## DCPI 2136/2016

[2021] HKDC 309

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 2136 OF 2016

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BETWEEN

YIP YING CHING (葉映清) Plaintiff

and

LAPCO SERVICE LIMITED

(立高服務有限公司) Defendant

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Before: Deputy District Judge Timon Shum in Court

Dates of Hearing: 14, 15, 16 May and 6 June 2019

Date of Judgment: 12 March 2021

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JUDGMENT

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*Introduction*

1. This is a hearing for assessment of damages in relation to the plaintiff Yip Ying Ching’s (“Yip”) claim for personal injuries suffered in a work accident on 4 November 2013 (“the Accident”).
2. Judgment on liability was entered against the defendant Lapco Service Limited (“Lapco”) by consent of the parties on 15 November 2016.
3. At the assessment hearing, Yip testified and Lapco called黎家聲 as defence witness.

*The plaintiff’s evidence*

1. Yip was born on 27 December 1959 in mainland China. She was aged 53 at the time of Accident. She was educated up to primary 6.
2. She joined Lapco on 17 July 2013 as a street cleaner. Her work required her to use a mobile power generator and a power washer. These 2 machines needed to be transported to the work location by a truck. As the mobile power generator is heavy, it had to be placed on a stroller when moving it around.
3. The scene of the Accident was outside Yen Ya Building, Nos 5-17 Tai Ha Street, Kwai Chung. On the day of the Accident, the truck carrying Yip, 3 co-workers, the mobile power generator, the power washer and other cleaning equipment arrived at the scene around 8:20 a.m. One of the co-workers operated the truck panel to lower the tail platform of the truck for unloading the cleaning equipment inside the compartment. Yip stood on the tail platform and another co-worker operated the truck panel again to raise the tail platform to the level of the compartment which was about 1 meter from the ground. Yip then pushed the stroller carrying the mobile power generator out from the compartment to the tail platform. While she was standing on the tail platform, it suddenly tilted. Yip lost her balance and fell 1 meter onto the ground together with the mobile power generator.
4. As a result of the Accident, Yip suffered injuries to her back, buttocks, thigh, knee, shoulder, head, 2 arms and elbow. She went to Yan Chai Hospital (“YCH”) for treatment by ambulance immediately.
5. On 9 November 2013, Yip sought treatment from Ha Kwai Chung Polyclinic General Out Patient Clinic (“HKCPGOPC”).
6. As her recovery was slow, she was arranged to have physiotherapy and occupational therapy at Princess Margaret Hospital (“PMH”). Physiotherapy treatments included Hot Pad, Intermittent Traction, Transcutaneous Electrical Nerve Stimulation, Mobilization and Strengthening Exercises. Occupational therapist suggested some stretching exercises to her.
7. From the date of the Accident on 4 November 2013 up to 14 September 2014, she was granted sick leave. She left Lapco on 15 September 2014. As she did not need to work afterwards, the doctor said there was no need to grant her further sick leave. But due to back pain, the doctor gave her sick leave again on 5 December 2014 and 10 March 2015.
8. Despite many outpatient treatments and physiotherapy treatments, Yip’s condition did not significantly improved. She followed the physiotherapist’s advice and took more rest at home with light stretching exercises.
9. Yip said her health condition was good before the Accident. Her hobby was to go out and do shopping.
10. After the Accident, she has pain in the buttocks, back, neck and shoulder. She could not do activities that require long hours. She does not go out often and needs to take painkillers for her symptoms. She could not cope with household chores as before and requires her daughter’s assistance.
11. Her current complaints include the followings:-
12. Pain in the back, shoulder and neck.
13. Pain in the knee when walking up or down stairs.
14. Unable to sit or stand for long.
15. Unable to bend waist or carry weight.
16. Unable to do household chores.
17. Due to her symptoms, she has not worked after the Accident. Her pain, inability to carry weight and inability to bend waist prevent her from returning to the pre-accident job as a street cleaner.

*History of treatments*

*Report from Yan Chai Hospital*

1. The report from YCH dated 18 June 2015 recorded Yip’s conditions and complaints when she attended the Accident & Emergency Department (“A&E Department”) on the day of the Accident. These include:-
2. *Tenderness over both arms, no redness, no swollen.*
3. *Tenderness over low back region.*
4. *No focal neurological deficit.*
5. *Tenderness and redness over back of left thigh.*
6. *Abrasion over right knee.*
7. X-ray of lumbar spine and pelvis showed no fracture. Voltaren, triact and hirudoid ointments were prescribed to her. She was treated and discharged.
8. She attended the A&E Department for persistent back pain again on 4 January 2014, 29 January 2014, 10 February 2014 and 4 April 2014. She was treated and discharged.

*Report from Ha Kwai Chung Polyclinic General Out Patient Clinic*

1. The report from HKCPGOPC dated 3 June 2015 stated that Yip first attended the clinic on 9 November 2013, 5 days after the Accident.
2. Her complaints included:-
   * 1. *Low back pain.*
     2. *Left buttock pain.*
     3. *Left thigh pain.*
     4. *Left shin pain.*
     5. *Right knee pain.*
     6. *Right shoulder pain.*
     7. *Left wrist pain.*
     8. *Left elbow pain.*
3. Physical examination revealed the following results:-
   * 1. *Could walk without aid.*
     2. *Mild limping gait.*
     3. *Bruise over left lateral thigh.*
     4. *Small abrasion over right knee around 2mm diameter.*
     5. *Range of movement over back, hips, knees, shoulders, elbows and wrists was full.*
4. Oral and topical analgesics and sick leave were prescribed to her.
5. The report also contains the following comments:-

*“Ms Yip continued to follow up in our clinic once every few days for continuation of sick leave. She had very slow progress in symptoms control and she claimed she was severely disabled by the symptoms even after a reasonable period of time. She was referred to Physiotherapy Department and Occupational Therapy of the Princess Margaret Hospital since the end of Nov 2013 and end of Dec 2013 respectively for pain relieve, exercise therapy and work evaluation. However, Ms Yip and her daughter often delay the arrangement of appointment and she later defaulted and rebooking now and then.*

*She was last seen on 10/3/2015. There was only very little improvement in pain symptoms. She still suffering from multiple joint/site pain, although physical examination could not demonstrate any physical or neurological deficit. According the physical examination, we believe that there should be no expected permanent impairment.”*

*Report from Physiotherapy Department of Princess Margaret Hospital*

1. Yip was referred by HKCPGOPC to the Physiotherapy Department of PMH on 26 November 2012. Physiotherapy treatment commenced on 24 December 2013. She attended 11 treatment sessions and was discharged on 12 August 2014.
2. Treatments included Hot Pad, Intermittent Pelvic Traction, Interferential Therapy, Intermittent Neck Traction, Transcutaneous Electrical Nerve Stimulation, Mobilization and Strengthening Exercises.

