#### DCPI2149/2006

IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 2149 OF 2006

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| BETWEEN | YIP TUNG FUNG  YU KAR KI IVY  YU TAT KIN MICHAEL | 1st Plaintiff 2nd Plaintiff  3rd Plaintiff |
|  | and |  |
|  | PUN CHI LEUNG | Defendant |

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##### Coram: H H Judge Marlene Ng in Court

Dates of Hearing: 16th and 17th July 2007 and 13th August 2007

Date of Judgment: 23rd November 2007

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###### JUDGMENT

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I. Introduction

1. At about 1:40pm on 6th November 2005, there was a collision at the T-junction of Hong Ning Road and Kwun Tong Road (“Junction”) between 2 private vehicles bearing registration nos. HJ3655 (“HJ3655”) and KP4707 (“KP4707”) driven by the 1st Plaintiff and the Defendant respectively (“Accident”). The 1st Plaintiff was also the owner of HJ3655.
2. Southbound Hong Ning Road had 3 lanes. Vehicles on the 1st lane (“1st HNR Lane”) must turn left into eastbound Kwun Tong Road. Vehicles on the 2nd lane (“2nd HNR Lane”) could turn either left or right into eastbound or westbound Kwun Tong Road. Vehicular traffic on southbound Hong Ning Road was controlled by a set of traffic signals at the Junction (“Set 3 Signals”).
3. Eastbound Kwun Tong Road was a straight stretch of road with 4 lanes (“1st to 4th KTR Lanes”). Vehicular traffic on eastbound and westbound Kwun Tong Road was controlled by sets of traffic signals at the Junction respectively called “Set 2 and Set 1 Signals”. A central concrete divider with waist-high metal railings separated the eastbound and westbound carriageways of Kwun Tong Road (“Divider”).
4. At the material time, the 1st Plaintiff was driving HJ3655 along the 2nd HNR Lane towards Kwun Tong Road with his wife the 2nd Plaintiff seated next to him, his brother-in-law the 3rd Plaintiff in the right rear seat and his mother-in-law Madam Wong Che Ping (“Madam Wong”) in the left rear seat. The Defendant was driving KP4707 along the 4th KTR Lane with no passenger on board.
5. The 1st to 3rd Plaintiffs claimed the Defendant entered the Junction when the Set 2 Signals showed red against him and his exit road/lane was not clear. They further claimed he drove too fast, and failed to (a) keep proper lookout, (b) have sufficient regard for oncoming traffic at the Junction, (c) give precedence to HJ3655 which had entered the Junction, (d) give adequate warning of KP4707’s approach and/or (e) take avoidance action. The Plaintiffs claimed they were injured and HJ3655 became a total loss as a result of the Accident.
6. On the other hand, the Defendant alleged the Set 2 Signals were green in his favour when KP4707 entered the Junction. He claimed the Accident was caused by the negligence of the 1st Plaintiff in causing HJ3655 to enter the Junction suddenly at high speed with the Set 3 Signals showing red against him, and failing to (a) keep proper lookout, (b) have sufficient regard for traffic conditions or KP4707, (c) give warning signal or sound horn, (d) take adequate precautions for the safety of other road users and/or (e) avoid the collision. On the first day of trial, I granted leave for the Defendant to withdraw his counterclaim.

*II. Overview of witnesses’ credibility*

1. At the material time, Sets 1-3 Signals were functioning properly (ie when Sets 1-2 Signals were green Set 3 Signals would be red and *vice versa*). In such circumstances, only one party’s case can stand. Much therefore turns on the credibility of the witnesses, ie the 1st to 3rd Plaintiffs, Madam Wong and the Defendant.
2. In assessing witnesses’ credibility, the court should consider the totality of their evidence against the documentary evidence, inferences based on inherent improbabilities and/or undisputed facts (see the principles set out by Chung J at paragraph 12 of *Star Glory Investment Ltd v Kai Tua (H.K.) Technology Ltd & ors* HCA3523/2002 (unreported, 13th August 2005)).
3. I prefer the evidence of the 1st to 3rd Plaintiffs and Madam Wong (whom I find honest and reliable) when considered against the photographs taken by the police (“Police Photographs”), the photographs taken by the motor surveyor Honest Source Limited (“HSL”), the description of the damage to HJ3655 in HSL’s expurgated motor survey report dated 11th November 2005 (“MS Report”) and the sketch of the scene of the Accident made by the police. The Plaintiffs’ witnesses were not shaken in cross-examination, and gave steadfast/consistent accounts. I am not persuaded they gave “almost identical accounts” of the Accident in their statements to the police (“Police Statements”) and in their witness statements in the present proceedings as a result of collaboration. On balance I find their observations and/or estimations as to time, distance and speed, and their descriptions of the point of impact on the 2 vehicles to be their own, and any similarity reflected the truthfulness and reliability of their recollections of the Accident.
4. The same could not be said for the Defendant whose evidence in relation to the Accident (which I do not hesitate to reject) was unreliable, self-serving and embellishing. In the words of Madam Wong (which I agree), I find on balance the Defendant “衝燈尾” by entering the Junction against the Set 2 Signals which showed red against him.

*III. Liability*

*(a) Undisputed facts*

1. The following matters were not in dispute :
2. At the time of the Accident, the 1st and 3rd Plaintiffs respectively had 9 and 14 years’ experience in driving private vehicles. The 2nd Plaintiff held a driving licence for private vehicles but seldom drove.
3. At the time of the Accident, the Defendant was the holder of a driving licence for private vehicles for 1 year and for motorcycles for 2 years.
4. Up to the time of the Accident, neither the 1st Plaintiff nor the Defendant had any traffic offence record.
5. HJ3655 and KP4707 were in good working condition.
6. There were no brake marks by HJ3655 or KP4707.
7. A female police officer (“WPC”) who was patrolling on motorcycle arrived at the scene at 1:41pm, ie 1 minute after the Accident.
8. The Police Photographs showed the final stop positions and the damaged condition of HJ3655 and KP4707 after the collision.
9. Madam Wong (who was then 60 years old) did not suffer personal injuries as a result of the Accident.
10. The 1st to 3rd Plaintiffs and the Defendant gave their Police Statements on 7th November and 6th December 2005.

*(b) Familiarity with the Junction*

1. The 1st Plaintiff lived in Tseung Kwu O. He drove to work and frequently went past the Junction. The Defendant sometimes drove when he worked off-site, so he was only fairly familiar with the Junction. In the year since he acquired his driving licence for private vehicles he had only driven past the scene of the Accident about 5 times. The 1st Plaintiff had the advantage of experience and familiarity with the Junction over the Defendant, but this alone does not mean he would have approached the Junction with greater care.

*(c) Journey destination*

1. At the material time the Defendant was driving KP4707 from Diamond Hill to Sheung Wan whilst the 1st Plaintiff was driving HJ3655 along the 2nd HNR Lane from Kwun Tong to Wong Tai Sin MTR station (which was not far away from the Junction) to pick up Madam Wong’s younger sister (“Wong Sister”) at about 2:00pm to visit the graves of ancestors (拜山). The Plaintiffs’ witnesses were not in a hurry because it was 20 minutes to 2:00pm when the Accident happened.

*(d) Approach to the Junction*

*(1) Plaintiff’s case*

1. The Set 3 Signals showed red when HJ3655 approached the Junction, so the 1st Plaintiff stopped at the white line (“HNR White Line”) to wait for the traffic signals to turn green. The 1st and 3rd Plaintiffs said there was a public light bus (“PLB”) stopping on the 1st HNR Lane and no vehicle on the 3rd lane to the right. But the 2nd Plaintiff and Madam Wong did not pay attention.
2. The 1st Plaintiff and his passengers could not see the colour of the Set 2 Signals. But given that the Set 3 Signals were green, they must be red. The 1st and 2nd Plaintiffs and Madam Wong saw vehicle(s) stopping on each of the 1st to 3rd KTR Lanes, but the 3rd Plaintiff did not pay attention. These vehicles blocked the 1st and 2nd Plaintiffs’ view of the 4th KTR Lane so that the 1st Plaintiff could only see it was empty for about 1 private vehicle’s length and the 2nd Plaintiff could not see at all.

