## DCPI 2242/2013

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 2242 OF 2013

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BETWEEN

IRVING MATTHEW WILLIAM

(suing by his father and next friend

IRVING WILLIAM SAMUEL) 1st Plaintiff

WONG YUI SHAN VANNESS (黃蕊珊) 2nd Plaintiff

and

MAN CHUN YEUNG (文鎮揚) 1st Defendant

MAN GREGORY CHING KWAN (文正堃) 2nd Defendant

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Before: Deputy District Judge Lawrence Hui in Court

Dates of Hearing: 7, 8, 10 & 11 March 2016

Date of Judgment: 23 March 2016

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JUDGMENT

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*INTRODUCTION, BACKGROUND AND THE ACCIDENT*

1. The 1st plaintiff is and was a minor. He was born on 26 December 2005. I shall call the 1st plaintiff Matthew.
2. The 2nd plaintiff is the mother of Matthew. The 2nd plaintiff is the wife of Mr William Samuel Irving. I shall call the 2nd plaintiff the mother (“the Mother”). She is now aged 39.
3. Mr William Samuel Irving is the father of Matthew, suing as Matthew’s next friend. I shall call Mr William Samuel Irving the father (“the Father”).
4. Since late year 2011, Matthew, the Mother and the Father (the Family) has lived peacefully in a rented residential property known as House 5 in Lot No 33 in DD 7, Fui Sha Wai, Tai Hang Village, Tai Po, New Territories, Hong Kong.
5. The Father rented House 5 from the 2nd defendant pursuant to a tenancy agreement dated 24 September 2011.
6. Unfortunately, at or about 4 pm on 16 April 2013, a metal gate guarding the vehicular access to House 5 toppled over Matthew when he tried to close the gate. Matthew thus suffered injuries. I shall this incident the accident.
7. When the accident happened, the Mother was nearby. Naturally, the Mother tried to rescue Matthew by lifting up the gate with the help of others. Although the Mother was successful in dragging Matthew out, she sprained her back in doing so. The Mother further alleged that the accident also caused her to suffer from “nervous shock”: insomnia, depressed mood, stress-related dyspepsia and alopecia. Pausing here, one should note that “nervous shock” and “psychiatric illness” were not pleaded in the plaintiffs’ case.
8. The 1st defendant is and was the owner of the remaining portion of section E of Lot No 33 in DD 7, where the metal gate was situated.
9. The 2nd defendant is and was the owner of the remaining portion of Lot No 33 in DD 7, where House 5 was situated.
10. The 1st defendant and the 2nd defendant are clansmen.

*THE CASE AND CLAIMS OF THE PLAINTIFFS*

1. The plaintiffs’ causes of action against the defendants are breach duty of care under the Occupiers Liability Ordinance, Cap 314 and breach of common law negligence. They sued for damages of and incidental to the accident.
2. The plaintiffs also alleged that House 5 was not an approved village house and was an unauthorized structure jeopardizing their safety.
3. In their re-revised statement of damages dated 14 April 2015, the plaintiffs originally claimed against both defendants for HK$948,192.03 plus interest:-
4. Pain, Suffering and Loss of Amenities of HK$400,000 for Matthew and HK$200,000 for the Mother;
5. pre-trial loss of earnings and MPF of HK$16,002 (a daily income of HK$1,778 for 9 days);
6. pre-trial medical expenses of HK$7,416;
7. future medical expenses of HK$20,000;
8. pre-trial travelling and miscellaneous expenses of HK$345; and
9. pre-trial loss of bond/rental deposit, removalist and rental paid from start of lease of HK$304,429.03.
10. However, just before the trial, the damages claimed by the plaintiffs decreased to HK$511,063 plus interest.
11. In the plaintiffs’ counsel’s amended opening submission dated 7 March 2016, they presently only claim for:-
12. Pain, Suffering and Loss of Amenities (“PSLA”) of HK$300,000 for Matthew and HK$150,000 for the Mother;
13. pre-trial loss of earnings and MPF of HK$16,002 (a daily income of HK$1,778 for 9 days);
14. pre-trial medical expenses of HK$7,416;
15. future medical expenses of HK$20,000;
16. pre-trial travelling and miscellaneous expenses of HK$345;
17. removal cost of HK$3,500; and
18. return of rental deposit of HK$13,800.
19. The reason for the decrease in claims is unknown.

*DEFENDANTS’ ORIGINAL DEFENCE AND STANCE AT TRIAL*

1. In the defence dated 7 January 2014, the defendants pleaded, inter alia, that:-
2. The allegations of the plaintiffs that House 5 was not an approved village house and that it was an unauthorized structure were irrelevant.
3. They deny that they were in breach of duty of care under the Occupiers Liability Ordinance, Cap 314 and deny that they were negligent in common law.
4. Alternatively, the plaintiffs were contributorily negligent.
5. The Father was in wrongful termination of the tenancy agreement of House 5.
6. However, just before the trial started, counsel for the defendants informed the court that the defendants do now admit full liability under the Occupiers Liability Ordinance, Cap 314 and negligence under common law vis-à-vis both plaintiffs. The counsel also confirmed that the liability of the defendants would be joint and several and that apportionment of liability between the 2 defendants is not necessary.