*Joint Orthopaedic Experts’ Report dated 29 November 2017*

1. Yip was examined by orthopaedic experts Dr Lam Kwong Chin and Dr Lau Hoi Kuen on 15 September 2017. Her complaints at the examination included:-

*Intermittent pain in entire low back*

* *No particular provoking factors.*
* *Pain associated with prolonged sitting (for 1 hour), standing (for 30 minutes), walking (for 20 minutes), weight lifting (a few catties of vegetables).*
* *Pain had improved by 50%.*
* *Need to take painkillers and apply ointment daily.*

*Intermittent pain in left shoulder*

* *Pain associated with carrying bag of grocery or scratching back.*
* *Pain had improved by 20-30%.*

*Intermittent pain in left knee*

* *Pain associated with walking for 20 minutes.*
* *Pain had improved by 20-30%.*
* *Pain intensity in the order of back>shoulder>knee.*

*Sleep is disturbed by back and left shoulder pain*

* *Can travel by public transport.*
* *No need for assistance in personal care and daily living activities.*

1. In relation to the back, Dr Lam gave the following opinions:-
   * 1. *Based on the reported findings, Yip mainly had symptoms over left side lower back/left buttock.*
     2. *There was no suggestion of lower limb neurological deficit or spinal nerve root tension.*
     3. *The reported progress was a good one.*
     4. *The diffuseness, chronicity and intensity of the back complaint are out of proportion to a back sprain/contusion with no substantial structural damage/neurological deficit sustained 4 years ago.*
     5. *The present complaints are rather subjective. Upon examination, the findings are largely dependent on voluntary effort.*
     6. *Based on more objective parts of the physical and radiological findings, the present condition of her low back should be satisfactory, if not good.*
     7. *The strongly positive results of the Waddell’s tests suggest that she is exaggerating her back symptoms and signs.*
     8. *X-ray of lumbar spine showed significant degenerative change of L5-S1 disc. As Yip had been a farmer and manual labourer all along, it is very unlikely that her back was completely problem free before the accident, though it might not be severe enough to justify medical treatment.*
2. On the other hand, Dr Lau gave a different view on the back:-
   * 1. *For people with chronic back pain, the symptoms often wax and wane, with intermittent remission and exacerbation.*
     2. *During this examination, Ms Yip had rather diffuse and severe tenderness over her back. The positive Waddell’s tests are often found in patients with chronic pain and doesn’t mean that she is malingering or exaggerating her pain.*
     3. *The L5-S1 disc degeneration should be pre-existing, likely due to ageing and the stress on low back in the past years of manual work. Such degenerative changes are very common for people of Yip’s age and are mostly asymptomatic.*
     4. *Yip’s back was asymptomatic before the accident. The accident had probably aggravated the disc bulging/protrusion and precipitated the pain, turning an asymptomatic back to a symptomatic one. It was only after the accident that Yip started to experience pain. If the accident had not happened, it is highly likely that Yip’s back would have remained asymptomatic.*
3. Dr Lam’s view on the left shoulder was as follows:-
   * 1. *Based on the reported findings, Ms Yip at most had a minor left shoulder sprain/contusion.*
     2. *The chronicity and intensity of the shoulder complaint are also out of proportion to such an injury sustained 4 years ago. They do not have a good physical explanation.*
     3. *The absence of muscle wasting of left upper limb is a good objective evidence that the present condition of her left shoulder is good and she has been actively using both upper limbs in effective and symmetrical manner.*
4. As to the left knee, Dr Lam said this:-
   * 1. *Throughout the available documents, Ms Yip did not have particular left knee complaint. This shows that she did not have any clinically significant injury to the left knee.*
     2. *The absence of muscle wasting of her left lower limb is also a good objective evidence that the present condition of her left knee is good and she has been bearing weight on both lower limbs in symmetrical manner.*
5. Both experts were of the view that Yip did not need any further treatment for her back, left shoulder and left knee. She could return to her pre-accident job as a cleaning worker.
6. Dr Lam said Yip’s subjective complaints of pain were without good physical cause and sick leave of up to 3 months would be appropriate. He assessed Yip to be suffering from 1% impairment of the whole person and 1% loss of earning capacity.
7. Dr Lau took into account the severity of the back pain and concluded that sick leave for 12 to 18 months would be appropriate. He assessed Yip to be suffering from 5 % impairment of the whole person and 7% loss of earning capacity.

*DISCUSSION*

1. *Genuineness of the plaintiff’s complaints*
2. Yip’s claim items include pain, suffering and loss of amenities, pre-trial loss of earnings, future loss of earnings, loss of earning capacity. Whether these should be awarded and if so, the amounts of awards depend on the genuineness of her complaints of symptoms.
3. Yip described the severity of back pain to the 2 orthopaedic experts at the joint examination on 15 September 2017. Her complaints were rather subjective:-

*“diffuse and severe tenderness over L4 to S2 levels and adjacent muscles, even upon light superficial touch.”*

*“Back movement was limited in all directions.”*

1. But such complaints were not in line with the 2 orthopaedic experts’ physical examination and radiological examination results:-

*“No swelling or deformity detected.”*

*“No loss in lumbar lordosis.”*

*“No muscle spasm felt”*

*“Waddell’s inorganic signs were positive in all categories.”*

*“Jerks were equal and normal on both sides.”*

*“There was no suggestion of lower limb neurological deficit or spinal nerve root tension.”*

