, the plaintiff admitted it is also possible that he had taken out those 4 hours before the start of buffet.
19. Regarding Point 4, according to Mr Yeung, defrosting of lobsters would be done in refrigerator at about -3°C to -4°C one day in advance and this was the standard procedure adopted by the defendant. He also said that that the normal temperature of the freezer in the Hotel was below -18°C.
20. I think Mr Law did have a point by saying that if the plaintiff only took out the lobsters from freezer and exposed them to room temperature for half an hour before cutting, the lobsters would still be too frozen and hard for doing so. I inclined to agree with Mr Law basing upon evidence available before me.
21. As such, I find that the lobsters were taken out by the plaintiff from the Hotel’s refrigerator after going through a proper procedure of defrosting described by Mr Yeung and they were in such state as ready for cutting by the plaintiff at the time of accident. If it were the otherwise, it appears quite impossible for him to proceed effectively to cut so many lobsters for so many days before the accident under the working conditions as he described.
22. In the light of the above analysis, it is fair to say the plaintiff’s evidence on Point 3 and Point 4 appear inconsistent or incredible, but these specific aspects would in my view touch upon relatively peripheral matters rather than directing towards the crux of the dispute. I have also fully taken into account the other discrepancies of the plaintiff’s evidence as drawn to my attention by Mr Law in his written closing submission when assessing the credibility of his evidence, and I come to a view that the effect of all these complaints made by Mr Law would not detract my findings made above or in other parts of this judgment.
23. In this regard, I find Seagrott J’s observation made in *Kristan Bowers Philips v The Hong Kong Philharmonic Society Ltd & Ors* **(**unrep, HCPI No 580 of 1996**)** as to how the court should approach the witnesses’ evidence particularly insightful and providing helpful guidance in this case. At para 155, his lordship said:-

“155. It is always difficult for people to recall events of a year or two previously, unless etched into their memories by a particular detail. For people to recall events of a decade earlier, even if aided by contemporaneous records or a dramatic detail, it is a struggle of varying dimensions. Conflicting versions, inconsistencies in the testimony of a particular witness, omissions in recall, surprising additions to what had been stated on an earlier occasion, always call for great care in assessment and sometimes give rise to a sceptical approach. But they are only to be expected in the circumstances. A witness may be extremely reliable on some aspects and yet quite unreliable on others. Some testimony may have to be rejected in total even though it is apparent that the witness is doing his or her honest best to state the position. Other testimony may be exaggerated because time and other factors have distorted the picture. I have not found it necessary to state in this judgment a detailed and analytical assessment of each witness's evidence. Some testimony is more relevant than others. I have used what I accept as relevant and convincing evidence, to establish the picture of events of that morning on the basis of probability; in some matters the picture is one of certainty.”

*Relevant legal principles on liability*

*Employer’s duty of care*

1. It is undisputed the defendant was the plaintiff’s employer at the time of accident. It is trite that employers owe duty at common law to take reasonable care of their employees’ safety. In *Cathay Pacific Airways Ltd v Wong Sau Lai*(2006) 9 HKCFAR 371, Bokhary PJ at paras 1 and 24 said:-

“1. Employers are duty-bound at common law to take reasonable care for their employees’ safety. This common law duty retains its importance despite the existence today of a large body of work safety legislation. Being a duty of care, it is not absolute. But the standard of care demanded is naturally a high one since personal safety is at stake…

…

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 *Cavanagh v Ulster Weaving 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 my view, the relevant duty most engaged in this case touches upon the provision of cut-resistant protective gloves for the plaintiff to wear in enabling him to cut lobsters safely. I find that had the defendant provided such cut-resistant protective gloves to the plaintiff, this would probably have prevented his left ring finger from being cut by the chef’s knife.
2. Mr Law sought to argue that cutting lobsters into halves after defrosting would be a simple and straight forward task for an experienced chef like the plaintiff to discharge, and therefore the risk of injury would be low and cut-resistant protective gloves would not be reasonably necessary. With respect, I do not think such argument would hold water under the circumstances of this case. At the material time, the plaintiff was not just assigned by the defendant to cut one or a few pieces of lobsters on ad hoc basis. Rather, it transpired after trial that the plaintiff had been assigned to cut lobsters alone for the Hotel’s dinner buffets on a daily basis for a few months, and he was required to cut about 100 to 140 lobsters each day, and he was discharging such daily routine at the time of accident as I so found above.
3. In other words, when the employer assigned lobsters cutting task of such high degree of repetition to the plaintiff, common sense dictates that the more frequent the plaintiff was required to use sharp knife to cut lobsters into halfves, the higher the risk his hand may get cut by the knife during the cutting process. As pointed out in Paragraph 7 above, the plaintiff also gave evidence that according to his daily work schedule he was required to cut the lobsters under great work pressure and his workload very heavy and such evidence was not disputed by Mr Yeung or sought to be challenged by Mr Law in his closing submission. This sort of working conditions would just add further to the risk of cut injury.
4. Viewing thus, an experienced chef remains human and is labile for momentary lapse of inattention, especially when carrying out work of such high degree of repetition and under great work pressure. In the course of giving his evidence, the plaintiff suggested that the heavy workload and great work pressure he was facing with at the material times contributed to the happening of the accident.
5. The above circumstances are reminiscent of Bokhary PJ’s observation made in *Cathay Pacific Airways*(supra). At para 38 of the judgment, his lordship said:-

“38. Here was a cabin attendant serving drinks to passengers under considerable pressure as to time. She was getting a bottle from a drawer which, being fully laden, weighed about 30 lbs. This involved her using one hand to support it and prevent it from falling out of the cart and onto her. The danger involved in that exercise was apt to be obscured by its repetitive nature. And being only human, she would not be immune from momentary lapses of attention. Did *Cathay* fail to take reasonable care for Ms Wong’s safety? This was the crucial issue of fact at the trial.”

1. Against the backdrop of the present case, I am of the view that it was highly risky and inherently dangerous for plaintiff to discharge the subject lobsters cutting task at the time of accident if he was not provided with any adequate protective gloves by the defendant to guard him against the aforesaid work hazard in the first place.
2. The passage of Lord Oaksey’s judgment quoted from in *Winter v Cardiff Rural District Council*[1950] 1 All ER 813as referred to in the case of *Cheung Suk Wai v Attorney General* (unrep, HCPI 536 of 1996, 1 November 1996) sheds light on the employer’s duty in situation like the present one. At p 822-823 of judgment in *Winter*(supra), Lord Oaksey said:-

“In my opinion, the common law duty of an employer of labour is to act reasonably in all the circumstances…, but that does not mean that an employer must decide on every detail of the system of work or mode or operation. **There is a sphere in which the employer must exercise his discretion and there are other spheres in which foreman and workmen must exercise theirs… where the system or mode of operation is complicated or highly dangerous or involves a number of men performing different functions, it is naturally a matter for the employer to take the responsibility of deciding what system shall be adopted.** On the other hand, where the operation is simple and the decision how it shall be done has to be taken frequently, it is natural and reasonable that it should be left to the foreman or workmen on the spot.” (emphasis supplied)