*(2) Defendant’s case*

1. KP4707 was travelling along the 4th KTR Lane at 50kph. When it was about 50 metres away from the Set 2 Signals, the Defendant saw they were green in his favour and proceeded at the same speed towards the Junction. The Defendant saw a lorry (“Lorry”) about 20 odd metres (see Defendant’s witness statement) or 10 odd to 20 metres (see Defendant’s Police Statement) ahead going past or had gone past the Set 2 Signals into the Junction. There were no vehicles stopping on the 1st to 3rd KTR Lanes at the white line (“KTR White Line”).

*(3) Analysis*

1. On balance I prefer the 1st Plaintiff’s evidence, including his claim that no vehicle on the 3rd KTR Lane went past the Set 2 Signals. I also accept the evidence of the 1st and 2nd Plaintiffs and Madam Wong that vehicles had stopped at the KTR White Line.
2. The Defendant gave differing accounts as to the whereabouts of the Lorry. He said in his Police Statement it crossed the KTR White Line 10 odd to 20 metres ahead on his *left*. But in his witness statement he said that when KP4707 was about 15 metres from the Set 2 Signals he saw that the Lorry on the 3rd KTR Lane had entered the Junction at about 20 odd metres ahead on his *right*.
3. Obviously the 3rd KTR Lane should be to the *left* of KP4707 travelling on the 4th KTR Lane. I am prepared to accept the reference in the Defendant’s witness statement that the Lorry being ahead to his *right* was a typographical error. But for reasons discussed below I reject the Defendant’s evidence that he saw the Lorry, which necessarily affects his overall credibility.
4. First, the Defendant claimed he paid careful attention to the Set 2 Signals on his *right* from 50 metres away until he crossed the KTR White Line. This raised a doubt as to whether he observed the Lorry on his *left*. Further, although the Defendant gave evidence that he “宏觀地睇過” there was no vehicular traffic from Hong Ning Road to his *left* when he was 10 odd to 20 metres away from the KTR White Line (see paragraph 28 below), I reject such contention (see paragraphs 33-34 below).
5. Secondly, the Defendant could not satisfactorily explain why in his Police Statement he said he was 10 odd to 20 metres away when he saw the Lorry drove past the Set 2 Signals when his witness statement suggested he saw the Lorry when it had already entered into the Junction by about 5 odd metres (ie the Lorry was 20 odd metres ahead of KP4707 at about 15 metres behind the Set 2 Signals).
6. Thirdly, the allegation (if true) that the Lorry crossed the Junction just shortly before KP4707 did would have corroborated the Defendant’s case that the Set 2 Signals were then showing green. But according to the WPC’s Police Statement the Defendant did not mention the Lorry to her at the scene.
7. Fourthly, when the Defendant gave his Police Statement he first described the Accident before he answered questions from the police officer. He did not describe the Lorry when he narrated how the Accident happened, and he tried to explain this away by saying that the Lorry did not feature in his mind’s eye when he described the Accident and he only recalled the Lorry when he was questioned by the police officer. Bearing in mind that the Defendant’s memory must have been fresh when he gave his Police Statement (which he knew was for police investigation into the Accident) on the day following the Accident, I reject such excuse as being strained and unreliable.
8. Fifthly, as Ms Lau, counsel for the 1st to 3rd Plaintiffs, submitted, the purport of the Defendant’s evidence in this respect was that the 1st Plaintiff not only entered the Junction against red traffic signals he did so with the Lorry coming from the right directly across its path. There is no logical/sensible reason for the 1st Plaintiff to put himself and his family in such danger.
9. Next, Ms Wong, counsel for the Defendant, submitted that the Plaintiffs’ witnesses collaborated on their accounts of the Accident. Actually, their accounts were not identical even when they gave their Police Statements on the day following the Accident. The 2nd Plaintiff and Madam Wong did not pretend to notice the presence of the PLB, which sits well with Madam Wong’s evidence that she was (a) looking at the Set 3 Signals and Kwun Tong Road to her *right*, (b) paying attention to the 1st Plaintiff’s driving and (c) watching where HJ3655 was going rather than checking the traffic to her *left*. Further, the 3rd Plaintiff did not claim he saw vehicles stopping on the 1st to 3rd KTR Lanes, but frankly admitted he did not pay attention. I find the Plaintiffs’ witnesses honest and truthful.

*(e) Moving into the Junction*

*(1) Plaintiffs’ case*

1. After about 10 seconds (according to the 1st and 2nd Plaintiffs), the Set 3 Signals turned green. The 1st Plaintiff drove off into the Junction and the PLB turned into eastbound Kwun Tong Road (see 1st and 3rd Plaintiffs’ Police Statements). The 1st Plaintiff switched on the right indicator with a view to turn right into westbound Kwun Tong Road. Although he did not check his speedometer, he felt HJ3655’s speed was about 10-20kph.

*(2) Defendant’s case*

1. The Defendant checked the Set 2 Signals to his right which remained green in his favour. He crossed the KTR White Line at a bit less than 50kph. He explained that his practice on approaching junctions with green traffic signals (unless they newly turned green) was to “輕輕收一收油” at about 15 metres (see his evidence-in-chief) or 15-20 metres (see his evidence under cross-examination) before the white line, so he could react accordingly if the traffic signals changed to amber. He adopted such practice when he approached the Junction on the day of the Accident, and felt KP4707 slowed slightly.
2. The Defendant further gave evidence that when he was 10 odd to 20 metres before the KTR White Line (ie about the time he noticed the Lorry on the 3rd KTR Lane), he “宏觀地睇過” there was no vehicle coming from southbound Hong Ning Road. But the Defendant did not pay attention to the traffic on southbound Hong Ning Road when he drove across the KTR White Line since he considered the road conditions safe. He claimed to concentrate on the road directly ahead, and only noticed HJ3655 after the collision.