*“No evidence of fracture, dislocation”*

*“The lordotic curvature is preserved”*

1. Waddell’s Test is used to detect malingering in patients with back pain. I accept that test result being positive does not necessarily mean that there was malingering on the part of Yip. But the true picture remains that her complaints were not consistent with the physical examination and radiological examination results.
2. At the joint medical examination on 15 September 2017, Yip’s gait was described as *“Could walk unaided in small steps and slow pace without limping”.* Such a description is again inconsistent with the medical notes from HKCPGOPC. On 9 and 13 November 2013, she was described as walking unaided with mild limping gait. But on 30 November 2013, 14, 18 January, 4, 17, 22, 26 February, 3 March, 13, 18, 27 June, 7, 11, 16 July, 18, 22 August, 5, 10 September, 5 December 2014, 10 March 2015, she was described as walking unaided with normal gait. On 27 March 2017, she was described as walking unaided without antalgic gait. On 5 April and 7 September 2017, she was described as walking unaided without limping. On 11 September 2017, she was even described as walking unaided with normal gait and fast pace.
3. There is no reasonable explanation for the sharp deterioration of gait from 11 September 2017 to 15 September 2017. The logical inference is that Yip was exaggerating her symptoms in front of the 2 orthopaedic experts.
4. Yip was also not consistent in her description of pain improvement. On 26 and 30 November 2013, the medical notes from HKCPGOPC stated that she had 20% to 30% improvement of her left buttock and right shoulder pain. But on 14 and 18 January 2014, the pain improvement was stated to be only 10%. On 29 January 2014, she stated that she had about 50% pain improvement at the A&E Department of YCH. But on 7 March 2014, the medical notes from HKCPGOPC recorded that her pain improvement was only 20%.
5. At the joint examination by the 2 orthopaedic experts on 15 September 2017, Yip *“still complained of severe pain in her low back, left shoulder and left knee”*. But back to 29 January 2014, the referral letter issued by the treating doctor of A&E Department of YCH stated that the pain was *“mild”*. There is no reasonable explanation for such a drastic deterioration over a period of 3½ years. This is another sign that Yip was exaggerating her symptoms to the 2 experts.
6. Yip was referred by HKCPGOPC for physiotherapy treatment on 26 November 2013 as her progress was slow. Naturally, one would expect that a person with pain symptoms would follow the referring doctor’s advice and make booking for physiotherapy as this might improve her condition. Looking at the medical records, Yip was reminded by the treating doctor to make booking on 30 November 2013. Further medical records show that she still failed to make booking when she visited HKCPGOPC on 4 and 9 December 2013. She finally made booking and had her first physiotherapy on 24 December 2013. But after 3 sessions, she defaulted on 21 February 2014. Re-booking was made subsequently.
7. When Yip was asked in cross-examination for her reason for not booking physiotherapy swiftly, she first explained that it was not effective. When defence counsel asked her how she knew it would not be effective when she had not even tried, she shifted to another explanation that she did not know how to make a booking by phone. When defence counsel suggested that the daughter who accompanied her for medical appointments could also have made a booking by phone on her behalf, she said she forgot to make an appointment.
8. When Yip was asked for the reason for defaulting physiotherapy treatment on 21 February 2014 after 3 sessions, she gave the version in the witness box that she felt too much pain and did not go. But this explanation was different from her explanation to the treating doctors at HKCPGOPC. The medical notes dated 22, 26 February, 3 March 2014 recorded that she defaulted physiotherapy because she thought her company would arrange private physiotherapy treatment for her. When confronted with the medical notes, Yip replied in the witness box that she could not remember having given such an explanation to the treating doctors. When it was suggested to her that she could have continued with physiotherapy at public hospital even if her company was providing private physiotherapy sessions to her, she resorted to the convenient reply by saying *“I don’t know”*.
9. The medical notes dated 7 March 2014 recorded another explanation for her default of physiotherapy treatment on 21 February 2014 as no family member was able to accompany her to attend. In the witness box, she denied having said this to the treating doctor. One would find it extremely strange why the treating doctor would have recorded something that Yip had not said. There is no reason for the doctor to make up an explanation for her. In any event, what was stated in the medical notes would not be a true reason. Yip’s daughter all along accompanied her to attend HKCPGOPC on various occasions. One would expect the daughter should be willing to accompany her for physiotherapy sessions when the need arose.
10. Yip was referred by HKCPGOPC for occupational therapy on 21 December 2013 because of her pain. But she had not made any booking even up to April and May 2014. The medical notes dated 14, 22, 28 April, 2, 7, 12, 26 May 2014 show that the issue of booking occupational therapy was raised by the attending doctors. Finally, an appointment was scheduled on 25 September 2014. But Yip defaulted in attending.
11. When defence counsel asked her if she agreed that the attending doctors suggested her make a booking for occupational therapy, Yip was evasive by giving answers like *“I can’t recall”* and *“I don’t know”*.
12. On 29 January 2014, the attending doctor at the A&E Department of YCH issued a referral letter to Yip referring her to the Department of Orthopaedics & Traumatology (“DOT”) of YCH. Apparently, she lost this referral letter. The attending doctor at HKCPGOPC issued another referral letter to her on 16 May 2014 referring her to the DOT of PMH.
13. Despite referral letters were issued to her, Yip did not make any booking with the DOT. If Yip’s pain symptoms were as serious and disturbing as she alleged, it would be strange that she did not take a step in making a booking thereby increasing the chance of finding a cure. The joint medical report by the 2 orthopaedic experts stated that her explanation to the 2 experts on 15 September 2017 was that she did not make a booking because she had no time to do so. Surprisingly, Yip denied in the witness box that she had ever said this to the 2 experts. I find it unreasonable that the 2 experts would have made such a record if Yip had not told them in the first place. In the witness box, she tried to explain her failure to make a booking with the DOT because she was not free, did not know how to make a phone booking and had little education. Her answers were confusing and her manner was evasive.
14. Yip was granted a total of 317 days of sick leave by YCH, HKCPGOPC and South Kwai Chung Clinic during the period from 4 November 2013 to 11 August 2018. She resigned from Lapco on 15 September 2014. From 4 November 2013 to 14 September 2014, the period of sick leave was almost continuous. The short broken periods were from 16 to 20 May 2014 and from 27 to 29 May 2014. Yip’s pattern was that she would attend HKCPGOPC on the day of expiry of sick leave and a new sick leave period would be granted by the attending doctor. Because of this, the report dated 3 June 2015 from HKCPGOPC stated that *“Yip continued to follow up in our clinic once every few days for continuation of sick leave”*. In fact, at least 28 medical notes on diver dates recorded that she attended for sick leave extension or requested sick leave from the attending doctors. When defence counsel asked her whether she was attending HKCPGOPC for the purpose getting sick leave certificates, she said she did not know. At one point, she admitted that she had requested for a few days of sick leave from the attending doctor. But then she said she did not ask for and it was the doctor who issued the sick leave certificate on his own initiative. She also said she did not recall whether she had requested the attending doctor to give her sick leave.
15. One should not speculate on the reason for her frequent visits to HKCPGOPC and why she would request sick leave to be granted to her during the period from the date of Accident on 4 November 2013 to the date of her resignation on 15 September 2014. But one could see that her answers on the issue of sick leave were evasive and shifting. She even denied what had been obviously stated in the medical notes. I find that she has not been totally truthful to the court.
16. At the medical examination by the 2 orthopaedic experts on 15 September 2017, Yip complained of left shoulder pain and such pain would disturb her sleep. But there was not any complaint about shoulders on both sides recorded in the report from the A&E Department of YCH where Yip first sought treatment on the day of the Accident on 4 November 2013. The medical notes from HKCPGOPC dated 9, 13, 18, and 22 November 2013 only mentioned right shoulder pain. It was not until 26 November 2013 that the medical notes stated that Yip *“claimed left sided shoulder also painful”*. Yip complained about right shoulder pain 5 days after the Accident. Her left shoulder complaint was raised 22 days after the Accident. Naturally, it gives rise to a doubt as whether the left shoulder complaint is genuine, and if so, whether it is related to the Accident at all.
17. Under cross-examination, Yip insisted that her left shoulder was injured. She said she had told the doctor at the A&E Department of YCH about this and the wound was bleeding. She said that it was the doctor who made a mistake and described her left shoulder complaint as right shoulder complaint. I find her explanation unreasonable. If she had raised her complaint about left shoulder, there would be no reason for the doctor at the A&E Department of YCH not putting this down in the medical report. While one doctor making a mistake would be possible, it would be unthinkable that another doctor of HKCPGOPC also made a mistake by misinterpreting Yip’s left shoulder complaint as a right shoulder complaint.
18. Even one assumes that Yip’s left shoulder complaint is related to the Accident, the degree of the pain would not be as serious as she claims. In the medical report by the 2 orthopaedic experts, her subjective complaint was recorded as *“tenderness over posterior deltoid region”*. But this subjective complaint was not supported by the objective physical examination and radiological examination results:-