1. Therefore, it would be futile for the defendant trying to argue that if the staff thinks necessary, he could wear protective gloves when cutting lobsters. According to my above analysis, I find the subject cutting task to be a high-risk task rather than a low-risk one and it was inherently dangerous, and so it was necessary for the defendant to take positive steps to provide cut-resistant gloves to the plaintiff for the subject lobsters cutting task in the interests of their employee’s safety. In my view, taking such positive steps was also a personal and non-delegable duty for the defendant to discharge and they could not simply shift their responsibility to the shoulders of their employee under the particular working conditions of this case. See *Wishing Long Hong v Wong Kit Chun*(2001) 4 HKCFAR 289, per Sir Thomas Eichelbaum at para 26.
2. Without prejudice to anything aforesaid or the generality of the foregoing, I think Mr Law’s argument cannot get off the ground in any event since I am not satisfied there were any protective gloves (which are adequate for the purpose of enabling the plaintiff to repeatedly cut lobsters for a large quantity under the subject working condition safely) being made available to him whether as placed at the oyster working areas or elsewhere at the Hotel[[8]](#footnote-8). The defendant never ran their case that the rubber gloves as referred to by Mr Yeung and Mr Durga at trial are protective gloves adequately protecting the plaintiff’s safety in the circumstances. Mr Yeung and Mr Durga both said they are not protective gloves. For avoidance of doubt, this court is not satisfied the rubber gloves as mentioned by these two witnesses are protective gloves on the evidence, let alone adequate protective gloves.
3. Apart from the aforesaid, I have also carefully considered the facts of the relevant authorities (namely, *Fong Yuet Ha v Success Employment Services Ltd*(unrep, CACV 100 of 2012)**;** *Cheung Suk Wai*(supra)**;** *Chan Wai Ming v Tai Lee Café & Cak Shop* (unrep, DCPI 1039 of 2006)) included under the defendant’s list of authorities and the legal principles applied in those cases. Needless to say, each case turns on its own merits. It suffices for me to say that the factual matrix of those authorities are materially distinguishable from the present case. Further, these 3 cases essentially provide the illustration of the same principle expounded in *Winter*(supra), which I have considered and discussed above.
4. By reason of the foregoing, I find the defendant failed to discharge their duty of care owed to the plaintiff, and they are liable to the plaintiff’s personal injuries suffered in the accident.

*Issue of contributory negligence*

1. Mr Law argued that the plaintiff was contributorily negligent and he should bear at least 50% for his negligence in this case.
2. It is well settled that the burden of proof rests upon the defendant to prove the plaintiff was contributory negligent. See *Clerk & Lindsell on Torts* (20th ed)**,** para 3-82.
3. In gist, Mr Law’s argument on contributory negligence in his written closing submission can be put thus: the plaintiff was a very experienced chef with 17 years’ experience in daily use of knife. He was in a position to examine the lobsters as to their softness or degree of defrosting before the cutting exercise. The cutting knife was under his sole control and manipulation. Both his hands and the placing of the lobsters were under his charge and co-ordination. It was not for long hours per day as the whole process of taking the seafood out, cutting them and return them back to the refrigerator would last about 1.5 hours.
4. In my view, the mere fact that the accident happened when the cutting knife and lobsters were under the plaintiff’s control and manipulation does not necessarily imply his negligence. After cross-examination of the plaintiff, I observe nothing to suggest that he was negligent in handling the knife or the lobsters during the cutting process. In fact, the plaintiff was not put with any question to suggest that the defendant had provided him with protective gloves to wear for cutting lobsters and he chose not to wear. Instead, it was only put to the plaintiff that his task of cutting lobsters was a low risk procedure and protective gloves were not necessary.
5. Apart from the aforesaid, since I have found in Paragraph 36 above that the state of the lobsters were ready for cutting by the plaintiff at the material time, it is also out of question that he would be negligent by choosing to cut the lobsters under condition when it was not yet ready for him to do so.
6. It is fair for Mr Law to point out that the plaintiff’s chef experience was a relevant factor that the court should take into account when considering the issue of contributory negligence. In particular, I have borne in mind that the more experienced and skillful a plaintiff, the more capable he would be to take reasonable care of his personal safety in discharging such job process which he was knowledgeable and proficient in. On the other hand, the mere fact that the plaintiff was experienced in a particular trade or manipulating a particular tool would not necessarily mean that he is bound to take up a portion of blame for the happening of accident irrespective of any circumstance.
7. As discussed above, the subject cutting task due to its repetitive nature can give rise to momentary lapse of inattention, thereby contributing causally to accidental cut injury. The plaintiff even being an experienced chef can have no immunity. However, any such momentary lapse of inattention in the present circumstances should nonetheless be considered as excusable and not be regarded as contributory negligence[[9]](#footnote-9).
8. During the few months before the accident, the plaintiff had managed to discharge the lobsters cutting task as assigned to him cutting a large quantity of lobsters each day without encountering any cut injury to this fingers even though the defendant had failed to provide him with any adequate protective gloves. To a certain extent, this tends to show that being an experienced chef, he had been discharging the assigned duty attentively.
9. Not only that, Mr Yeung actually mentioned in his witness statement that when he worked with the plaintiff, he felt that the plaintiff was a highly skilled and experienced chef who worked efficiently and professionally. He had personally seen him reminding his juniors every now and then of the proper working method and working environment. Given such a depiction of the plaintiff’s working attitude and performance by Mr Yeung according to his personal experience, the plaintiff does not appear to be such kind of person who has the propensity to adopt unsafe or risky shortcut to perform the cutting task at the expense of his own personal safety.
10. All in all, given the state of evidence about plaintiff’s working conditions at the time of accident, I am satisfied that the plaintiff did work under great pressure to finish cutting about 100 to 140 lobsters on the day of accident as part of his daily routine, and after that he would be required to prepare large quantities of curry food for the dinner buffet. Under such working conditions, I think the court should be slow to blame the plaintiff for the happening of the accident. In my view, he was effectively forced to work under an unsafe system of work, that is to say, to repeatedly cut lobsters without being provided with any adequate protective gloves by the defendant. This is totally different from a situation where an employer had provided its employee with adequate protective gloves but the latter chose not to wear for his own convenience sake.
11. In *Lam Fung Ying v Lui Kwok Fu*(unrep, HCPI 862 of 2002 – decision dated 26 February 2004), Sakhrani J at para 58 of the judgment said:-

“58. **The defendant has alleged that the deceased was guilty of contributory negligence. I am unable to accept this. The deceased was the employee of the defendant and he was instructed to carry out the works. There was no safety equipment provided to him by his employer to carry out the works whilst working on the scaffold. As the deceased was simply following his employer's instructions to carry out the works**, I am unable to accept that there was any contributory negligence on his part. I find that the defendant was liable for the fatal accident to the deceased and that there was no contributory negligence on his part.” (emphasis supplied)

1. In another case of *Chow Cheung Ching v Right Base Construction & Engineering Co Ltd & Anor*[2002] 2 HKLRD 738, Fung DJ (as his lordship then was) at paras 26, 29 and 30 said:-

“26. Counsel for the 2nd defendant submitted that the plaintiff was liable for 50% contributory negligence while the plaintiff denied any such liability.

…

29. In considering the question of contributory negligence, I shall bear in mind the following factors:

1. There has been a breach of regulation 10(4) in relation to the failure to guard the circular saw.
2. There has been breach of occupier’s liability in relation to the presence of dangerous debris on the ground upon which the bench affixed with the circular saw was situated.
3. The plaintiff was tired as a result of having worked long hours in the **difficult environment** of a tunnel.”

30. I find that the **slipping of the footage of the plaintiff was at most a momentary inadvertence** and he should not be liable for any contributory negligence.” (emphasis supplied)

See also *Sun Wan Co v Ng Kam*[1988] HKC 358 (CA), per Fuad VP at pp 368E to 369E.

1. As said, the defendant bears the burden of proof to show that there were some negligent acts or omissions of the plaintiff that contributed to the happening of the accident, but upon the survey of all the relevant evidence here, I am not satisfied that the defendant has discharged such burden. As such, I do not find that the plaintiff had any contributory negligence under the circumstances of this case.

*Breach of statutory duty*

1. For completeness sake, I wish to point out that due to the failure of the defendant (being the plaintiff’s employer) to provide the necessary cut-resistant gloves to the plaintiff for cutting lobsters repetitively under such working conditions described above, I also find they had breached their statutory duty as imposed upon them under section 6(1) and 6(2)(a) of the Occupational Health and Safety Ordinance (Cap 509) (“OHSO”), which provide that:-

“(1) Every employer, must so far as reasonable practicable, ensure the safety and health at work of all the employer’s employees.