*(3) Analysis*

1. Ms Wong criticised the 1st and 2nd Plaintiffs for their same estimation that HJ3655 stopped for about 10 seconds before crossing the HNR White Line, which she submitted was suggestive of collaboration on the part of the Plaintiffs’ witnesses. But the 3rd Plaintiff and Madam Wong never gave such time estimation when they gave their Police Statements, their witness statements or their evidence. The 3rd Plaintiff fairly said he did not pay attention. I find the 1st and 2nd Plaintiffs gave truthful evidence on what they witnessed at the time of the Accident.
2. As regards HJ3655’s speed, the 1st Plaintiff admitted he did not look at the speedometer, so I would not hold his estimate of about 10-20kph to be precisely accurate. Nevertheless, I prefer his evidence that HJ3655 was not travelling at high speed although I find it was not “almost static” as Ms Wong suggested. Clearly, HJ3655 had some forward motion at the time of the Accident since it had traversed the 1st to 3rd KTR Lanes (see below) and was going to turn right into westbound Kwun Tong Road.
3. On balance I accept HJ3655 started off from a stationary position upon change of the Set 3 Signals to green and was about to negotiate a right turn. HJ3655 would not have been travelling at any high speed. The 1st Plaintiff’s driving manner, ie stepping on the accelerator to drive off when the Set 3 Signals turned green, reducing (but not fully lifting) pressure on the accelerator when negotiating the turn, and intending to step on the accelerator again after swinging into the turn, also meant his speed would not have been fast when he was inside the Junction.
4. I do not accept the Defendant tried to decelerate when he was about 15-20 metres from the Junction. Although he claimed he would not have forgotten such usual practice of deceleration (which he claimed to have adopted on the day of the Accident), it was never mentioned in his Police Statement or witness statement and was first elicited when he gave evidence. I find this to be an unreliable embellishment that diminishes the Defendant’s overall veracity.
5. In my view, even the Defendant’s own evidence showed he failed to keep a proper lookout. Although he claimed that prior to crossing the KTR White Line (ie at about the time he observed the Lorry) he “宏觀地睇過” there was no vehicle coming from southbound Hong Ning Road, it was not mentioned in his Police Statement. He tried to brush this away by saying the police officer never specifically asked him about this. But he knew the Police Statement was for police investigation into the Accident. He was also given an opportunity to describe the Accident, and the police officer did ask him whether he paid attention to the traffic at Hong Ning Road when he crossed the KTR White Line. I find it strange he did not say he never saw any vehicle coming from Hong Ning Road just a moment before that. More importantly, this was not mentioned in the Defendant’s witness statement prepared for the purpose of the present proceedings. I reject his poor explanation that he did not realise the omission when he admittedly read it before signing the statement and before giving evidence.
6. I find on balance the Defendant did not check the traffic on southbound Hong Ning Road before crossing the KTR White Line, which sits well with my earlier rejection of his allegation that he saw the Lorry ahead of him to his *left*.
7. The Defendant admitted he did not pay attention to any possible vehicular traffic coming from southbound Hong Ning Road as he entered the Junction (which was a T-junction) even though such vehicles (if any) would also have been road users of the Junction. I find he did not keep a proper lookout by concentrating on the road directly in front of him and ignoring the prevailing traffic condition at the Junction including potential vehicular traffic from Hong Ning Road. This is reflected by the fact he never saw HJ3655 (which had traversed 3 lanes to reach the 4th KTR Lane) until after the collision.
8. Even if the Set 2 Signals were green in the Defendant’s favour (which I disagree), they were merely a permission to him to drive beyond the KTR White Line but did not allow him to lower his standard of care (see *Au Cheung v Choi Lai-fan and anor* [1979] HKLR 543). I find on balance the Defendant failed to drive in a manner expected from a prudent and reasonable driver.
9. I will deal with the question of KP4707’s speed below.

*(f) Collision*

*(1) Plaintiffs’ case*

1. HJ3655 was turning slightly to the right. When about half of its front part was inside the 4th KTR Lane and the rest of it still on the 3rd KTR Lane, the 1st to 3rd Plaintiffs and Madam Wong for the first time saw a private vehicle (later known as KP4707) on the 4th KTR Lane about 4 private vehicle lengths away (according to the 1st and 3rd Plaintiffs) or very close to HJ3655 (according to the 2nd Plaintiff and Madam Wong) coming towards HJ3655 at high speed. Other than KP4707, there was no other vehicle approaching the Junction from eastbound Kwun Tong Road (see the 3rd Plaintiff’s witness statement and the 1st Plaintiff’s Police Statement).
2. The 1st Plaintiff could not be certain but estimated KP4707’s speed to be over 80kph. The other Plaintiffs’ witnesses could only say KP4707’s speed was very fast. But all of them agreed there was a large difference between the speed of HJ3655 and that of KP4707.
3. The 1st Plaintiff’s immediate reaction upon sighting KP4707 was to apply brakes and to attempt avoidance action (試圖閃避) by pulling the steering wheel to the left, ie away from the approaching KP4707. In 1-2 seconds (according to the 1st to 3rd Plaintiffs) or 1 second (according to Madam Wong), there was a collision whereby HJ3655’s right front (右前面 or 右前方 or 右車頭) was hit by KP4707’s left front (左前面 or 左前方 or 左車頭). The impact was so forceful that the 1st Plaintiff was shaken even though he grabbed the steering wheel. The 1st Plaintiff fairly admitted he could not tell whether HP3655 braked to a halt, but Madam Wong felt it was still moving (albeit slowly) when the collision occurred.
4. As a result of the single forceful impact, HJ3655 was pushed left by KP4707 to eventually stop sideways at an angle before the Divider as shown in the Police Photographs. In the meantime, KP4707 veered right to the opposite westbound lane of Kwun Tong Road to stop upon hitting the Divider as shown in the Police Photographs.

*(2) Defendant’s case*

1. According to the Defendant’s Police Statement, after KP4707 travelled a distance of 4 vehicle lengths past the KTR White Line, he felt its front left (左車頭) was hit once and then KP4707 “被推向右邊” to crash into the Divider. When he gave evidence, the Defendant said the 2 vehicles came towards each other at an angle of 90° and HJ3655 collided with KP4707’s “左車頭”. But he could not describe the point of impact on KP4707 more precisely except to say that suddenly a strong force from the left hit KP4707’s “車左角”, “左前方車頭燈位置”, “大概係側邊左手邊位置” or “左手邊車頭” and pushed KP4707 to speed towards the right. He instinctively held onto the steering wheel which was shaking badly, and subconsciously lifted his foot off the accelerator (since he was stepping on the accelerator before the collision). However, he could not react in time, and when he applied the brakes KP4707 crashed into the Divider. In fact, KP4707’s left front corner area and left front wheel rode up onto the hard shoulder of the Divider and hit the railings. The final stop position of KP4707 was partly in the westbound carriageway of Kwun Tong Road and completely outside the 4th KTR Lane.