* *No swelling, hotness or deformity detected.*
* *Absence of muscle wasting in the region.*
* *Impingement sign: negative.*
* *No bony abnormality detected.*

1. I accept Dr Lam’s comment that the condition of the left shoulder should be good.
2. At the examination by the 2 orthopaedic experts on 15 September 2017, Yip said she had intermittent pain in the left knee associated with walking for 20 minutes. This complaint about left knee pain was raised for the first time nearly 4 years after the Accident. The report from the A&E Department of YCH only recorded that *“there was abrasion over right knee”*. In the medical notes from HKCPGOPC dated 9, 13, 18, 22, 26 and 30 November 2013, Yip’s complaint was related to the right knee. There was no mention about left knee pain until the joint examination on 15 September 2017.
3. Under cross-examination, Yip said that she actually had pain in both knees. If the pain in the left knee were true, there would be no reason why this complaint was not recorded by the attending doctors of the A&E Department of YCH and HKCPGOPC but only came to light almost 4 years after the Accident. On the other hand, if Yip’s complaint about right knee pain were true, there would be no reason that the 2 orthopaedic experts did not make any record for this complaint.
4. This left knee pain was only a subjective complaint from Yip. It was not supported by the physical and radiological examination results:-

* *No swelling, hotness or deformity.*
* *No ligamentous laxity detected.*
* *McMurray test for meniscus negative.*
* *Patellar grinding test negative.*
* *Range of motion within normal limits.*
* *No bony abnormality detected.*

1. Even one assumes that the left knee complaint is related to the Accident, the current condition should be reasonably good. I accept Dr Lam’s view in this regard.
2. On the whole, I accept that as a result of the Accident, Yip suffered multiple injuries as detailed in the report from the A&E Department of YCH dated 18 June 2015. She has recovered to a large extent, if not in full. Her back pain, if any, is not as serious as she alleges. If her problem is so serious, there would be no reason for her to delay making appointment with the physiotherapy department, the occupational therapy department and the DOT. She was exaggerating her symptoms to the 2 orthopaedic experts at the joint medical examination on 15 September 2017. Her description of symptoms was not consistent with contemporaneous medical records. She was not truthful to the court when giving evidence. She was evasive. Sometimes her answers were vague, contradictory and do not make sense. I do not find her to be an honest and truthful witness.
3. Regarding her left shoulder complaint, I find it unrelated to the Accident. There is no mention of any shoulder injury in the report from A&E Department of YCH where Yip sought treatment immediately after the Accident. Her right shoulder complaint only came out 5 days after the Accident on 9 November 2013. The current left shoulder complaint came out 22 days later on 26 November 2013.
4. Likewise, I find the left knee pain unrelated to the Accident. There is no mention of any left knee injury in the report from the A&E Department of YCH. This complaint about left knee was raised at the joint medical examination on 15 September 2017 which was almost 4 years after the Accident.
5. Even if I am wrong in my conclusion that the left shoulder and left knee complaints are unrelated to the Accident, it would not make too much difference in the assessment of Yip’s claim. I accept Dr Lam’s view that the current conditions of the left shoulder and left knee should be good and Yip’s complaints are not justified by the physical examination and radiological examination results.
6. *Sick Leave Period*
7. Yip was granted a total of 317 days of sick leave by various government hospitals and clinics. There were another 11 hospital visits which were proved by attendance certificates but not by sick leave certificates.
8. Dr Lau believed that the appropriate period of sick leave is 12 to 18 months.
9. On the other hand, Dr Lam was of the view that sick leave of about 3 months should be appropriate. He stated the followings:-

* *Considering her injury nature and job requirement, a sick leave up to 3 months should be the maximum for subjective painful complaints without good physical cause.*
* *As there is no demonstrable pathology, further and prolonged sick leave given with no expectation of significant improvement from specific treatment is not appropriate. The sick leaves would not facilitate her recovery. In the contrary, the prolonged sick leaves might de-motivate and de-condition her from ever returning to work.*

1. When the court needs to make a determination of the appropriate period of sick leave, it is not bound by the sick leave certificates issued by the government hospitals and clinics. In *Choy Wai Chung v Chung Wo Construction & Engineering Co Ltd*, CACV 172/2004, Roger VP stated the following at paragraph 9 of the judgment:-

*“On this appeal Mr Chan SC, who appeared on behalf of the plaintiff, placed great reliance upon the fact that the plaintiff had been given sick leave certificates. In my view the judge was perfectly entitled to reject these as an indication of the plaintiff’s inability to work for the reasons which she gave. It was for the judge to decide whether on the evidence the plaintiff had been unable to work and, if he had been able to work, the extent to which he was able to work. Obviously in doing so the judge must have regard to the medical evidence. Nevertheless, the judge cannot be bound by the mere issue of sick leave certificates. As the judge pointed out the issuance of sick leave certificates would be primarily because of the subjective symptoms reported to the doctors by the plaintiff.”*