(2) The cases in which an employer fails to comply with subsection (1) include (but are not limited to) the following:-

1. a failure to provide or maintain plant and system of work that are, so far as reasonably practicable, safe and without risks to health;…”
2. In my view, the defendant did not provide a safe system of work to the plaintiff without providing the cut-resistant gloves as necessary to protect his safety in the circumstances.
3. In *Chan Yim v Shing Cheong Construction Limited*(unrep, HCPI 54 of 2006, 18 June 2007), Deputy High Court Judge Longley found the defendant employer’s failure to provide goggles and a steel cutter, resulting in injury to the plaintiff’s eye, amounting to a breach of the employer’s duty to provide a safe system of work. (See: paragraphs 5 and 6 of the judgment)
4. By failing to provide a safe system of work as aforesaid, the defendant was therefore in my view acting in breach of their statutory duty specified under s 6(1) and s 6(2)(a) of OHSO.
5. Here, the significance of the defendant’s breach of statutory duty (which according to my finding above had effectively caused the plaintiff’s injury) is twofold. The first significance is succinctly put by Ribeiro JA (as his lordship then was) in *Mak Woon Kin & Anor v Wong Chiu*[2000] 2 HKLRD 295. At p 302D-E, his lordship said:-

“…It is therefore clear that where a breach of statutory duty by an employer is a substantial cause of injury to an employee, the fact that the employee contributed causally to the accident by his own momentary inadvertence or lack of care, if in the context of a repetitive, distracting or fatiguing work environment, may well be regarded as an “excusable lapse” and not as contributory negligence at all: per Lord Reid in the *Stavely Iron* case at p 642.”

1. The second significance would only arise in this case if I were wrong in finding no contributory negligence on the plaintiff’s part. But even in that event, I consider that the defendant should bear a larger portion of responsibility. As expounded in a long line of authorities both in Hong Kong and England, in principle, the more culpable and continuing the breach of the statutory duty, the higher the percentage of blame should fall on the defendant. According to my above finding, the defendant had effectively been forcing the plaintiff to cut lobsters of large quantities day by day for a few months (including the date of accident) without providing any adequate protective gloves.
2. In *Mak Woon King*(supra), Ribeiro JA at p 302E-I continued to say:-

“ The abovementioned principle has been extended to apply to the process of apportioning liability where the employee is found guilty of some contributory negligence. The principle operates to lessen the percentage by which the award is reduced. This was acknowledged by Sachs LJ in *Mullard v Ben Line Steamers* [1970] 1 WLR 1414, at 1418, as follows:-

“To my mind, as indeed Mr Forrest conceded, the principle enunciated in the passages [inter alia from the *Stavely Iron* case] cited applies not only to assessing the question of liability - in other words, whether a man is negligent - but also to assessing culpability - in other words, how one apportions blame as between a plaintiff and a defendant, even if a plaintiff has been held to overstep the boundary between inadvertence and negligence. ......

What happened was indeed exactly of the nature intended to be guarded against by the precautions prescribed by the regulations; and when a defendant's liability stems from such a breach the courts must be careful not to emasculate those regulations by the side-wind of apportionment. Moreover, the more culpable and continuing the breach of the regulation, the higher the percentage of blame that must fall on the defendant.”

Such approach has been adopted by this court in *Li Man Yuen v Li Chung I (t/a VF Electric Manufacturing Co)* [1991] 2 HKC 230.”

1. Putting it in another way, the standard by which the employee’s contributory negligence is judged should be less exacting than that used for ordinary negligence. Otherwise, the effectiveness of OHSO being the relevant statute here to ensure the safety and health of employees at work would be seriously impeded and its very purpose defeated. See also *Li Man Yeun v Li Chung I (t/a VF Electric Manufacturing Co*[1991] 2 HKC 230 (CA), per Clough JA at p 238D-I.

*Quantum*

*Nature and extent of injuries and treatment received*

1. After the accident, the plaintiff attended the A&E Department of RTSKH for treating his finger injury on the same day. Physical examination revealed ‘1 cm cut injury over the left ring finger tip’*.* His cut wound was sutured and he was prescribed by painkiller. Sick leave was granted by the attending doctor from 9 May 2011 up to 16 May 2011. At that time, he was considered to be fit to resume work on 17 May 2011[[10]](#footnote-10).
2. At trial, the plaintiff agreed that he did resume work after the sick leave and worked for the defendant for about 10 months. However, he also gave evidence that his condition deteriorated during this period. According to the medial report, he had complained to Dr Wong Tak Chuen (an associate consultant of RTSKH) who treated him on 29 March 2012 that he had had persistent pain and hypersensitivity of the injured site[[11]](#footnote-11).
3. At RTSKH, the doctor’s working diagnosis of the plaintiff’s medical condition was complex regional pain syndrome for which he was referred to pain clinic for further treatment. He also received occupational therapy and physiotherapy for treating such syndrome as preliminarily diagnosed. As for his left ring finger injury, it was treated with physiotherapy and medication.
4. According to another medical report of RTSKH dated 2 May 2013, he had been last seen in their clinic on 28 March 2013, in which he complained of diffuse pain over his left ring finger and whole left upper limb[[12]](#footnote-12).
5. Apart from his physical injuries, attended Psychiatric Outpatient Clinic, Pamela Youde Nethersole Eastern Hospital (“PYNEH”) on 18 July 2012. In that interview, he complained of depressed mood, poor sleep, poor appetite, limited motivation in daily routine, feeling uselessness, anxiety symptoms like chest discomfort, hand tremor and headache. However, no suicidal ideation was evident, and psychotic features can be elicited. Diagnosis was mild depressive episode[[13]](#footnote-13). On 31 July 2012, he attended the Outpatient Psychiatric Clinic again, his mood was still depressed and he felt distressed over persistent pain and limited ROM of his left ring finger. Sleep was poor and appetite was fair. Yet, no suicidal ideation was observed or psychotic features elicited. He was prescribed with medication for his psychiatric condition[[14]](#footnote-14).
6. The plaintiff’s medical condition had been assessed by the Medical Assessment Board (“the Board”) and in the Certificate of Review of Assessment issued on 11 June 2013 (“the Form 9”), his injury was assessed by the Board as “left ring finger cut resulting in (i) pain, stiffness, weakness, numbness and hypersensitivity; and (ii) psychiatric impairment”[[15]](#footnote-15).
7. According to the medical certificates produced at the trial bundle, the plaintiff had been granted sick leaves by different medical practitioners as per the following periods and causes[[16]](#footnote-16):-
   1. 09.05.2011 to 16.05.2011 (left ring finger cut injury);
   2. 15.03.2012 to 28.03.2012 (tendon injury of left ring finger);
   3. 29.03.2012 to 10.05.2012 (left RF injury with suturing done);
   4. 10.05.2012 to 21.06.2012 (left RF injury with suturing done);
   5. 21.06.2012 to 16.08.2012 (left ring finger injury);
   6. 18.07.2012 to 31.07.2012 (depression);
   7. 17.08.2012 to 11.10.2012 (left ring finger injury);
   8. 11.10.2012 to 6.12.2012 (left ring finger injury);
   9. 7.12.2012 to 31.01.2013 (left ring finger injury);
   10. 31.01.2013 to 28.03.2013 (left ring finger injury); and
   11. 28.03.2013 to 06.06.2013 (left ring finger injury).
8. In the Form 9, the Medial Assessment Board also certified that the plaintiff’s absence of duty in the aforesaid periods as necessary save that the last period should be up to 28.05.2013 only.