*(3) Analysis*

1. The above showed clearly that the 1st Plaintiff had been keeping a proper lookout. I find that he paid heed to oncoming traffic from eastbound Kwun Tong Road as he moved into the Junction. When he was still in Hong Ning Road, part of the 4th KTR Lane was blocked from his view due to the presence of stationary vehicles on the 1st to 3rd KTR Lanes. But when he moved into the Junction and the 4th KTR Lane, he noticed KP4707 about 4 private vehicle lengths away but did not see any other vehicle approaching the Junction. Since the Defendant admitted that the collision occurred after KP4707 travelled a distance of 4 vehicle lengths beyond the KTR White Line, it appears that the 1st Plaintiff noticed KP4707 when it was crossing or about to cross the KTR White Line.
2. Ms Wong submitted it was surprising that the Plaintiffs’ witnesses all paid attention to the circumstances of the Accident (eg the change of the Set 3 Signals to green colour and the “high” speed of KP4707). I see nothing sinister with the driver or even the passengers paying attention to the road conditions and watching where the vehicle was going. Further, there was no cross-examination as to what the passengers were doing within HJ3655 at the material time. Indeed, Madam Wong explained (which I accept) it was her practice as passenger to pay attention to her son’s or son-in-law’s driving.
3. Ms Wong next suggested that the same estimation adopted by the 1st and 3rd Plaintiffs of 4 private vehicle lengths between the 2 vehicles spoke of collaboration. Again, I see nothing sinister in such description of distance. After all, even the Defendant adopted a similar manner of description (see paragraph 42 above). I further note the 2nd Plaintiff and Madam Wong did not adopt the 1st and 3rd Plaintiffs’ description, but merely said KP4707 was very close to HJ3655. I disagree the evidence was suggestive of collaboration.
4. Much play was made on the 1st Plaintiff’s estimate of KP4707’s speed. It was argued that the estimation of over 80kph was doubtful because both the 2nd and 3rd Plaintiffs were unable to give any estimation. However, I agree with the 3rd Plaintiff that despite their driving experience their perceptions as passengers might well be different from that of the 1st Plaintiff as driver. After all, the Accident happened in a split-second. It is a mark of reliability of the evidence of the Plaintiffs’ witnesses that the 2nd and 3rd Plaintiffs did not pretend to adopt the 1st Plaintiff’s estimation of speed.
5. It was next suggested that the estimation of over 80kph was an exaggeration. Ms Wong submitted that an average private vehicle would be about 4 metres in length, so the maximum speed of KP6707 would be about 57.6kph. In fact, the 3rd Plaintiff’s evidence was that 1 private vehicle length would be about 14 feet or 4.5 metres, so on strict arithmetical calculation that would bring the distance of 4 private vehicle lengths to, say, 18 metres and a speed of about 64.8kph.
6. But irrespective of the aforesaid calculations of speed, I note several obvious matters. First, the Accident happened a split-second after the 1st Plaintiff first saw KP4707. Secondly, the 1st Plaintiff was plainly thinking about distances in terms of private vehicle lengths rather than in metres or feet. Thirdly, the 1st Plaintiff’s estimation was based on a fleeting observation followed by immediate reaction on his part to the road emergency. There was no room for leisurely calculation of speed and distance. In such circumstances, I am not prepared to hold the estimation of over 80kph to be a precise speed, but I accept on balance that it is a reflection of the 1st Plaintiff’s genuine impression (as confirmed by the other Plaintiffs’ witnesses) that KP4707 was travelling much faster than HJ3655 (ie there was a substantial difference in their respective speeds). I further find it would have been more than 50kph as suggested by the Defendant. This is borne out by the collision and its aftermath which I will discuss below.
7. I further find that because the 1st Plaintiff was keeping a proper lookout and driving at a reasonable speed he was able to react to the emergency created by the oncoming KP4707. I accept he immediately applied the brakes and attempted to swerve left even though the collision could not be avoided. The application of brakes was corroborated as follows : (a) it was his practice to drive with his heel to the floor and his foot swivelling between the accelerator and footbrake so he able to brake immediately when he saw KP4707, (b) the 3rd Plaintiff actually felt the 1st Plaintiff’s effort to apply the brakes, and (c) the 1st Plaintiff already told the WPC at the scene of the Accident that he had applied the brakes.
8. The same could not be said of the Defendant. The Accident took him by surprise. In his evidence-in-chief he said he was stepping on the accelerator prior to the Accident, but subconsciously lifted his foot at the time of collision. Then he jammed on the brakes, but when he did so KP4707 had crashed into the Divider. Plainly, the Defendant was not keeping a proper lookout and he was unready for the road emergency. This also suggested (and I find) he did not reduce speed when he approached the Junction, which echoes the above conclusion that there was a large difference in speed between the 2 vehicles.
9. In my view, the above findings of fact were consistent with the damage to the 2 vehicles and the paths they took to reach their final stop positions.
10. When the 1st Plaintiff first saw KP4707, half of the front part of HJ3655 was inside the 4th KTR Lane turning slightly right towards westbound Kwun Tong Road. The 1st Plaintiff tried to swerve left, but was unable to avoid the collision. In my view, HJ3655 would not have sufficient time to make the full swing from right to left in the split-second prior to the Accident. Further, there can be no doubt (and Ms Wong conceded) there was a lateral force coming from the right side of HJ3655 (ie the oncoming KP4707) that hit the right front corner area of HJ3655. This was evidenced by the Police Photographs and the photographs annexed to the MS Report (“MS Photographs”) which showed damage to the offside headlamp and a leftward shift of the front bumper assembly with consequent or associated damage to or displacement of the fenders, engine bonnet, front grille and nearside headlamp. In short, it was KP4707 that ran into HJ3655 rather than *vice versa* as suggested by the Defendant.
11. The above conclusion is also corroborated by the following matters. First, the 1st Plaintiff gave evidence that the whole frame of HJ3655 including the engine and the right front wheel arm was pushed left (see also the MS Report which noted there was damage to *inter alia* offside front chassis frame and wheel housing, and offside wheel arm and suspension unit). Plainly, the right front corner area of HJ3655 was hit by KP4707 coming from its right side. Secondly, after the collision HJ3655 completely changed direction and swung towards the left. In my view, given HJ3655’s sedate speed and the 1st Plaintiff’s incomplete avoidance action, this swing of direction is consistent with a lateral force hitting the right front corner of HJ3655 and pushing HJ3655 towards the left. HJ3655 did not have sufficient forward momentum to counteract the lateral force coming from KP4707, so it proceeded for a short distance towards the left and stopped short of hitting the Divider. This speaks eloquently of the greater speed of KP4707. Thirdly, the damage to HJ3655 was essentially dislodgment of various vehicle parts towards the left and consequent damage/buckling. There was no visible inward crushing of the front of HP3655 that would have been consistent with it ramming into KP4707.
12. On balance I accept it was the left front corner of KP4707 that hit HJ3655. Being driven at speed and with no avoidance action, the forward momentum of KP4707 could not be arrested by the collision with the slower HJ3655. With the point of impact at its left front corner, the collision only deflected KP4707’s direction and it sped forward at an angle to ram into the Divider and its railings.
13. Ms Wong submitted that if HJ3655 (which she said was almost static) was hit perpendicularly on the side by KP4707 at over 80kph, HJ3655 would bounce away from the 4th KTR Lane back into the 3rd KTR Lane and KP4707 would simply proceed along the 4th KTR Lane. I do not agree. First, as explained above, HJ3655 was not almost static; it was moving albeit at a sedate pace. Secondly, I see no reason why HJ3655 would not turn sideways to the left when its right front corner was hit laterally from its right by KP4707 and when the 1st Plaintiff’s avoidance action was to swerve left, but instead would bounce back to the 3rd KTR Lane. There is no merit to this argument. Ms Wong alternatively suggested that on the Plaintiffs’ case the force from KP4707 would have been so great that HJ3655 would have been unable to move onward and would just have turned to the left by less than 90°. As explained above, HJ3655 was not stationary, but its forward momentum was not as great as that of KP4707. There was no reason for it to simply swing left on the spot. I prefer the evidence of the Plaintiffs’ witnesses, which is consistent with the objective evidence.
14. Ms Wong then argued that if KP4707’s speed was over 80kph and it was able to stop after the collision within a distance of 2 vehicle lengths (according to the police sketch), there must have been some brake marks. As there were none, she submitted that KP4707 could not have been travelling at a high speed. I disagree. The Defendant did not bring KP4707 to a complete halt after the collision (as in the case for HJ3655). KP4707 came to a stop because it ran up the hard shoulder of the Divider and hit the railings. Even the Defendant admitted in evidence that by the time he was able to react and jam on the brakes, KP4707 had hit the Divider. I find that was why there were no brake marks at all.
15. In the circumstances, even on the Defendant’s case, I find he did not tell the truth to the WPC even at the scene of the Accident. According to the WPC’s Police Statement, the Defendant said he entered the Junction with the Set 2 Signals showing green in his favour, “但駛到[the Junction]時，[the Defendant]見到[HJ3655]由[Hong Ning Road]右轉出[Kwun Tong Road]西行， [the Defendant]於是立即將[KP4707]剎停，但[HJ3655]之車頭仍與[KP4707]之右車頭發生碰撞 ……”. Actually he never saw HJ3655 before the collision and he was unable to brake and stop KP4707 in time.
16. This led to an even more desperate proposition by Ms Wong, ie unless KP4707’s speed was less than 80kph, the Divider would not have stopped KP4707, which would have ploughed on to stop further away. Having studied the Police Photographs, I cannot agree. KP4707 ran up the hard shoulder and hit the waist-high metal railings and ended up with inward crush damage to left front corner of the vehicle, displacement of the nearside headlamp, and buckling of the engine bonnet and front grille. In my view, the railings and Divider would have stopped (as they did) the progress of KP4707.
17. I prefer the evidence of the Plaintiffs’ witnesses that the Accident was the result of a single collision impact between the 2 vehicles, which consequently veered in separate directions to end up in the final stop positions shown in the Police Photographs.
18. Ms Wong argued that despite the lateral force from KP4707 pushing HJ3655’s bumper assembly to the left, after the collision the 2 vehicles (which had similar speeds) were in contact for a while and KP4707 was pressed from the side by HJ3655 causing it to end up at its final stop position with the damage as depicted in the Police Photographs (ie buckling of the engine bonnet but no damage to the bumper). If it were otherwise, Ms Wong submitted that there would have been damage to the side and/or engine bonnet of KP4707.
19. First, HJ3655’s bumper assembly was pushed leftwards which (in my view) caused the engine bonnet and the offside front fender to buckle. Secondly, it should be borne in mind that left front corner of KP4707 was the point of impact with HJ3655 and later with the Divider. There is difficult to tell from the Police Photographs what aspect of the resultant damage as shown was caused by the first collision impact, especially when the railings were waist-high and almost at the level of the engine bonnet. Thirdly and more importantly, the allegation that after the collision KP4707 remained in contact with and was pushed by HJ3655 for some unknown distance and time was advanced on the 2nd day of trial by Ms Wong, who submitted this was the true meaning of the Defendant’s Police Statement (ie “我感覺倒我架車左車頭被撞一吓我架車*因而*被推向右邊” (my emphasis). But such statement merely suggested that KP4707 was pushed to the right by reason of the single collision impact. Even more importantly, the Defendant never made the suggestion of the 2 vehicles being in contact for some time and distance in his witness statement or in his evidence. I reject such proposition.
20. Ms Wong next criticised the Plaintiffs’ witnesses for adopting the same mistaken words (ie 右前面, 右前方 or 右車頭) to describe the point of impact on HJ3655, which she submitted should be more precisely described as “右側邊”. But since the collision damage to HJ3655 was shown in the Police and MS Photographs (because HJ3655 did not hit the Divider), there is no reason for the Plaintiffs’ witnesses to be deliberately vague. In my view, bearing in mind that the whole front area of a vehicle is often colloquially described as “車頭”, it is understandable for the Plaintiffs’ witnesses as lay persons to so describe the aforesaid point of impact. Even the Defendant in his Police Statement and witness statement described the left front corner of KP4707 as “左車頭”. Indeed, “右側邊” would not have been an accurate description of the point of impact on HJ3655 since it suggested the point of impact was at the right side (instead of the front area) of HJ3655. Indeed, the 2nd Plaintiff denied that “[HJ3655]車頭撞[KP4707]車側邊”.
21. The 2nd Plaintiff struggled to verbally describe the precise location of the point of impact between the 2 vehicles and their exact damage. Yet she consistently explained “應該係車頭撞車頭” and that it was “右車頭同車燈個到”, “係側邊同前頭嘅角位” or “唔係正前面” that was hit by the left “角位” of KP4707. The 3rd Plaintiff said “右前方側邊” was hit by “車頭” of KP4707. Madam Wong said HJ3655 was hit on “右手邊車頭近前輪”, “車頭近門車冚個到” or “司機位近門車冚個到”. I bear in mind these were split-second impressions of passengers, 2 of whom suffered injuries as a result of the collision. I find they were honest in describing the collision as best as they could from their personal impression.
22. It was suggested that Madam Wong exaggerated her evidence when she said HJ3655 hit the Divider. I accept her clarification under re-examination that she was in fact not sure whether HJ3655 hit the Divider but it stopped very close to the Divider. After the Accident, she was more concerned with the injuries of her family members and did not bother to check the vehicle damage. On reviewing the Police Photographs, she fairly accepted that HJ3655 did not hit the Divider.