1. As pointed out earlier, the pattern of Yip’s sick leave showed that she would attend HKCPGOPC on the day of expiry of sick leave and a new sick leave period would be granted by the attending doctor. At least 28 medical notes on diver dates show that Yip attended HKCPGOPC for extension of sick leave or she requested sick leave from the attending doctors.
2. I accept the possibility that sick leave was granted to Yip by the attending doctors because of her subjective complaints. I find it unsafe to determine the appropriate length of sick leave period by relying on the sick leave certificates alone.
3. The next question is whether I should accept Dr Lau’s view of sick leave period for 12 to 18 months or Dr Lam’s view of sick leave period for 3 months.
4. I find Dr Lam’s analysis more reliable and complete. I accept the same. My reasons are as follows:-
   * 1. Dr Lau’s view was based on *“the severity of her back pain”*, a subjective complaint of Yip which I do not accept.
     2. Dr Lau did not explain why he accepted Yip’s claim of severe back pain when such claim was inconsistent with the physical examination and radiological examination results.
     3. Dr Lau did not explain why he accepted Yip’s claim of severe back pain which was not supported by contemporaneous medical notes and records.
     4. Dr Lau did not explain why 12 to 18 months’ sick leave would be necessary for Yip’s recovery and rehabilitation.
     5. Dr Lau did not comment on Yip’s left shoulder complaint even when Dr Lam gave the view that the condition was good.
     6. Dr Lau did not comment on Yip’s left knee complaint when Dr Lam gave the view that the condition was good.
5. Another reason for my accepting that the appropriate sick leave period being 3 months is that Yip’s condition had become stable by that time. Looking at the medical notes from HKCPGOPC dated 4 February 2014, her complaints were mainly left buttock pain and left shoulder pain. The condition remained more or less the same up to 11 September 2017. As such, there should be no good reason for giving Yip more sick leave after the 3-month period when there was not any concrete plan for further treatment.
6. *Whether the plaintiff can return to the pre-accident job*
7. Dr Lau said that Yip *“will continue to suffer a significant degree of decreased efficiency and endurance at work”* due to the residual back pain. Dr Lam said that Yip will suffer a *“mild decrease in her efficiency at work”*.
8. Despite the comments on work efficiency, both experts were of the view that Yip should be able to return to the pre-accident job as a cleaning worker.
9. Dr Lau further said that her back pain is expected to be aggravated by heavy manual work and she should not do manual lifting of more than 10 kg. She should also avoid physical exertion, extreme range of back movement, prolonged working, standing or walking. She may need intermittent breaks of 15 minutes after working for every 2 hours.
10. Yip did not do any work after the Accident. She resigned from Lapco on 15 September 2014. She said she could not return to the pre-accident job because the job required her to move machines and bend her back. In examination-in-chief, she explained that she could not cope with because of the pain in the low back, left thigh and left forearm.
11. One should note that her complaints about pain in the left thigh and left forearm are different from her complaints to the 2 orthopaedic experts. She told the 2 orthopaedic experts at the joint examination that the pain was in the left knee and left shoulder.
12. I am not persuaded that Yip cannot return to the pre-accident job. There is no evidence that the pre-accident job required carrying weight of more than 10 kg or extreme movement of the back. In fact, the medical notes from HKCPGOPC dated 11 September 2017 stated that *“no distress shown upon every posture and smooth in changing every posture”*. The medical report from HKCPGOPC dated 3 June 2015 stated that *“there should be no expected permanent impairment.”* There is also no evidence to show that Yip’s job required prolonged working, standing or walking.
13. According to Yip’s description, 3 workers worked as a team when cleaning the streets. The first one would push the power washer around, the second one would carry the hose connected to the power washer and splash water on the street for cleaning and the third one would push the mobile power generator around so as to provide power to the power washer. Yip was mainly responsible for moving the mobile power generator. Sometimes she would carry the hose and wash the streets.
14. Yip described that the mobile power generator would be put on a stroller when being moved around. Before me, there is no evidence that she would be unable to push the stroller or carry the hose. The 2 orthopaedic experts did not say so.
15. The explanation for not being able to return to the pre-accident job was her subjective complaint of severe pain. I have already stated that I do not accept her pain is as serious as she claims. Therefore, I do not accept that she cannot return to her pre-accident job.
16. As to Dr Lau’s suggestion that Yip might need intermittent breaks for 15 minutes after working for every 2 hours, such a view was based on the assumption that Yip’s complaint of pain is genuine. As I do not accept that Yip’s complaint of severe pain is genuine, I have a reservation about the need for such intermittent breaks at work. Even assuming intermittent breaks are necessary, Yip would still be entitled to the same in her pre-accident job. She described that her team would clean the streets for about 1 odd hour using 2 buckets of water. After the water had been used up, they had to wait for other colleagues to get water supply. Sometimes the waiting time would be 1 hour. This would be an intermittent break for her.
17. *Pain, suffering and loss of amenities*
18. The only current complaint that should draw the court’s attention is the residual back pain which should not be as serious as Yip alleges. Both Dr Lam and Dr Lau noted the significant degenerative changes of the L5-S1 disc which should be pre-existing. Dr Lau was of the view that these degenerative changes should be asymptomatic before the Accident. They became symptomatic as a result of the Accident. Dr Lam was of the view that it was very unlikely that Yip’s back was problem free prior to the Accident.
19. As counsel for Lapco agree that they are not seeking a deduction on damages on the basis of Yip’s pre-existing condition, I do not find it necessary to draw a definite conclusion on whether Yip’s back was asymptomatic before the Accident.
20. For the award for pain, suffering and loss of amenities, counsel on both sides have submitted a number of case authorities for the court’s consideration.