*The medical experts’ joint assessment of the plaintiff’s condition*

1. On 29 January 2013, the plaintiff was jointly examined by both parties’ medical experts – Dr Wong Chin Hong (P’s medical expert) and Dr Henry Ho (D’s medical expert). They prepared a joint medical expert dated 22 May 2013 (“the JMR”) for this action[[17]](#footnote-17).
2. According to Dr Wong, the sick leaves granted to the plaintiff up to 6 June 2013 was reasonable. On Dr Ho’s part, he considered the sick leave rather long since his condition should have stablised after one year[[18]](#footnote-18).
3. By the time of the joint medical examination, the plaintiff still complained of the persistent pain in his left ring finger. After conducting thorough medical examination of the plaintiff, Dr Wong and Dr Ho agreed that all treatments rendered for the plaintiff’s injury were appropriate[[19]](#footnote-19). They also agreed that the plaintiff will be unable or would have difficulty to return to his previous work as a chef when both hands are needed, especially if dexterity is required. In Dr Ho’s view, he considered the plaintiff was physically fit for employment like car park attendant, security guard or messenger. Dr Wong commented that the plaintiff can take up alternative jobs such as petrol station attendant, shop assistant or watchman.
4. As regards the respective medical expert’s assessments of the plaintiff’s residual disabilities at his left hand, Dr Wong observed that clinically, there is flexion stiffness at left middle, ring and little finger. The palmer skin of his left middle, ring and little fingers is dry. X-rays showed osteopaenia (reduced bone density) around the proximal interphanlangeal joints and metacarpophalangeal joints of the left ring and middle fingers. The cut wound at the left ring finger tip had healed. However, there is persistent hypersensitivity and tenderness along the left ring finger.
5. According to Dr Wong’s diagnosis, the palmer skin dryness with stiffness in the middle and little fingers could be the consequences of complex regional pain syndrome. This could have been triggered by the persistent pain and hypersensitivity in the ring finger. This could also be due to psychological upset after the injury[[20]](#footnote-20).
6. On Dr Ho’s part, he also took the view that the presence of flexion contractures of the left middle, ring and little fingers with hypersensitivity to touch are consistent with complex regional pain syndrome[[21]](#footnote-21).

*PSLA*

1. On this item, the plaintiff claims HK$120,000 at paragraph 21 of his Revised Statement of Damages (“the RSOD”)[[22]](#footnote-22). In their Answer to the RSOD (as amended at trial) (“Revised Answer to RSOD”)[[23]](#footnote-23), the defendant agreed to the claimed figure. On such basis, I allow HK$120,000 for PSLA in this case.

*Loss of earnings*

1. The plaintiff’s claim for loss of earnings was hotly contested. This is also the focus of the parties’ dispute in quantum.
2. In essence, the defendant mounted their challenge thus - since the plaintiff resumed duties at the Hotel on 17 May 2011 after taking sick leave for about a week, and then continued working full-time for about 10 months (“the 10-month period”) before he stopped in mid-March 2012, any sick leaves granted to him since 15 March 2012 and any further complaint about his physical and psychiatric impairment would have nothing to do with the injury he sustained in the accident.
3. At trial, the plaintiff frankly admitted that after the initial period of sick leave he had resumed working for the defendant at the Hotel for about 10 months. However, he explained that his condition had deteriorated during the 10-month period until he could not bear with the persistent pain at his left ring finger and his health also became so poor that he had to stop. It was against such a background that he could work no further for the defendant since 15 March 2012.
4. My overview is that the plaintiff’s explanation about his deteriorated condition during the 10-month period is plausible and being consistent with the objective medical evidence and findings made by the different medical practitioners in this case.
5. First of all, the plaintiff gave evidence that after he resumed work with the defendant, he could only manage to cut the lobsters for only about four to five months, and thereafter the lobsters delivered to the Hotel had been cut in advance. I observe there is no evidence coming from Mr Yeung to counter what the plaintiff said in this regard.
6. If the defendant was really serious in telling this court that the plaintiff had been fully capable of discharging his job duties during the entire 10 month-period just as what he did before the accident and without experiencing any difficulty at all, they could have arranged their relevant staff working at the Hotel to prepare witness statement and testify in court to that end. The defendant had ample opportunities but did not do so notwithstanding they had been legally represented throughout this litigation. Mr Yeung gave no evidence commenting on the plaintiff’s physical condition or his working performance during the 10-month period either.
7. Apart from the aforesaid, neither the defendant’s witness nor their solicitors have offered any satisfactory reason to this court to explain why all the pay slips for the 10-month period could not be produced to the court at a much earlier time. These documents were only submitted to the bench through their counsel on the first day of the hearing.
8. During the plaintiff’s cross examination, Mr Law put to him that he had only taken 2 days of sick leaves on 30January 2012 and 31 January 2012 during the 10-month period as shown in the pay slip for February 2012. The plaintiff disagreed, and he said that he did seek medical consultation at some other days during the 10-month period, and he had produced the relevant medical certificates to the defendant but these matters are not reflected in the pay slips.
9. I have carefully gone through Mr Law’s submission made in relation to the 10-month period, but this court on the other hand cannot neglect the objective medical findings made by the government doctors, the Medical Assessment Board and both parties’ medical experts in this case. All these medical professionals had the benefit of conducting independent medical examination of the plaintiff, and they did not cast doubt over the plaintiff’s complaint of the pain, stiffness and hypersensitivity at his left ring finger. I shall elaborate their specific medical findings at Paragraphs 112 and 113 below.
10. Mr Law reminded me of the plaintiff’s evidence given at trial that the workload as assigned to him was no less heavy after he resumed work with the defendant. To complete the picture of his evidence, the plaintiff also said that, a few months after the accident, the lobsters delivered to the Hotel were precut, and this court also recalls the plaintiff giving evidence to the effect that he discharged all the duties assigned to him as best he could until the condition of his finger and health had deteriorated to such a state that he could endure no more and had to stop working for the defendant.
11. After going through the all the relevant evidence including the contemporaneous evidence documentary or otherwise surrounding the 10-month period and carefully considering Mr Law’s closing submission on the evidence related to this issue, I find that notwithstanding such resumption of duties, the plaintiff’s finger condition and health had also deteriorated during the same period. Eventually, his condition became so worse that he could not take up any further chef’s work with the defendant since 15 March 2012.
12. However, the matter does not stop here. Mr Law further submitted that the plaintiff attempted to ‘bury’ the fact of his resumption of work during the 10-month period. Mr Law pointed out that plaintiff’s pleaded case did not reveal the 10 months’ work and the full loss of earnings are claimed for such period as well. In his witness statement, it was stated that he has not been able to work since the time of accident till now. At the stage of opening submission, after Mr Law had produced the pay slips, the court tried to clarify with the plaintiff on the plea for his pre-trial loss of earnings at paragraph 26 of the RSOD[[24]](#footnote-24). In response, the plaintiff said he had passed all these pay slips to his former solicitors. Prima facie, such answer is unsatisfactory. If he had indeed passed all these pay slips to his former solicitors, the latter should not have drafted the RSOD in such way to include the 10-month period for quantifying his loss of earnings. But, on the other hand, I observe that the defendant’s original pleaded case in this regard is equally strange. In their original Answer to RSOD dated 4 October 2013[[25]](#footnote-25), the defendant allowed one full year’s pre-trial loss of earnings to the plaintiff during the period between 9 May 2011 and 8 May 2012 (ie covering the 10-month period) notwithstanding that the defendant knew full well that the plaintiff had resumed his duties for such 10 months and that they had already fully paid him salaries for such period. Yet, the defendant only corrected their pleaded case on this aspect at the trial hearing, and no satisfactory reason was offered by the defendant to explain to this Court why the original Answer to RSOD was so pleaded in the first place, or why the correction could not have come earlier.
13. Mr Law further pointed out that it is also recorded in JMR that the plaintiff had not returned to work after the subject injury. Prima facie, Mr Law’s observation seems pertinent. However, as a matter of fair and proper procedure, such discrepancy appeared in the JMR should have been sufficiently put to the plaintiff during the cross-examination so that he would be given a fair chance to comment or otherwise respond to the same. Especially, the plaintiff was unrepresented in this trial. Yet, he was not cross-examined on such discrepancy.
14. In *Unlimited Production Limited & Anor v Filmko Pictures Ltd*[2008] 1 HKC 247 (CA), Tang VP (as his lordship then was) said:-

“33. Mr Martin Lee SC drew our attention to the helpful decision by Hunt J in the Supreme Court of New South Wales in *Allied Pastoral Holdings Pty Ltd v Federal Commissioner of Taxation* [1983] 44 ALR 607 at 652. There the judge gave the example of an issue between *X v Y*, whether *X* was in Melbourne upon a specific date and at a specific time. The burden was on *X* to prove that he was not in Melbourne. He gave evidence-in-chief that he spent the whole day in Sydney with A and B. This is what Hunt J said at page 632:-

“(5) Y does give fair warning that the evidence of X is challenged, by putting to him simply that he was in Melbourne at the time and place where C and D saw him; there is in evidence (upon some other issue), whether tendered by X or by Y, a diary kept by X in which there is an entry that X had an appointment to see Z in Melbourne on the relevant date and at about the relevant time; Y does not draw any attention to this entry during the course of the evidence, but asks the tribunal by reason of the existence of this entry in the diary to disbelieve the evidence of X. It is the situation postulated in (5) which is applicable in the present case.