*(g) Post-collision*

*(1) Plaintiffs’ case*

1. Fortunately, the vehicles on the westbound lane of Kwun Tong Road had stopped for the Set 1 Signals (which should be showing red) and did not hit KP4707.

*(2) Defendant’s case*

1. After the collision the Defendant steadied himself and looked out of the windscreen. He saw there were no vehicles on the westbound lane, but noticed serious damage to KP4707. He claimed he noticed a taxi stopping at the HNR White Line on each of the 1st and 2nd HNR Lanes (see his Police Statement), but no vehicle in the yellow box Junction.

*(3) Analysis*

1. I prefer the evidence of the 1st to 3rd Plaintiffs that vehicles had stopped on the westbound carriageway of Kwun Tong Road. Also I am not persuaded that the Defendant checked the traffic at Hong Ning Road. In light of the Defendant’s overall unreliability, I am not prepared to place weight on his evidence in this respect.

*(h) Madam Wong’s departure*

1. As explained above, about a minute after the Accident, the WPC arrived at the scene. About 3-4 minutes later, other police officers arrived. The 2nd and 3rd Plaintiffs were injured, and an ambulance was paged. The 3rd Plaintiff had a bleeding laceration of right eyelid. They had to wait for a while before they were taken by ambulance to the Accident and Emergency Department (“AED”) of United Christian Hospital (“UCH”) at 2:10pm.
2. At that time, the 1st Plaintiff merely had headache and thought it was no great matter. He noted that the injuries of the 2nd and 3rd Plaintiffs were not too serious, and felt they would be well taken care of by medical personnel at UCH. He was worried whether HJ3655 (his first car) could be repaired, so he went with the towing truck to the garage instead. After he saw HJ3655 to the garage, he immediately took a taxi to UCH to see how the 2nd and 3rd Plaintiffs were doing.

*(1) Plaintiff’s case*

1. Although the 1st Plaintiff could not remember whether Madam Wong left the scene before the police arrived, the 2nd and 3rd Plaintiffs were adamant Madam Wong remained at the scene until they boarded the ambulance. The 2nd Plaintiff said Madam Wong was in no hurry to leave the scene. The 3rd Plaintiff recalled Madam Wong gave him a piece of tissue to wipe the blood.
2. Madam Wong was initially worried about the 3rd Plaintiff’s injury (which was close to the eye) and she asked whether she should accompany him to the hospital. He declined her offer. The WPC made way for her to cross the road to take a taxi to the Wong Tai Sin MTR station to meet up with Wong Sister. After they went to sweep the graves of ancestors (拜山), Madam Wong telephoned the 2nd and 3rd Plaintiffs and confirmed it was unnecessary for her to go to UCH. Although Madam Wong did not understand why, the WPC told her she was not required to provide a Police Statement.

*(2) Defendant’s case*

1. The Defendant did not know whether Madam Wong left the scene before or after the police and/or ambulance arrived because he did not pay attention, but he remembered Madam Wong telling her children she was leaving first.

*(3) Analysis*

1. Despite his evidence, the Defendant through Ms Wong suggested to the Plaintiffs’ witnesses during cross-examination that (a) Madam Wong left before the police arrived at the scene because she was in a hurry and (b) she was not mentioned in the WPC’s Police Statement because she did not witness the Accident and had left the scene.
2. In my view, it would have been improbable for Madam Wong to leave the scene before the WPC arrived 1 minute after the Accident. In any event there is no evidence to such effect. Further, the ambulance left the scene at 2:10pm, so when Madam Wong left after the 2nd and 3rd Plaintiffs boarded the ambulance, she would not have been in any great hurry to meet Wong Sister.

*(i) Police enquiries*

*(1) Plaintiff’s case*

1. The Defendant also boarded the ambulance. Whilst waiting to leave for UCH, the police came up to the ambulance to ask questions, but the 3rd Plaintiff could not remember what was said save that the police asked him and the 2nd Plaintiff for their identity cards. He said the situation was confusing because he was being given first aid by ambulance staff (ie a gauze for the eyelid laceration) at that time.

*(2) Defendant’s case*

1. At first, the Defendant thought he did not suffer any injuries. Later he felt a bit dizzy and had some chest discomfort. To err on the side of caution, he told the police he would go to the hospital as well and boarded the ambulance. His impression was that the 2nd and 3rd Plaintiffs were inside when he boarded. He noticed the 3rd Plaintiff’s eyelid was bleeding. Then a policeman boarded the ambulance and asked the 3rd Plaintiff about the Accident. The 3rd Plaintiff said he could not see the collision and did not pay attention as he was sitting in the rear of the vehicle. Then the policeman asked the Defendant what he saw of the Accident and he answered truthfully. The Defendant later realised the policeman misunderstood that all persons on board the ambulance were from the same vehicle. When he disabused the policeman of such error, the policeman left the ambulance in embarrassment.
2. After receiving treatment at UCH, the Defendant was discharged on the same day. KP4707 was so damaged by the Accident that it could not be repaired and became a total loss.