21. Counsel for Lapco relies on the followings:-
    * 1. *Wong Chun Kin v Caritas – Hong Kong*, DCPI 1454/2017 (Award of HK$80,000);
      2. *Cheung Chung v Softtrans Supply Chain (Hong Kong) Company Limited*, HCPI 954/2016 (Award of HK$100,000);
      3. *Kang Chi Keung v Lai Yau Kai Judy & Ors*, DCPI 2310/2013 (Award of HK$100,000);
      4. *Ng Hiu Man v Trade In Asia Limited*, DCPI 2640/2013 (Award of HK$80,000);
      5. *Lau Wing Yeung v Kowloon Cricket Club*, HCPI 955/2013 (Award of HK$90,000);
      6. *Hussain Basharat v 曾慶裕 & Anor*, DCPI 508/2012 (Award of HK$100,000); and
      7. *Lam Tak Wa v Everbest Port Services Limited (In Liquidation) & Anor*, HCPI 455/2016 (Award of HK$120,000).
22. On the other hand, counsel for Yip relies on the followings:-
    * 1. *Li Yuen Hung v Yau Yuk Lan*, HCPI 504/1995 (Award of HK$210,000);
      2. *Woo Wai Kuen v Li Siu Keung t/a Alex’s Kitchen*, DCPI 309/2001 (Award of HK$150,000);
      3. *Shek Kam Ching v Po Kee Construction Engineering Ltd & Ors*, HCPI 434/2001 (Award of HK$150,000);
      4. *Chung Kam Chuen v Lisboa Bakeries Ltd*, HCPI 1270/2003 (Award of HK$150,000);
      5. *Ashok G C v Kam Kee Construction Works Ltd & Anor*, HCPI 691/2004 (Award of HK$180,000);
      6. *Chan Chung Keung v Greenroll Ltd*, HCPI 275/2005 (Award of HK$180,000);
      7. *Mohammad Shakil v Lam Siu Kwong trading under the name or style of Tat Lee Engineering & Anor*, HCPI 610/2007 (Award of HK$200,000).
23. While every personal injury case has its own features, I am of the view that the case authorities of *Wong Chun Kin v Caritas – Hong Kong*, DCPI 1454/2017, *Cheung Chung v Softtrans Supply Chain (Hong Kong) Company Limited*, HCPI 954/2016 and *Kang Chi Keung v Lai Yau Kai Judy & Ors*, DCPI 2310/2013 are closer comparables for Yip’s case.
24. In *Wong Chun Kin v Caritas – Hong Kong*, DCPI 1454/2017, His Honour Judge Andrew Li ruled that the plaintiff had failed to establish liability against the defendant. But the learned judge also assessed the quantum of damages in the judgment. The plaintiff was 39 years old at the time of trial. He suffered sprained back injury. X-ray of the lumbar spine showed no fracture and dislocation. He received follow-up treatments at government clinics and physiotherapy. MRI showed that there was a slight posterior prolapse of the T11/12 disc and early dehydration of the lumbar and lower thoracic discs. There was no significant nerve impingement. He was granted sick leave almost continuously from the day of accident on 10 November 2014 to 31 January 2015. During the period from 7 July 2015 to 30 June 2018, 294 days of sick leave were granted intermittently to the plaintiff. Despite prolonged treatments, the plaintiff claimed he still suffered from residual back pain, stiffness and left lower limb numbness. His daily activities were essentially independent. The expert doctor was of the view that he could return to the pre-accident job as a welfare worker and trainer. His condition would deteriorate when he stood or walked for a long period of time, carried weight of 5 kg for 10 minutes. He enjoyed sports and outdoor activities but had to refrain from the same allegedly due to his injuries. The learned judge found that the plaintiff had grossly exaggerated his complaints and that he had no difficulties in carrying moderate to heavy weight. The period of sick leave granted by the doctors at the public hospitals was excessive. The residual pain and discomfort experienced by the plaintiff should be mild and his disabilities should be insignificant. The learned judge made an award of HK$80,000 for pain, suffering and loss of amenities.
25. In *Cheung Chung v Softtrans Supply Chain (Hong Kong) Company Limited*, HCPI 954/2016, the plaintiff was allegedly injured in a work accident. He said that he slipped and sprained his back at the work place. Deputy High Court Judge Kenneth Wong ruled against the plaintiff on the issue of liability. But the learned deputy judge also considered the issue of quantum in the judgment. The plaintiff was 43 years old at the time of trial. He complained that he could not walk for longer than 10 minutes, otherwise his back would experience pain and his left thigh would become very stiff. When he remained seated or standing, he had to keep changing his postures. He felt uneasy when sitting or standing. There was pain and numbness at the back of his spine. The muscles and tendons nearby were stiff. The pain and stiffness would radiate to his left thigh, calf and ankle. The range of movement of waist was limited. He needed to use a stick when walking and had to rely on painkillers to ease the pain. He had to avoid carrying weight. Pain in the back and left ankle would worsen when weather changed. When sleeping, he had to keep changing postures. His left calf would cramp for no reason. He had lost weight for more than 10 kg. His sex life was affected to a great extent. The learned deputy judge found that most of his complaints were contradicted by the surveillance video. The only possible residual symptom would be tenderness with reduced range of movement of the lumbar spine. The learned deputy judge was of the view that the appropriate award for pain, suffering and loss of amenities should be HK$100,000.
26. In *Kang Chi Keung v Lai Yau Kai Judy & Ors*, DCPI 2310/2013, the plaintiff was injured in a work accident. He was 39 years old at the time of trial. He suffered soft tissue injuries to his right shoulder and back. He had a back contusion. There was no bony damage or neurological deficit. According to the orthopaedic experts, the injury was not serious and the pain was not severe and that he could return to his pre-accident job as a delivery worker. The plaintiff had pre-existing degenerative condition in his back. Before the accident, he had complained of back pain. He had 8 to 9 visits to general practitioners or bonesetters in the 5 years before the accident. Deputy Judge Elaine Liu found that he had exaggerated the degree of pain when examined by the orthopaedic expert. After taking into account of the pre-existing degeneration, the learned deputy judge was of the view that the appropriate award for pain, suffering and loss of amenities should be HK$100,000 before deduction for contributory negligence.
27. After considering all the case authorities submitted by both sides, I am of the view that the award for pain, suffering and loss of amenities in this case should be HK$100,000.
28. *Pre-trial loss of earnings*
29. At the time of the Accident, Yip was earning a monthly salary of HK$7,905 as a street cleaner of Lapco. As I have accepted Dr Lam’s view that the appropriate period of sick leave should be 3 months, Yip’s loss of earning during the sick leave period should be as follows:-