In accordance with the decision of the Court of Appeal in *Cullen v Ampol Petroleum Ltd, supra*, consistently with all the other authorities to which reference has been made, and provided that such a use of the diary had not in any way been foreshadowed, it would in my view be wholly unfair for Y to rely upon the diary in seeking to have the tribunal of fact disbelieve the evidence of X that he was not in Melbourne. If the diary had been put to X, or its significance had in some other way been made apparent, X could have explained, for example, that the entry had been made in error, or that the appointment had been cancelled, and he could have called Z to corroborate his explanation for the existence of the entry. In the absence of forewarning, X would have no chance to do any of these things. He would, to use the express of Holmes JA in *Cullen*, have been well caught in an ambush.”

1. I would respectfully adopt here the reasoning of Hunt J in *Allied Pastoral* quoted in*Unlimited Production* (supra). It is noted that the plaintiff was accompanied by an interpreter when he attended the joint medical examination. He also needed a Punjabi interpreter at trial. So, any inaccurate or improper interpretation on this matter at the material time may give rise to miscommunication between the two medical experts and the plaintiff. Having said that, I must make it clear this court is not speculating what explanation the plaintiff may have offered had the relevant question on such discrepancy been properly put to him during cross-examination. However, as reasoned by Hunt J, if the defendant failed to put such material matter (basing upon which the defendant now asks this court to disbelieve the plaintiff’s evidence) to the plaintiff in the course of evidence, the court should not simply exclude the possibility that the plaintiff may be able to offer a proper explanation for that.
2. Obviously, Mr Law wanted this court to disbelieve the plaintiff’s evidence by virtue of these discrepancies in relation to the 10-month period issue. But the important question to ask is to what extent? As pointed above, the plaintiff readily admitted to the court that he did work for the defendant during the 10-month period when Mr Law produced the pay slips to the bench from the bar table. This court would certainly discard any income earned by the plaintiff during the 10-month period when quantifying his loss of earnings. In terms of assessing the plaintiff’s credibility as a witness, this court would not only take into account these discrepancies but also any other relevant submissions on the quality of the plaintiff’s evidence made in other parts of Mr Law’s written closing submission as well. For that, I have respectfully adopted Seagroatt J’s approach in *Kristan Bowers Philips*(supra) to carefully assess all the relevant evidence in relation to all the material issues in dispute as determined in this judgment[[26]](#footnote-26).
3. However, if Mr Law was in effect asking this court to disbelieve the plaintiff to the extent of accepting that these discrepancies as supporting his further submission (made in the other part of his written closing submission) that the plaintiff had made a calculated attempt to booster up and/or grossly exaggerate his injuries and disabilities, the court would refuse to make such a finding for the following reasons.
4. In his written closing submission, Mr Law further submitted that the plaintiff’s ‘sudden and complete’ cessation of chef work in mid-March 2012 and thereafter appears to be under very strange and peculiar circumstances. In gist, Mr Law submitted thus - on 6 March 2012, the Certificate of Assessment was issued by the Medical Assessment Board, and on 13 March 2012, the Commissioner for Labour issued a Form 5 certifying that a sum of HK$9,285.44 under the Employees’ Compensation Ordinance. Then, on 15 March 2012, the plaintiff could not endure duties as a chef due to his declining health and he visited a private practitioner Dr Keung Chi Keung and filed an application to object Form 7 on the same day. On 2 April 2012, the plaintiff through his former solicitors filed the Application under DCEC 573 of 2012 seeking employees’ compensation against the defendant. Mr Law then submitted that judging the sequence of events and the proximity of the EC application with the consultation with Dr Keung and his objection to Form 7, there was a calculated attempt by the plaintiff to booster up and/or to grossly exaggerate his injuries and disabilities for the purpose of making claims against the defendant.
5. In his oral closing submission, Mr Law tried to clarify the defendant’s stance by submitting that the defendant did not say that the plaintiff has committed any fraud, but on the other hand he said the plaintiff in making such calculated attempt to booster up or grossly exaggerate his injuries and disability, there was an element of dishonesty in him. Yet, Mr Law has fairly agreed that the defendant cannot pursue any case of fraud against the plaintiff without a proper plea.
6. My response to such submission is twofold. First, although Mr Law disowned any case of fraud, the allegation of such calculated attempt involving dishonesty on the plaintiff’ part is *in substance* an allegation of fraud perpetuated by the Plaintiff to feign injuries and disabilities with a view to deceive the court into believing his injuries and disabilities were more serious than they actually are and hence allowing him compensation more than he should be entitled to. In my view, such kind of allegation is an allegation of fraud, which must be pleaded distinctly and with sufficient particularity in civil action, and it is not permissible just to leave fraud to be inferred from the facts. See *Cheung Wan Lun v Hop Hing Construction & Engineering (HK) Company & Anor*(unrep, DCEC 560 of 2009, 28 April 2011)per Deputy District Judge Wilson Chan (as his lordship then was) at paras 48 and 49.
7. But, I do not find any plea of fraud to the effect as submitted by Mr Law in the Defence or in the Revised Answer to RSOD. It would also be practically unjust for the defendant to raise such a theory of fraud against the plaintiff without a proper plea, and they are debarred from doing so.
8. In *Cheung Wan Lun*(supra), the learned Judge at para 49 of his judgment said:-

“49. In *Aktieselskabet Dansk Skibsfinansiering v Wheelock Marden & Co Ltd* [1994] 2 HKC 264, at 270D, Bokhary JA (as he then was) reminded practitioners that the specially strict rules regarding the pleading of fraud have nothing to do with technicality, all of them have everything to do with “practical justice”. These specially strict rules have always been of importance.”

1. Second, even if I were to permit the defendant to argue along this theory of calculated attempt as submitted in Mr Law’s written closing submission, I do not see there is cogent and sufficient evidence before me (even taking into account the state of evidence related to the 10-month period as pointed out by Mr Law) to draw the inference that plaintiff has indeed feigned his injuries or disabilities at his left ring finger in this case. On that basis and after carefully considering all the relevant evidence as a whole, I am not prepared to find the defendant’s allegation of the plaintiff’s calculated attempt being established on evidence in any event.
2. In *Nina Kung v Wong Dan Shin*(2005) 8 HKCFAR 387, Ribeiro PJ at para 182 said:-

“182. The majority in the House of Lords in *Re H* held that the civil standard requiring proof on a balance of probabilities continues to apply where, in civil proceedings, an allegation is made of criminal (or similarly serious) misconduct, but explained that such standard is to be applied flexibly, factoring in the inherently greater improbability of serious misconduct as compared with lesser forms of misconduct, and therefore requiring the person bearing the burden of proving the allegation to prove it with evidence of a commensurate cogency. The well-known passage in the speech of Lord Nicholls of Birkenhead states as follows:-

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A step-father is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.”” (at 586)