*(3) Analysis*

1. I reject the Defendant’s evidence, which was elicited for the first time when he gave evidence. I note that when the 3rd Plaintiff was cross-examined by Ms Wong on the subject, he did not seek to deny what he allegedly said to the police on the ambulance, but fairly acknowledged that due to the lapse of time he had no clear recollection. Interestingly, although the Defendant said the 2nd Plaintiff was present and would have heard the conversations in the ambulance, the Defendant’s contentions were not put to the 2nd Plaintiff in cross-examination at all. I find the Defendant’s evidence to be an unreliable embellishment.

*(j) Miscellaneous*

1. It was also suggested that the evidence of the 1st to 3rd Plaintiffs was exaggerated because Madam Wong as the eldest person in HJ3655 was unhurt whilst they all claimed to suffer various injuries. However, it is not a necessary inference from 1 passenger’s escape from injury that the others must have exaggerated theirs. I also bear in mind that Madam Wong being the left rear seat passenger was furthest away from the point of impact on HJ3655.
2. I also disagree that the 1st Plaintiff’s failure to clearly recollect the number of times of his physiotherapy treatments and/or the evidence of the 1st to 3rd Plaintiffs (see below) as to their injuries adversely affected the reliability of their accounts of the Accident.

*(k) Summary*

1. I therefore accept the account of the Accident given by the 1st Plaintiff as supported by the evidence of the 2nd and 3rd Plaintiffs and Madam Wong. I find the Accident was caused by the Defendant’s negligence in entering the Junction at a much higher speed than that of HJ3655 against the Set 2 Signals which showed red against him. He did not keep a proper lookout for other road users, including the oncoming HJ3655 which proceeded into the Junction on green Set 3 Signals. I do not consider that the 1st Plaintiff should be liable for any contributory negligence.

*IV. Quantum*

1. Ms Wong confirmed that the Defendant would not take issue on the quantum of the motor survey fee, the medical fees or the transportation expenses, but would dispute whether the medical treatments and transportation expenses incurred by the 1st to 3rd Plaintiffs were incurred as a result of the Accident. In respect of the claims for pain, suffering and loss of amenities (“PSLA”), tonic food and total loss of HJ3655, the Defendant took issue on both issues of causation and quantum.
2. In making the awards for PSLA below, I have taken into account the following authorities cited by Ms Lau :
3. *Wong Wai Hung v Loo Kin & anor* DCPI643/2006, Deputy District Judge W C Li (unreported, 30th March 2007);
4. *Siu Leung Shang Peter v Chung Wai Ming* HCPI43/2006, Deputy Judge Gill (unreported, 16th March 2007);
5. *Wong Kin Hung v Chan Wai Ming* DCPI1223/2006, Deputy Judge A B bin Wahab (unreported, 16th February 2007);
6. *Lau Choi Chung v Xie Renlan & anor* DCPI468/2004 Deputy Judge A B bin Wahab (unreported, 29th January 2007);
7. *Chiu Po Ling v Wong Yuet* DCPI115/2006, Deputy Judge A B bin Wahab (unreported, 22nd February 2007).

Ms Wong also referred me to the following authorities :

1. *Chan Yuk by his next friend Madam Chu Yin Chun v Dragages et Travaux Publics (HK) Limited* CACV89/2000 (unreported, 28th June 2000);
2. *Ng Ming Wa v Chan Lai Mei & anor* DCPI98/2000 H H Judge Lam (unreported, 30th May 2001);
3. *Singh Jagdeep v VSC Engineering Products Company Limited* DCPI391/2005, H H Judge Wong (unreported, 17th June 2005);
4. *Cheung Yu Tin Alvin v Ho Hon Ka* DCPI863/2004 Deputy District Judge W Lam (unreported, 9th June 2005);
5. *Wong Shing Kam & anor v Leung Ming Kwong* DCPI171/2005 Deputy District Judge S T Poon (unreported, 24th January 2006).
6. I find Ms Lau’s suggestion of PSLA awards of HK$100,000.00, HK$120,000.00 and HK$120,000.00 for the 1st, 2nd and 3rd Plaintiffs overly high. On the other hand, I cannot accept the averment in the Answer to the Revised Statement of Damages that there was no basis for any PSLA claim at all.

*(a) 1st Plaintiff*

1. The 1st Plaintiff was a production manager and 29 years old at the time of the Accident.
2. At the scene of the Accident, he only felt some headache and declined to go to UCH. He felt pain at his neck and lower back in the evening on the following day, so on 8th November 2005 he consulted Dr Chu Wen Jing (“Dr Chu”) of Human Health Medical Centre near his home (see Dr Chu’s medical report dated 12th February 2006).
3. The defence expressed doubt as to the delayed presentation of neck and lower back pain. I see no reason to doubt the 1st Plaintiff given the clear documentation of his complaint in Dr Chu’s medical report. Further, when the 1st Plaintiff asked Dr Pang (see below) about the delayed onset of neck and lower back pain, he was assured it was a normal reaction following from the collision.
4. The 1st Plaintiff’s witness statement said he had right forearm pain. When he gave evidence he said his forearm had obvious bruises, but he could not remember whether he told Dr Chu of any forearm injury. Ms Wong submitted the 1st Plaintiff exaggerated his injuries because Dr Chu’s medical report and receipts did not mention any right forearm pain. However, I notice the sick leave certificate issued by Dr Chu on 8th November 2005 for 14 days (ie from 8th to 21st November 2005) clearly stated the 1st Plaintiff was suffering from back and right forearm injury and the clinical diagnosis was “accident/injury”. I disagree that the 1st Plaintiff made up his forearm injury.
5. According to the 1st Plaintiff, Dr Chu on viewing the x-ray told him he had suffered soft tissue sprain around his cervical/lumbar spine. The 1st Plaintiff also agreed that the pain in his lower back was muscle pain. In my view, the complaint/diagnosis of neck and back sprain and soft tissue injury are consistent with Dr Chu’s medical report that noted (a) normal findings except pain on extension of movement and (b) cervical x-ray was normal.
6. The 1st Plaintiff still felt painful and Dr Chu recommended him to consult a specialist. So he liaised with his accident insurer who referred him to Dr K W Pang of 808 Medical Centre (“Dr Pang”). The 1st Plaintiff went to see Dr Pang for his neck and lower back pain. Dr Pang arranged for another x-ray which was not available for the present proceedings. There was also no medical report from Dr Pang. Due to the lapse of time, the 1st Plaintiff could not remember what Dr Pang said about his back or his neck except that his neck pain from the collision was caused by neural irritation on compression of 3 segments (三節) of his neck.
7. The 1st Plaintiff agreed that the receipts dated 16th, 19th, 21st, 28th November and 5th December 2005 and the sick leave certificates issued by Dr Pang dated 21st and 28th November and 5th December 2005 only stated he suffered back and right forearm injury without mention of any neck pain. But I do not agree that the 1st Plaintiff made up his complaint of neck pain. The 2 receipts issued by Dr Chu dated 8th and 13th November 2005 referred specifically to neck injury.
8. Dr Pang prescribed ointment/medication and arranged for a course of physiotherapy for the 1st Plaintiff. Due to the lapse of time, the 1st Plaintiff could not remember the number of times he had physiotherapy treatment, but fairly acknowledged in re-examination that each time he was given a receipt which he produced in the present proceedings. This meant he had physiotherapy treatment 3 times (see the receipts dated 19th, 21st and 28th November 2005 issued by Dr Pang).
9. I am satisfied that medical treatment by Dr Chu and Dr Pang were for the 1st Plaintiff’s injuries caused by the Accident. I further find that the 1st Plaintiff suffered soft tissue injury and some discomfort/ irritation in the neck area, but such problems were substantially resolved upon physiotherapy and medical treatments by Dr Pang. So Dr Chu’s medical report noted that a course of physiotherapy was taken and the 1st Plaintiff was seen again on 13th November 2005 with good response.
10. Dr Pang granted the 1st Plaintiff sick leave for 21 days from 22nd November to 12th December 2005. During that period he still worked on an on-and-off basis for not more than 10 days. Thereafter he returned to his work on a full-time basis although he said he tired more easily.
11. Having considered the above matters and the authorities cited by counsel, I am satisfied on balance that the appropriate award for PSLA was HK$40,000.00.
12. The 1st Plaintiff withdrew his claim for medical expenses as he could not be certain how much of those expenses had been reimbursed by his accident insurer. He did not incur travelling expenses for visiting Dr Chu. He incurred travelling expenses for attending Dr Pang 5 times (see Dr Pang’s receipts dated 16th, 19th, 21st and 28th November and 5th December 2005) at HK$100.00 *per* round trip.
13. The 1st Plaintiff claimed that HJ3655 was a total loss due to the Accident. The garage commissioned the MS Report on the 1st Plaintiff’s behalf before carrying out any repairs and he incurred HK$750.00 for such purpose. The expurgated MS Report revealed that the front body of HJ3655, including “engine bonnet, front grille, both headlamps, front bumper assembly, bulkhead panel, A/C condenser and pressure pipes, radiator and cooling fans, air cleaner box, both front fender, O/S/F chassis frame and wheel housing, O/S/F wheel arm and suspension unit, both front airbags and control unit”, sustained damage. The garage recommended to the 1st Plaintiff not to repair HJ3655 because the repair charges would not be economical and would exceed the market value of the vehicle.
14. The 1st Plaintiff claimed he hire-purchased HJ3655 as a new vehicle in 1997 for HK$149,000.00, but paid off the balance of the hire-purchase loan after 2 odd years (ie after paying 20 odd out of 48 instalment payments). In fact, according to the hire purchase agreement dated 13th October 2007 the hire purchase price of HK$185,184.00 comprised cash price of HK$146,968.00 and hire charges of HK$38,216.00.
15. Ms Lau submitted that the loss value of HJ3655 would not be less than HK$30,000.00. On the basis that the 1st Plaintiff redeemed HJ3655 after paying 24 instalments, the total amount paid would have been about HK$166,076.00. A loss value of HK$30,000.00 would represent almost 80% depreciation over a span of 8 years from October 1997 to November 2005.
16. Quite obviously, the total loss of HJ3655 was a real and actual loss as a result of the Accident. *McGregor on Damages* 17th ed (2003) at para.8-002 at pp.297-298 stated as follows :