HK$7,905 x 3 months = HK$23,715

1. Both orthopaedic experts were of the view that Yip should be able to return to her pre-accident job. I find that her condition had become stable after 3 months’ sick leave. As such, I do not think that she should be entitled to compensation for loss of earnings beyond 3 months.
2. *Future loss of earnings*
3. For reasons already stated, there should be no award for loss of future earnings after the assessment hearing.
4. *Loss of Mandatory Provident Fund*
5. Yip’s employer Lapco would be required by law to make a 5% contribution to the Mandatory Provident Fund (“MPF”) based on her income. Her loss of MPF based on her pre-trial loss of earnings would be as follows:-

HK$23,715 x 5% = HK$1,185.75

1. *Loss of earning capacity*
2. Yip also claims loss of earning capacity.
3. On 24 December 2014, the Employees’ Compensation (Ordinary Assessment) Board assessed Yip to be suffering from 2.5% loss of earning capacity as a result of her injuries. This assessment was confirmed by the same board upon review on 30 April 2015.
4. A percentage of loss of earning capacity given by the board does not carry too much meaning. This was highlighted by Hunter JA in *Chan Kit v Sam Wo Industrial Manufactory* [1989] 1 HKC 115 at 118D-E:-

*“… the court’s jurisdiction appears to be appellate. But one has then to remember that these boards are acting on their own knowledge. They hear no evidence. They keep no record. They give no reasons so that they provide no material which explains the basis of their approach. They only produce a result. Although the procedure by way of appeal may be properly so described in order to bring about a reversal of their decision if the court is so minded, it is plain that a court approaching this matter has really got to start afresh.”*

1. Dr Lam was of the view that the mild residual pain in her back should give rise to 1% loss of earning capacity. On the other hand, Dr Lau expected the residual pain in the left shoulder, left knee and low back would cause 7% loss of earning capacity.
2. The guiding principle for making an award for loss of earning capacity was stated in *Moeliker v A Reyrolle & Co Ltd* [1977] 1 WLR 132 at 141:-

*“Where a plaintiff is in work at the date of the trial, the first question on this head of damage is: what is the risk he will at some time before the end of his working life lose that job and be thrown on the labour market? I think the question is whether there is a “substantial” risk or is it a “speculative” or “fanciful” risk … If the court comes to the conclusion that there is no “substantial” or “real” risk of the plaintiff losing his present job during the rest of his working life, no damages will be recoverable under this head.”*

1. In *Chan Wai Tong v Li Ping sum* [1985] HKLR 176, at 183, Lord Fraser of Tullybelton stated the following:-

*“… A claim for loss of future earning capacity usually arises where the claimant is in employment at the time when the claim falls to be evaluated. The claim is to cover the risk that, at some future date during the claimant’s working life, he will lose his employment and will then suffer financial loss because of his disadvantage in the labour market. The Court has to evaluate the present value of that future risk see Moeliker v. A. Reyrolle & Co. Limited [1977] 1 WLR 132, 140 where Browne, L.J. dealt fully with this matter. Evidence is therefore required in order to prove the extent, if any, of the risk that the claimant will at some future time during his working life lose his employment. If he is, and has been for many years, in secure employment with a public authority the risk may be negligible. In other cases the degree of risk may vary almost infinitely, depending on inter alia the claimant’s age and the nature of his employment. Evidence will also be generally required in order to show how far the claimant’s earning capacity would be adversely affected by his disability. This will depend largely on the nature of his employment. Loss of an arm or a leg will have a much more serious effect upon the earning capacity of a labourer than on that of an accountant.”*

1. Yip had not attempted to return to the pre-accident job. She resigned from Lapco on 15 September 2014. Both orthopaedic experts opined that Yip should be able to return to the pre-accident job. Despite this, Yip said in evidence that she could not cope with any job. I am of the view that Yip was exaggerating once again. I find that she did not return to the pre-accident job out of her own choice, even though her physical ability could cope with. As such, I do not see there would be any substantial or real risk that she would lose her employment in the future.
2. In any event, defence witness 黎家聲, who was the accounting manager of Lapco, testified that Yip’s contract would expire on 31 October 2014. Even without the Accident, Yip would probably lose her job as a street cleaner with Lapco by that time. Given her current physical condition, I see no reason why she could not find another similar job as a street cleaner even if her contract with Lapco was not renewed.
3. Taking into all the relevant factors, I am of the view that no award should be made for loss of earning capacity.
4. *Special damages*
5. Yip claims medical expenses in the sum of HK$4,767, tonic food in the sum of HK$2,000 and travelling expenses in the sum of HK$2,786.
6. Defence counsel only agree to a lump sum figure of HK$3,000 for medical expenses. It is submitted to the court that medical expenses should not be awarded in full because Yip was attending HKCPGOPC for continuation of sick leave and sometimes her outpatient visits covered unrelated illnesses such as upper respiratory infection, cough and sore throat.
7. Having considered the submission by defence counsel, I would deduct the medical expenses incurred after 29 November 2017 in the sum of HK$300. I am of the view that Yip still suffers residual back pain, although the degree is not as serious as she alleges. Before the 2 orthopaedic experts’ conclusion on 29 November 2017 that no further treatment would be needed, it would not be unreasonable for Yip to attend government hospitals and clinics for monitoring her condition. Therefore, I allow Yip’s claim for medical expenses in the sum of HK$4,467 (ie HK$4,767 – HK$300).
8. As to tonic food for HK$2,000, Yip could not produce any receipts. But she said she had to take fish oil pills costing HK$300 for a bottle. She had taken more than 15 bottles. Other items included ginseng and chicken soup.
9. Defence counsel only agree to a lump sum award of HK$1,000 for tonic food.
10. In the absence of supporting receipts, I will follow His Honour Judge Andrew Li’s approach in *Wong Chun Kin v Caritas – Hong Kong*, DCPI 1454/2017 and award a nominal sum of HK$1,000 for tonic food.
11. Regarding travelling expenses for HK$2,780, Yip is claiming for herself and her daughter who accompanied her for treatments:-
    * 1. Visits to YCH by public light bus

HK$7 x 5 visits x 2 trips x 2 = HK$140

* + 1. Visits to PMH by public light bus

HK$7.10 x 10 visits x 2 trips x 2 = HK$284

* + 1. Visits to HKCPGOPC by public light bus

HK$7 x 77 visits x 2 trips x 2 = HK$2,156

* + 1. Visit to Dr Balwin Chan’s Clinic by MTR

HK$25 x 2 trips x 2 = HK$100

* + 1. Visit for joint medical examination by 2 orthopaedic experts by MTR

HK$25 x 2 trips x 2 = HK$100

1. Defence counsel only agree to a lump sum award of HK$1,000 for travelling expenses. It is submitted to the court that there is no evidence explaining why Yip needed to be accompanied by daughter and medical notes dated as early as 5 December 2014 showed that Yip could attend on her own without company.
2. I accept the above submission and decide that travelling expenses for Yip’s daughter should not be allowed. I only allow travelling expenses for Yip in the sum of HK$1,390 as per her counsel’s calculation.
3. The amount of special damages allowed by me is HK$6,857 (Medical Expenses HK$4,467 + Tonic Food HK$1,000 + Travelling Expenses HK$1,390).
4. *Summary of quantum of damages*
5. Yip has received Employees Compensation in the sum of HK$268,301 from Lapco. This should be deducted from the quantum of damages. The court’s assessment of damages is set out as follows:-
   * 1. Pain, suffering and loss of amenities HK$100,000
     2. Pre-trial loss of earnings HK$23,715
     3. Future loss of earnings HK$0
     4. Loss of MPF HK$1,185.75
     5. Loss of earning capacity HK$0
     6. Special Damages HK$6,857