1. Without prejudice to the generality of the foregoing and purely for the sake of argument but not the otherwise, the sequence of events as drawn to my attention by Mr Law at best only suggest the plaintiff might have thought of bringing a litigation against the defendant to seek for employees’ compensation in the vicinity of time he filed his objection against Form 7. However, this does not logically entail that his complaint about persistent pain and hypersensitivity at his left ring finger were feigned.
2. After conducting the joint medical examination of the plaintiff, both medical experts agreed that there are flexion contractures of the left middle, ring and little fingers, palmar skin dryness with stiffness in middle and X-rays showed osteopaenia (reduced bone density) around the proximal interphanlangeal joints and metacarpophalangeal joints of the left ring and little fingers[[27]](#footnote-27). All these symptoms or medical signs cannot easily be feigned.
3. It is also remarkable that both medical experts also accepted that there was persistent pain and hypersensitivity at his left ring finger and they did not indicate in the JMR there was any sign of malingering or symptom exaggeration. Not only that, I also observe that in the Form 9, the Medical Assessment Board also independently assessed the plaintiff as suffering from “left ring finger cut resulting in (i) pain, stiffness, weakness, numbness and hypersensitivity[[28]](#footnote-28). In addition, many different attending government doctors have granted sick leaves to the plaintiff owing to his left ring finger injury over a substantial spread of time. On balance of probabilities, if the plaintiff had really feigned his finger injuries or disabilities, I do not think such faked symptoms could have escaped the eyes of so many medical professionals.
4. On the other hand, I do not lose sight of the fact that it was put on record in the JMR that the plaintiff has not returned to work since the injury[[29]](#footnote-29) (“the information”), and it now transpired that the plaintiff had resumed work with the defendant for about 10 months under such condition as I so found above. Mr Law submitted that the information given to the two medical experts should come from the plaintiff. Apart from the observation stated in Paragraph 101 above, this court also observe that, notwithstanding the information, the two medical experts have also reminded themselves that the plaintiff’s progress within the period between 9 May 2011 and 15 March 2012 (ie the 10 months’ period) is unclear[[30]](#footnote-30). Further, as revealed in the JMR, these two medical experts had perused RTSKH’s medical report dated 27 June 2012 and been alert to the attending government doctor’s view that the plaintiff was fit to resume work on 17 May 2011[[31]](#footnote-31). And, in the normal course of event, the two medical experts should and would make their professional assessments of the plaintiff’s medical conditions basing upon the objective medical evidence as available to them before they gave their shared medical opinion that the plaintiff is unfit to resume his pre-accident chef’s duties.
5. By considering all the evidence as a whole, I do not think that had these two medical experts’ attention been drawn to the plaintiff’s deteriorated condition during the 10 months’ resumption of work as I have so found in Paragraph 97 above, they would necessarily have come to a materially different conclusion on the plaintiff’s unfitness to resume his pre-accident job.
6. To say the least, the fact that the plaintiff had resumed working with the defendant during the 10-month period could have been brought to the two medical experts’ attention by the defendant through their solicitors in the course of preparation for this trial, but they did not do so. In these circumstances, this court can only consider the plaintiff’s medical condition based upon the best available evidence before it.
7. In his written closing submission, Mr Law also reminded me of the rather extreme complaints about his mental state as described in the plaintiff’s witness statement[[32]](#footnote-32). This is a fair point to make. Since complaints of such degree as depicted in the plaintiff’s witness statement are not supported by psychiatric expert’s evidence, I am skeptical of the same and not prepared to take them at their face value. On the other hand, I observe the description of the plaintiff’s psychiatric condition in PYNEH’s medical report dated 17 August 2012[[33]](#footnote-33) sound plausible and are consistent with the deteriorated condition at his left ring finger and deteriorated health condition during the 10-month period. Moreover, in the Form 9[[34]](#footnote-34), aside the physical disabilities at his left ring finger, the Medical Assessment Board also assessed the plaintiff as suffering from psychiatric impairment which is consistent with PYNEH’s diagnosis. There is no other objective psychiatric expert’s evidence available in this case to dispute the diagnosis made by PYNEH’s doctor or the Medical Assessment Board’s assessment as certified in the Form 9. In these circumstances, I accept PYNEH’s diagnosis that the plaintiff did suffer from mild depressive episode as mentioned in their report dated 17 August 2012.
8. For completeness sake, I wish to point out that the two medical experts also had the benefit of reading PYNEH’s medical report[[35]](#footnote-35), and prima facie, the contents of the JMR suggest the two medical experts have made reference to the description of the plaintiff’s psychiatric condition and the hospital’s diagnosis stated in PYNEH’s medical report rather than the plaintiff’s complaint stated in his witness statement before they made their respective diagnosis about the plaintiff’s left ring finger’s residual disabilities and their respective assessments that he was unfit to resume his pre-accident job.
9. After carefully considered all the evidence (medical or otherwise) in this case and bearing in my mind the caveat on the quality of the plaintiff’s evidence before me which Mr Law had drawn my attention to in his written closing submission, I find on balance of probabilities that the pain, stiffness and hypersensitivity at the plaintiff’s left ring finger were genuine and he is physically unfit to resume to his pre-accident chef’s duties.
10. In the JMR, it is mentioned that the plaintiff has had good past health and he has no previous hand injury or surgery[[36]](#footnote-36). This is not in dispute. Moreover, given my above finding about the plaintiff’s deteriorated condition during the 10 month-period and more fundamentally speaking, there is no sufficient evidence before this court showing the existence of any cause(s) other than the accident that would likely account for the plaintiff’s residual disabilities suffered at his left ring finger, I also find that such residual disabilities are effectively caused by the accident on 9 May 2011 after taking into account the totality of evidence in this case.

*Any novus actus intervenies?*

1. For completeness sake, I wish to point out that there are two short paragraphs approaching the end of Mr Law’s written closing submission where Mr Law submitted that - the plaintiff mentioned at trial that he was so ill about 6 months before the trial (ie in about November 2013) that he was admitted to Tuen Mun Hospital with 3 months in a rehabilitation centre. The attack was about mental condition and he was unable to walk. He was initially confined to bed and progressively wheelchair bound. Caretaker was provided to assist him and slowly he managed to walk again. Mr Law also pointed out the plaintiff used a crutch for ambulation in court. Such attack triggering all these problems would constitute an intervening event putting an end to any loss of earnings of the plaintiff beyond November 2013.
2. With respect, I reject such argument. First, the defence of novus actus intervenies (as so put by Mr Law in his written closing submission) was not specifically pleaded in the Defence or in the Revised Answer to RSOD. Second and even more importantly, even assuming the defendant can somehow overcome this pleading point, the burden to prove such intervening event breaking the chain of causation rests upon the defendant’s shoulders. However, I do not find there is sufficient evidence before this court showing more likely than not that the plaintiff would not be physically or mentally fit to engage into any employment owing to such episode of attack for the rest of his working life. Needless to say, there is no medical or psychiatric expert evidence informing this court of the actual clinical cause (if any) of such attack and whether it would create any lasting effect at all on the plaintiff and, if yes, to what extent would that affect his employability.
3. In these circumstances, I would not find the episode of attack constituting a novus actus intervenies on the evidence before me in any event. In other words, it remains my view that the plaintiff’s loss of earnings (as quantified below) still flow from his cut injury sustained on the date of accident.