“…… [Where] it is clear that some substantial loss has been incurred, the fact that an assessment is difficult because of the nature of the damage is no reason for awarding no damages or merely nominal damages. As Vaughan Williams L.J. put it in *Chaplin v Hicks*, the leading case on the issue of certainty: “The fact that damages cannot be assessed with certainty does not relieve the wrongdoer of the necessity of paying damages.” Indeed if absolute certainty were required as to the precise amount of loss that the claimant had suffered, no damages would be recovered at all in the great number of cases. ……”

Doing the best I can and bearing in mind that the 1st Plaintiff used HJ3655 almost daily, I consider a substantial depreciation would be appropriate. But the expurgated MS Report also noted that HJ3655 had good body, satisfactory tyres, and operative steering and brakes. Looking at the matter in the round, I am prepared to award HK$25,000.00 as damages for loss of HJ3655.

1. I will deal with the issue of tonic food below, but for convenience shall set out my assessment for such expenses herein. In the circumstances, the quantum of damages suffered by the 1st Plaintiff is as follows :

|  |  |  |
| --- | --- | --- |
|  |  | HK$ |
| (a) | PSLA | 40,000.00 |
| (b) | Total loss of HJ3655 | 25,000.00 |
| (c) | Survey fee | 750.00 |
| (d) | Transportation expenses for attending medical treatments (5 x HK$100.00) | 500.00 |
| (e) | Tonic food | 1,000.00 |
|  | Total : | 67,250.00 |

*(b) 2nd Plaintiff*

1. The 2nd Plaintiff was a secretary and 29 years old at the time of the Accident. She said she suffered neck and lower back pain and injury to her left arm as a result of the Accident.
2. Immediately after the Accident, the 2nd Plaintiff received treatment at UCH’s AED. According to UCH’s medical report dated 20th April 2006, she complained of left upper arm pain and mild left upper forearm pain and redness. There was no weakness or numbness, and no report of other associated injury. Physical examination found mild abrasion and erythema over left forearm. No other abnormality was detected. The 2nd Plaintiff was discharged after wound dressing and no follow-up was arranged. The 2nd Plaintiff agreed that her left forearm injury had recovered.
3. The 2nd Plaintiff started to feel neck and lower back pain in the evening of the day of the Accident. She consulted Dr Chu on the following day for her neck and lower back pain. Neither the Revised Statement of Damages nor the 2nd Plaintiff’s witness statement mentioned back pain. Further, Dr Chu’s medical report dated 12th February 2006 noted the 2nd Plaintiff had neck pain and left elbow abrasion on 7th November 2005. X-ray of cervical spine was normal. Dr Chu saw the 2nd Plaintiff again on 15th November 2005 for neck pain and right elbow wound. The 2nd Plaintiff said although Dr Chu told her that superficially no problem was revealed by the x-ray, she still felt painful at the neck and lower back.
4. Dr Chu referred the 2nd Plaintiff to Dr Pang who treated the 2nd Plaintiff and arranged physiotherapy. The 2nd Plaintiff still had neck and lower back pain on bending actions, but enjoyed some relief from the physiotherapy treatment. She was followed-up by Dr Pang, but his medical fees were paid by her employer under a staff health plan.
5. Dr Chu and Dr Pang together granted the 2nd Plaintiff sick leave from 8th November to 12th December 2005. All sick leave certificates stated that the 2nd Plaintiff suffered from neck injury without any mention of back injury.
6. Ms Wong submitted that the 2nd Plaintiff’s allegation of back pain was an exaggeration, which the 2nd Plaintiff denied. Having heard the 2nd Plaintiff’s evidence, I am satisfied she had some contusion discomfort in the neck/back area but it was mild. This is borne out by the fact that (a) Dr Pang did not arrange for any x-ray and (b) the 2nd Plaintiff could continue to work at her job throughout her sick leave period. I find that any such pain/discomfort was substantially resolved by the expiry of the sick leave period on 12th December 2005.
7. Having considered the above matters and the authorities cited by counsel, I am satisfied on balance that the appropriate award for PSLA was HK$40,000.00.
8. The 2nd Plaintiff paid the medical fee of UCH’s AED of HK$100.00 (see receipt dated 6th November 2005). There is no plea in the Revised Statement of Damages for medical fees paid to Dr Chu and Dr Pang. The 2nd Plaintiff incurred transportation fees for consulting Dr Pang. From the available sick leave certificates, she visited Dr Pang 3 times instead of 8 times as claimed. At HK$100.00 *per* round trip, her incurred transportation fees were HK$300.00.
9. I will deal with the issue of tonic food below, but for convenience shall set out my assessment for such expenses herein. In the circumstances, the quantum of damages suffered by the 2nd Plaintiff is as follows :

|  |  |  |
| --- | --- | --- |
|  |  | HK$ |
| (a) | PSLA | 40,000.00 |
| (b) | Medical fees of UCH | 100.00 |
| (c) | Transportation expenses for attending medical treatments (HK$100.00 x 3 times) | 300.00 |
| (d) | Tonic food | 1,000.00 |
|  | Total : | 41,400.00 |