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Sub-total: HK$131,757.75

Less: Employees’ Compensation HK$268,301

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

Total: (HK$136,543.25)

1. *Conclusion*
2. As can be seen, Yip has been sufficiently compensated by the award of Employees’ Compensation and should not be entitled to further common law damages from this court.
3. In conclusion, Yip’s claim for damages is dismissed with a costs order nisi that Yip do pay Lapco’s costs for assessment of damages (including all costs reserved) with certificate for one counsel, such costs to be taxed if not agreed. Yip’s own costs to be taxed in accordance with the Legal Aid Regulations. The costs order nisi shall become absolute in the absence of application to vary within 14 days.
4. *Defence counsel’s challenge on pleading point*
5. When Mr Wong, counsel for Yip, was opening his case, Mr Chung, counsel for Lapco, raised an objection on a point of pleading. I ruled against Lapco on the pleading point and allowed Mr Wong to proceed with his opening submissions. At that juncture, I said I would give my reasons in my judgment. This I do now.
6. In gist, Mr Chung’s complaint was that Mr Wong was departing from the Revised Statement of Damages (“RSD”) filed on 11 January 2018.
7. In the RSD, it was pleaded that Yip was not able to do any work from the date of Accident on 4 November 2013 to 3 December 2017. It was further pleaded that Yip would be able to do part-time cleaning work earning a monthly income of HK$5,382 (HK$34.5 x 6 hours x 26 days) from 4 December 2017 to 4 November 2018 (ie 12 months) which was the notional date of trial. For future loss of earnings, it was pleaded that Yip could do some light duty jobs earning a monthly income of HK$5,382 (HK$34.5 x 6 hours x 26 days). On this basis, Yip was claiming pre-trial loss of earnings and MPF in the sum of HK$517,892 and future loss of earnings and MPF in the sum of HK$396,772 giving a total sum of HK$914,664.
8. When Mr Wong was opening his case, he adopted a less aggressive approach. He stated that Yip should be entitled to pre-trial loss of earnings for 13 months from the date of Accident on the basis that she could not do any work during the sick leave period.
9. After the first 13 months, Mr Wong outlined 2 possible scenarios. Scenario 1 was on the assumption that Yip could not work full time as a cleaning worker but could work as a part-time cleaning worker for 6 hours each day earning a monthly income of HK$15,225. Scenario 2 was on the assumption that Yip could not work full time as a cleaning worker but could work full time in alternative lighter employment earning the minimum wage.
10. In Scenario 1, the pre-trial loss of earnings and MPF would be HK$249,826.77 and the future loss of earnings and MPF would be HK$15,225 giving a total figure of HK$265,051.77.
11. In Scenario 2, the pre-trial loss of earnings and MPF would be HK$248,345.48 and the future loss of earnings and MPF would be HK$17,424.25 giving a total figure of HK$265,769.73.
12. As such, Mr Chung was complaining that Mr Wong was departing from the RSD. While I accept that it would have been much better if Mr Wong’s 2 scenarios had been pleaded clearly in the RSD, I do not think a failure to do so would cause any prejudice to Lapco. Mr Wong’s opening submissions, be it on Scenario 1 or Scenario 2, amounted to a concession in Yip’s case. Mr Wong no longer insisted what had been pleaded in the RSD ie that Yip was unable to do any work for 49 months after the Accident. Mr Wong accepted that Yip should be able to do some work after 13 months, as a part-time cleaning worker in Scenario 1 or take up full time alternative lighter employment as in Scenario 2. Also, the residual earning capacity of Yip submitted by Mr Wong in his opening submissions was actually higher than what had been pleaded in the RSD.
13. Such a concession on the part of Mr Wong was actually advantageous to Lapco. In the RSD, Yip claimed total loss of earnings and MPF amounting to HK$914,664. But in Mr Wong’s opening submissions, the total loss of earnings and MPF claimed was HK$265,051.77 in Scenario 1 and HK$265,769.73 in Scenario 2. Mr Wong’s concession helped to narrow down the difference between the 2 sides on the issue of loss of earnings. I do not see how such a concession would affect Lapco’s conduct of defence. Lapco’s position had always been that Yip should have no difficulty in returning to her pre-accident job and should do so after 3 months’ sick leave.
14. I refused Mr Chung’s request for Mr Wong to clarify whether Yip’s case was based on the RSD or the scenarios outlined in Mr Wong’s submissions. I did not think it was necessary. Mr Wong’s opening submissions spoke for themselves. Mr Wong made a concession from the RSD and then advanced 2 possible scenarios about Yip’s residual earning capacity after the Accident.
15. Mr Chung also criticised the RSD and Mr Wong’s opening submissions for including vague terminologies like “light duty jobs” and “alternative lighter employment” without actually identifying what those jobs were. While I agreed that it would have been much better if the same had been spelt out more clearly, I did not think a failure to do so would cause prejudice to Lapco. By using those terminologies, Mr Wong actually meant that Yip could not return to the pre-accident job and her residual earning capacity would only be a monthly income based on the minimum wage. As such, I do not see it would assist Lapco’s defence even if the court required Mr Wong to specify the particular jobs he had in mind. Whatever those jobs were, Mr Wong was saying that they could only give Yip a monthly income based on the minimum wage.
16. Allowing Mr Wong to proceed with his opening submissions by outlining different possible scenarios did not mean that the court had already accepted the same. Ultimately, the court would need to see if Mr Wong’s submissions were supported by the evidence heard at trial.
17. As can be seen in the earlier part of this judgment, the court found in favour of Lapco because there was sufficient evidence to conclude that Yip should be able to return to her pre-accident job after 3 months’ sick leave. The 2 different scenarios advanced by Mr Wong simply did not arise. There was no need for the court to consider the same in greater details.
18. Lastly, I would like to thank counsel on both sides for their thorough submissions on the case authorities and meticulous analysis of the medical evidence.

( Timon Shum )

Deputy District Judge

Mr Charles Wong instructed by Hastings & Co, assigned by the Director of Legal Aid, for the plaintiff

Mr Gary KH Chung and Ms Flora HT Lam, instructed by Winnie Leung & Co, for the defendant