*Quantification of the plaintiff’s loss of earnings and other claims*

1. According to the RSOD:-
   1. Since the date of accident up to 31 December 2011, the plaintiff’s averaged monthly earnings is $16,682.64 per month (which the defendant agreed to have such figure rounded up to $16,683 per month);
   2. To calculate his pre-trial loss of earnings since 2012, the plaintiff’s averaged monthly earnings but for the accident is $17,902.68 per month (which the defendant likewise agreed to have such figure rounded up to $17,903 per month); and
   3. To calculate his post-trial loss of earnings, his averaged monthly earnings but for the accident would also be $17,902.68 per month (and similarly rounded up to $17,903 per month).
2. I find the aforesaid figures well corroborated by the contemporaneous documents, namely - the Form 2 completed by the defendant[[37]](#footnote-37), the Form 5 issued on 13 March 2012[[38]](#footnote-38), the defendant’s letter dated 10 January 2012 concerning the plaintiff’s annual salary review and distribution of discretionary bonus[[39]](#footnote-39). I would adopt the aforesaid figures to quantify the plaintiff’s loss of earnings.
3. According to the defendant’s Revised Table of Quantum Figures (as helpfully prepared by Mr Law) submitted to the court on the second day of the trial hearing, the defendant agreed that if the court finds that the Plaintiff is unable to resume the chef’s work, the notional earnings of the alternative employment would be $11,000 as pleaded in the RSOD.
4. Given the aforesaid and basing upon my above findings, I would quantify the plaintiff’s loss of earnings as follows.

*Pre-trial loss of earnings*

*Loss of earnings during the sick leave period*

1. The sick leaves granted by the private medical practitioner Dr Keung and the government doctors are set out in Paragraph 78 above and they last until 6 June 2013. As pointed out above, Dr Wong considered the sick leaves granted to the plaintiff[[40]](#footnote-40) reasonable whereas Dr Ho took the view that the sick leave was rather long since his condition should have stablised after one year. Given my above findings and taking the medical evidence as a whole, I prefer and accept Dr Wong’s view on the reasonable period of sick leave. Particularly, I observe Dr Wong’s view is more in line with the Medical Assessment Board’s independent assessment stated in the Form 9[[41]](#footnote-41). In these circumstances, the plaintiff’s loss of earnings during such sick leave period would be quantified thus:-

During the period between 09.05.2011 and 16.05.2011:-

$16,683 per month x 8 days/31 days = $4,305 (I)

During the period between 15.03.2012 and 06.06.2013 (14.7 months):-

$17,903 per month x 14.7 months = $263,174 (II)

1. In the RSOD, the plaintiff claims full loss of earnings up to the date of trial. Although I have made my finding that the plaintiff is unfit to resume his pre-accident job, that does not mean he was unemployable in the light of the objective medical observation made by the two medical experts. I am of the view that he is both physically and mentally fit to take up alternative employments as suggested by the two medical experts in the JMR, and the defendant agreed that the notional earnings for such alternative employment job is $11,000 per month. I would therefore adopt such figure to quantify the plaintiff’s loss of earnings after 6 June 2013.

*Loss of earnings during the remaining pre-trial period*

1. Having said so, I do not think it is realistic to assume the plaintiff could simply have located such alternative job immediately after the expiry of the reasonable sick leave period even this court found that he was both mentally and physically fit to do so by that time. One would need to spend time looking for a new job that fits his or her own personal background and requirement. Of course, such time spent would vary case by case. In this connection, I observe there is a line of authorities where the court was prepared to allow the plaintiff a reasonable period for job locating after the expiry of the relevant sick leave period having regard to the individual circumstances of each particular case. See *Iau Kau Ih v Wan Kei Geotechnical Engineering Co Ltd & Ors*[2002] 4 HKC 76, per Deputy Judge B Yu SC at para 39;*Wong Yun San v Cheng Yue Yiu t/a Radio Engineering Co*(unrep, DCPI 1909 of 2007 – decision of Deputy District Judge Richard Khaw at para 26(1);*Chong Yiu Ta v Fong Man Chi & Ors*(unrep, HCPI 742 of 2001) per Reyes J at para 94.In these 3 cases, the reasonable period for job locating as allowed by the court was either 3 months or 4 months.
2. Each case must be decided according to its own merits and circumstances. In this particular case, I consider it reasonable to allow the plaintiff 3 months (after the expiry of the reasonable sick leave period) to look for the suitable alternative employment. Hence, the plaintiff’s loss of earnings during this period would be:-

$17,903 per month x 3 months = $53,709 (III)

1. Thereafter (ie from 06.09.2013 onwards) until the date of judgment (13.4 months), I find that the plaintiff has only suffered partial loss of earnings as quantified thus :-

$(17,903 - 11,000) per month x 13.4 months

= $92,500 (IV)

1. In the premises, the plaintiff’s total pre-trial loss of earnings would be:-
2. + (II) + (III) + (IV)

= $(4,305 + 263,174 + 53,709 + 92,500)

= $413,688

*Pre-trial loss of MPF*

1. Accordingly, the plaintiff’s pre-trial loss of MPF would be:-

$392,979 x 5% = $20,684

*Post-trial loss of earnings*

1. When the RSOD was filed on 3 September 2013, the plaintiff’s former solicitors only adopted a multiplier of 6 for quantifying his post-trial loss of earnings. By the time of trial, the plaintiff was 38 years old. If the new approach in assessing the multiplier as expounded by Bharwaney J in *Chan Pak Ting v Chan Chi Kuen (No.2)*[2013] 2 HKLRD 1 is adopted, the appropriate multiplier in the plaintiff’s age would be much greater than 6. Mr Law has rightly agreed that in that event, the appropriate multiplier in the plaintiff’s case is 16.72 according to Table 7 of the Hong Kong Personal Injury Table 2013 assuming the plaintiff would have retired at 60 but for the accident. Mr Law also commented that after the delivery of his lordship’s decision in *Chan Pak Ting* (supra) on 7 February 2013, by September 2013 when the RSOD was filed, solicitors acting for plaintiffs in personal injuries claim would generally adopt Bharwaney J’s approach in pleading multipliers for claiming post-trial loss of earnings.
2. Since the plaintiff was acting in person at trial, I think it would be fair for this court to point out to him this material issue on multiplier that would very substantially affect his claim on post-trial loss of earnings rather than just leaving such matter as if unnoticed. I have explained the situation to the plaintiff and he applied leave with this court to amend the RSOD. Despite Mr Law’s objection and after hearing his arguments, I granted leave to the plaintiff to amend the RSOD so that he was permitted to rely on such multiplier to quantify his future loss of earnings by adopting the Bharwaney J’s approach in *Chan Pak Ting* (supra) on the condition that he agrees to abandon the amount of his claim in this action which is in excess of the District Court’s monetary jurisdiction of HK$1 million.
3. In gist, this court’s reasoning was that the question of multiplier in this case is largely a question of law and I do not see there is any prejudice caused to the defendant that cannot be compensated by costs notwithstanding such application was only made at the first day of the hearing. The plaintiff agreed to abide by the condition this court imposed and I also allowed the defendant to amend their Answer to RSOD consequentially.
4. At trial, Mr Yeung gave evidence that the normal retirement age of chefs working at the Hotel is 60 years old. The plaintiff did not dispute that. On the aforesaid basis, I find that the appropriate multiplier for quantifying the plaintiff’s future loss of earnings is 16.72.
5. For completeness sake, I just wish to add that, on 3 July 2014, the Court of Appeal’s decision in *Chan Wai Ming v Leung Shing Wah*(unrep, CACV 266 of 2013) was handed down. In that case, the Court of Appeal endorsed Bharwaney J’s approach in assessing the appropriate multiplier for the plaintiffs in personal injury claims. See Cheung JA’s judgment in *Chan Wai Ming* (supra) at paras 5.1-5.3 and 8.1-8.6.
6. In the light of the aforesaid, the plaintiff’s post-trial loss of earnings is quantified thus:-

$(17,903 - 11,000) per month x 12 months x 16.72

= $1,385,018

*Post-trial loss of MPF*

1. The plaintiff’s post-trial loss of MPF would then be:-

$1,385,018 x 5% = $69,251

*Loss of earning capacity*

1. In the RSOD, the plaintiff claimed $50,000 under this head which the defendant disputed.
2. Although as a matter of principle, the item of loss of earning can be awarded in addition to the claim of post-trial loss of earnings. However, my overall impression of the relevant evidence in this case is that the plaintiff is already substantially and adequately compensated by this court’s assessment of his post-trial loss of earnings. I do not see it appropriate for this court to make an additional award under this head. Among other things, I observe that as recorded in the JMR, the plaintiff is right-handed[[42]](#footnote-42), and there is no sufficient evidence before me showing that he would encounter any practical difficulty in discharging the job duties of the alternative employments as suggested by the two medical experts. The plaintiff’s impairment of whole person owing to his persistent pain, hypersensitivity and stiffness at his left ring finger as assessed by Dr Wong and Dr Ho are 3% and 2% respectively. See *Li Man Yuen v Li Chung I* [1991] 2 HKC 230 (CA), per Clough JA at p.240B to I.