*(c) 3rd Plaintiff*

1. The 3rd Plaintiff was a designer and 38 years old at the time of the Accident.
2. Immediately after the Accident, the 3rd Plaintiff attended UCH’s AED. According to the medical report by UCH’s AED dated 3rd March 2006, physical examination showed there was laceration with endema near lateral eyelid. The on call ophthalmologist was consulted. No eye tear gland was involved and simple suture was performed. According to the medical report dated 8th May 2006 of UCH’s Department of Opthalmology (“DOO”), the 3rd Plaintiff was assessed by the eye outpatient clinic on 7th November 2005. Examination showed both eyes’ visual acuity was 1.0 and there was normal intraocular pressure. No abnormal pupil response was detected. Eye movement was normal without diplopia. Both eyes’ anterior segment and fundi were normal. The 3rd Plaintiff was seen again at UCH’s DOO on 14th November 2005. His condition was stable with no ocular damage, so he was not offered any further follow-up.
3. The 3rd Plaintiff attended Dr Chu on 8th November 2005 for cleansing the wound on his right eyelid. Dr Chu in her medical report dated 12th February 2006 noted that neurological examination and vision were normal.
4. Photographs taken of the 3rd Plaintiff shortly after the Accident showed the suture (ie 3 stitches according to Dr Chu) for his right eyelid laceration. At the time of trial the slight scar was almost not noticeable.
5. The 3rd Plaintiff believed he must have hit his knees against something inside the compartment of HJ3655 at the time of the Accident and suffered bilateral knee abrasion and bruising. The medical report by UCH’s AED confirmed the 3rd Plaintiff had superficial abrasion over bilateral knees although the range of movement was normal. The 3rd Plaintiff was then discharged and there was no follow-up for his bilateral knee injury.
6. It was suggested that the 3rd Plaintiff exaggerated his claim of bruising over bilateral knees which was not mentioned in the medical reports. I disagree. I believe the court is entitled to exercise some practical common sense in noting that bruising or contusion takes a while to darken before fading.
7. On 16th November 2005, the 3rd Plaintiff sought treatment from Dr Philip W C Ng (“Dr Ng”) due to blurred vision occurring after 14th November 2005. Dr Ng’s receipt dated 16th November 2005 stated the diagnosis was “right eyelid laceration by accident”.
8. The 3rd Plaintiff was granted sick leave from 7th to 22nd November 2005 (ie 2 days by UCH’s DOO for “recent R brow injury”, 7 days by Dr Chu for “head injury”, 7 days by UCH’s DOO for “recent right upper eyelid injury with repair done” and 7 days by Dr Ng for “right eyelid laceration by accident”). During that period he rested for 3 days but returned to work on other days. Since his job required him to view the computer all day, his employer arranged him to handle other work over a half-month period and thereafter he returned to his previous work.
9. Having considered the above matters and the authorities cited by counsel, I am satisfied on balance that the appropriate award for PSLA was HK$55,000.00.
10. I am satisfied that the treatments by UCH, Dr Chu and Dr Ng were for the 3rd Plaintiff’s injuries caused by the Accident. The 3rd Plaintiff paid HK$100.00 being the medical fees for UCH’s AED (see receipt of 6th November 2005), HK$250.00 being medical fees of Dr Chu (see receipt of 8th November 2005), HK$160.00 being medical fees for UCH’s DOO (see 2 receipts of 7th and 14th November 2005), and HK$400.00 being Dr Ng’s medical fees (see receipt of 16th November 2005). Although the 3rd Plaintiff paid and Dr Chu issued a receipt dated 12th February 2006 for HK$400.00 stating the clinical diagnosis was “accident/injury”, I doubt whether this was for therapeutical treatment. I believe it was more likely for the preparation of Dr Chu’s medical report of the 3rd Plaintiff of the same date. This sum is disallowed.
11. The 3rd Plaintiff incurred transportation fees for attending medical treatment. The sum claimed (ie HK$200.00) is in my view reasonable given that he visited doctors 4 times other than the initial attendance at UCH’s AED.
12. I will deal with the issue of tonic food below, but for convenience shall set out my assessment for such expenses herein. In the circumstances, the quantum of damages suffered by the 3rd Plaintiff is as follows :

|  |  |  |
| --- | --- | --- |
|  |  | HK$ |
| (a) | PSLA | 55,000.00 |
| (b) | Medical fees of UCH | 260.00 |
| (c) | Medical fees of Dr Chu | 250.00 |
| (d) | Medical fees of Dr Ng | 400.00 |
| (e) | Transportation expenses for attending medical treatments | 200.00 |
| (f) | Tonic food | 1,000.00 |
|  | Total : | 57,110.00 |

*(d) Tonic food*

1. The 1st to 3rd Plaintiffs claimed that Madam Wong prepared the tonic food for them. The 1st Plaintiff’s mother also prepared tonic food and Chinese herbal medicine for him. The 1st to 3rd Plaintiffs were not familiar with and could not fully name the tonic food they consumed. Further, they did not know how much Madam Wong or the 1st Plaintiff’s mother actually spent on the tonic food or Chinese herbal medicine. Although Madam Wong did not ask for reimbursement of the cost of the tonic food, they voluntarily gave her money for the same. The 1st Plaintiff said he gave HK$4,000.00 or HK$2,000.00-HK$3,000.00 as an expression of appreciation. The 2nd Plaintiff said she paid about HK$2,000.00 to Madam Wong, and the 3rd Plaintiff said he paid HK$2,000.00-HK$2,500.00 to her.
2. Madam Wong gave evidence that she purchased 石合 (which was good for removing bruises) and 田七 in powder form, and she gave each of the Plaintiffs a bottle. She said 石合 was best consumed in the morning. It was very expensive. Madam Wong explained she made special tonic food for the 2nd Plaintiff, such as ginseng and chicken soup, other Chinese herbal medicine such as 北耆 and 杜仲, and bird’s nest (ie 2-3 taels at HK$600.00 per tael) for her skin.
3. Madam Wong claimed that she spent about HK$8,000.00 on tonic food for the 1st to 3rd Plaintiffs and they each paid HK$2,000.00-HK$3,000.00 to her. She did not have any invoice/receipt because she asked a friend to purchase the tonic food for her from 南北行.
4. I am not persuaded that the 2nd Plaintiff was entitled to recover for expenditure on bird’s nest. She did not complain of poor skin or the poor skin was caused by the Accident. There are no receipts for the tonic food. Following *Yu Ki v Chin Kit Lam* [1981] HKLR 419 and judging from the mild nature of the injuries, I would allow HK$1,000.00 for each of the Plaintiffs under this head.

*(e) Interest*

1. There be interest on damages for PSLA from the date of the Writ of Summons to the date of judgment at 2% pa and interest on special damages at half judgment rate from the date of the Accident to date of judgment, and thereafter at judgment rate until payment.

V. Conclusion

1. I therefore grant judgment in favour of the 1st, 2nd and 3rd Plaintiffs against the Defendant in the sums of HK$67,250.00, HK$41,400.00 and HK$57,110.00 respectively with interest thereon as set out in the above paragraph. There is no reason why costs should not follow event. I grant a costs order *nisi* that the Defendant do pay the 1st, 2nd and 3rd Plaintiffs costs of the action (including all costs reserved, if any) to be taxed if not agreed with certificate for counsel.

# (Marlene Ng)

District Court Judge

Representation:

Ms Julia Leung instructed by Messrs Vincent T K Cheung, Yap & Co for the Plaintiff.

Ms Catherine Wong instructed by Messrs Li, Kwok & Law for the Defendant.