*Special Damage*

*Medical expenses and travelling expenses*

1. The defendant agreed to the plaintiff’s claim of medical expenses and travelling expenses in the respective sums of $2,614 and $2,000 as pleaded in the RSOD[[43]](#footnote-43). Although the plaintiff said he spent $4,000 on travelling expenses in his witness statement dated 30 April 2013 (which was before the RSOD was filed on 3 September 2013)[[44]](#footnote-44), he did not elaborate further on this item of expenses at trial. Given such circumstances and the quality of relevant evidence before me, this court is only prepared to allow $2,000 for his travelling expenses.

*Tonic food*

1. In his witness statement, the plaintiff said he spent $10,000 on tonic and nourishing food [[45]](#footnote-45), but he subsequently reduced his claim to $2,000 in the RSOD.[[46]](#footnote-46) The defendant disputed the need and amount of such claim. Although it was also stated in his witness statement that some receipts are lost and/or there are no receipts provided, the fact remains that not a single supporting receipt was produced in the trial bundle, and the plaintiff did not elaborate further on this item at trial. I find the plaintiff’s bare averment that he has spent money (be it $2,000 or $10,000) on this item is too flimsy to support such claim in the circumstances, and I would not allow the same.

*Employees’ compensation received*

1. It is common ground that credit is to be given to the employees’ compensation already received by the plaintiff in the sum of $289,904.20 under the related proceedings under DCEC 573 of 2012.

*Summary*

1. To summarise, I set out the plaintiff’s quantum as this court assessed above by way of the following table:-

Head of Damage Amount (HK$)

PSLA 120,000

Pre-trial loss of earnings 413,688

Pre-trial loss of MPF 20,684

Post-trial loss of earnings 1,385,018

Post-trial loss of MPF 69,251

Loss of earning capacity Nil

Medical express 2,614

Travelling expenses 2,000

Tonic food Nil

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

Sub-total: 2,013,255

Less : previous employees’ compensation (289,904.20)

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

Balance: 1,723,351

1. By reason of the foregoing and since the plaintiff has agreed to abandon the amount of his claim in this action which is in excess of the District Court’s monetary jurisdiction, I grant judgment in favour of the plaintiff in the sum of HK$1 million against the defendant.

*Interest*

1. There will be an award of interest on damages for PSLA in the sum of HK$120,000 at 2% from the date of service of writ until the date of judgment.
2. As for the pre-trial loss of earnings of HK$413,688 (excluding MPF element) and the other two items of special damages (ie medical expenses and travelling expenses) in the respective sums of HK$2,614 and HK$2,000, interest will be awarded on the aggregate of these 3 items of special damages (after deducting employees’ compensation of $289,904.20) at half judgment rate from the date of the accident until the date of judgment.

*Costs*

1. I make a costs order nisi that the defendant shall pay the plaintiff’s costs of this action (including all costs reserved, if any) to be taxed if not agreed. Such costs order nisi shall become absolute in the absence of any application within 14 days to vary the same.
2. Lastly, as to the costs of the plaintiff’s amendment application of the RSOD (as referred to Paragraph 136 above), Mr Law on the defendant’s behalf sought for costs of and occasioned by such application. At that time, I indicated that I would deal with such question of costs at the end of trial which I now do. Mr Law’s submission in opposing the amendment application took up some time at the trial. The defendant resisted the amendment application but failed, and for that normally costs should follow the event. On the other hand, had the multiplier been properly pleaded in the first place, the amendment application would have been unnecessary.
3. In these circumstances, I order that:-
   1. the plaintiff do pay the costs of and occasioned by the amendment application of the RSOD (as referred to in Paragraph 136 above) to the defendant (save and except that the costs incurred by the defendant in relation to their opposition of the amendment application at the trial, there be no order as to costs) (“the costs for the amendment”).
   2. the costs for the amendment shall be set off against the plaintiff’s costs of this action, which I have ordered in favour of the plaintiff in Paragraph 151 above.
4. As to the costs order set out in Paragraph 153 above, I shall also make it a costs order nisi, to be made absolute within 14 days in the absence of any application to vary the same.

( Simon Ho )

Deputy District Judge

The plaintiff appeared in person

Mr Dennis Law, instructed by Deacons, for the defendant

1. [51-55] and its English translation at [56-61] [↑](#footnote-ref-1)
2. [70-77] and its English translation at [78-81] [↑](#footnote-ref-2)
3. [57-58] - para 5 [↑](#footnote-ref-3)
4. [150] [↑](#footnote-ref-4)
5. [94] - para 31 [↑](#footnote-ref-5)
6. see: Paragraph 15 above [↑](#footnote-ref-6)
7. see: Paragraph 15 above [↑](#footnote-ref-7)
8. see also: Paragraph 28 above [↑](#footnote-ref-8)
9. see also: Paragraph 68 below [↑](#footnote-ref-9)
10. [83] - RTSK’s medical report dated 27 June 2012 [↑](#footnote-ref-10)
11. [86] - RTSKH’s medical report dated 28 September 2012 [↑](#footnote-ref-11)
12. [86(1)] [↑](#footnote-ref-12)
13. [84] - PYNEH’s medical report (psychiatry Department) dated 17.08.2012 [↑](#footnote-ref-13)
14. [85] [↑](#footnote-ref-14)
15. [119] [↑](#footnote-ref-15)
16. [150-158(2)] [↑](#footnote-ref-16)
17. [87-97] [↑](#footnote-ref-17)
18. [96, 97] - paras 46 and 47 [↑](#footnote-ref-18)
19. [95] - JMR, para 40 [↑](#footnote-ref-19)
20. [95-96] - JMR, para 44 [↑](#footnote-ref-20)
21. [96] - JMR, para 44 [↑](#footnote-ref-21)
22. [22] [↑](#footnote-ref-22)
23. [36(4)] - para 21 [↑](#footnote-ref-23)
24. [23] [↑](#footnote-ref-24)
25. [32] [↑](#footnote-ref-25)
26. see: Paragraph 38 above [↑](#footnote-ref-26)
27. [91, 93, 95, 96] - JMR, paras 25, 29, 44 and 45 [↑](#footnote-ref-27)
28. see: Paragraph 77 above [↑](#footnote-ref-28)
29. [89] - para 8 [↑](#footnote-ref-29)
30. [94] - para 33 [↑](#footnote-ref-30)
31. [88-89] - para 13 [↑](#footnote-ref-31)
32. [46] - paras 30 and 32 [↑](#footnote-ref-32)
33. see: Paragraph 76 above [↑](#footnote-ref-33)
34. see: Paragraph 77 above [↑](#footnote-ref-34)
35. [90] - para 17 [↑](#footnote-ref-35)
36. [89] - para 10 [↑](#footnote-ref-36)
37. [99] [↑](#footnote-ref-37)
38. [98-101] [↑](#footnote-ref-38)
39. [120] [↑](#footnote-ref-39)
40. [96] - paras 45 and 46 [↑](#footnote-ref-40)
41. see: Paragraph 81 above [↑](#footnote-ref-41)
42. [89] - para 11 [↑](#footnote-ref-42)
43. [25] - paras 31 and 33 [↑](#footnote-ref-43)
44. [42] - para 17 [↑](#footnote-ref-44)
45. [42] – para. 16 [↑](#footnote-ref-45)
46. [25] – para. 32 [↑](#footnote-ref-46)