*MATTERS AT TRIAL AND ISSUES*

1. Before evidence started, the defence by summons sought leave to amend the defence of the 1st and 2nd defendants. Since the proposed amendments only concerned minor typographical errors and since the counsel for the plaintiffs had no objection to the summons, I granted leave to the defendants for the amendments with costs summarily assessed at HK$550 to be paid to the plaintiffs forthwith.
2. Also, before the trial started, I queried counsel for the plaintiffs as to whether the Mother has any medical expert reports or medical documents (apart from a 2-line medical chit dated 24 April 2013 issued by the Union Hospital and the payment advice dated 16 January 2014 also issued by the Union Hospital) in support of her case of sprained back and “nervous shock (or psychiatric illness)”. The answer was negative. However, after evidence had started and in the afternoon of 7 March 2016, the 2nd plaintiff made an application by summons to adduce fresh “medical evidence” of the Mother. Upon the objection by the counsel for the defendants and upon reminding the plaintiffs’ counsel of the Orders of Master J Chow and Master M Lam respectively dated 8 April 2014 and 6 October 2014, counsel for the plaintiffs had sensibly and fairly withdrew the summons. No order for costs was thus made.
3. The plaintiffs filed witness statements of the Father, Mother and a Mrs Judith Lynne Norton. At trial only the Father and the Mother gave evidence.
4. For the avoidance of doubt, counsel for the plaintiffs agree that I should ignore the supplemental witness statement of the Father dated 25 July 2015, (since leave from Deputy Judge D Ho was not obtained to adduce the same) and the witness statement of Mrs Norton dated 7 June 2014.
5. For the avoidance of doubt, Matthew did not file any witness statements and did not give evidence in court. I had no opportunities to see him in person. I only had the benefit of seeing his pictures taken after the accident.
6. I have also enquired with the counsel for the plaintiffs as to how to calculate the HK$20,000 for the future medical expenses claimed by the plaintiffs. I wondered if there was any documentary and factual evidence to demonstrate the same. The answer was in the negative. It appears that the sum of HK$20,000 was merely an estimation in a vacuum. In final submissions, the counsel for the plaintiffs invited me to make my own inference and own assessment.
7. It is also worth mentioning that after the defence had closed their case, I asked the plaintiffs’ counsel as to whether the Father has any supporting proof of his income showing a daily income of HK$1,778, viz the alleged pre-trial loss of earnings and MPF of HK$16,002 (HK$1,778 x 9 days). The 9-day period represented financial loss of the Father, when he was unable to attend his work taking care of the Family. The counsel confirmed that there was no such evidence before me. In final submissions, the counsel for the plaintiffs invited me to make my own inference and own assessment.
8. Since the defence admits liability, the only remaining issues for me to decide are the assessment and quantum of damages, if any, under each of the heads for Matthew and the Mother.
9. The issues for quantum of damages are thus (see plaintiffs’ counsel’s amended opening submission dated 7 March 2016):-
10. Any PSLA for Matthew? If so, how much?
11. Any PSLA for the Mother? If so, how much?
12. Any pre-trial loss of earnings and MPF? If so, how much?
13. Any future medical expenses? If so, how much?
14. Any removal cost? If so, how much?
15. Any return of rental deposits? If so, how much?
16. It should be noted that the defendants agree that they are liable to the pre-trial medical expenses of HK$7,416 and pre-trial travelling and miscellaneous expenses of HK$345.
17. It should also be noted that counsel for the plaintiffs had sensibly agreed that whether House 5 was an illegal structure causing the family to move out is not an issue in this personal injury trial. This is because not only it is not pleaded, it is also not supported by any evidence, save perhaps the letter dated 25 July 2013 issued by the Lands Department. Moreover, the said letter is inconclusive and equivocal as to whether the gate causing the accident and/or House 5 are illegal structures. Both counsel agreed that the removal cost of HK$3,500 and the return of the rental deposit of HK$13,800 hinges on the reasonableness of the plaintiffs’ decision to move out and the remoteness vis-à-vis the accident.

*EVIDENCE AT TRIAL*

1. The plaintiffs called 2 witnesses. The Father and the Mother.
2. As the defendants had admitted full liability, they called no witnesses although 3 defence witnesses’ witness statements were prepared.
3. The joint medical report on Matthew dated 17 July 2014 signed by Drs Bong Shu Chun and David H F Cheng are agreed by both parties. The doctors are specialists in Orthopaedics and Traumatology.
4. The joint medical report on Matthew dated 7 January 2015 signed by Drs Lo Siu Sing and Herman Mak Kai Tang are agreed by both parties. The doctors are specialists in Otorhinolaryngology, Head and Neck Surgery (“ENT”).
5. No medical doctors were called to testify.
6. The trial bundles contain other documentary evidence, for instance, letters, emails and photographs of Matthew, House 5 and the blood stains of Matthew at the gate area. I have certainly not lost sight of the 2-line medical chit dated 24 April 2013 issued by the Union Hospital and the payment advice dated 16 January 2014 also issued by the Union Hospital.

*EVIDENCE OF THE FATHER*

1. The Father adopted his witness statement dated 7 June 2014 as his evidence in chief.
2. The Father and the Mother were married in May 2003. Their son, Matthew, was born on 26 December 2005. At the material time of the accident, they resided in House 5. There were 2 vehicle gates and 2 pedestrian gates. On 16 April 2013, when he was working in his office, the Mother called him and informed him of the accident. The Mother was crying hysterically on the phone. He immediately went back to House 5 and accompanied Matthew and the Mother to the North District Hospital. Throughout the night of the accident, Matthew suffered from severe nose bleeds and complained of pain in his body. The Mother was unable to eat and sleep. She cried uncontrollably.
3. On 17 April 2013, Matthew was taken to the Union Hospital. It was confirmed by the hospital that Matthew had a chip fracture on his nose, apart from the head and leg injuries. As Matthew had bruises over his face and he was unable to walk, the Father had to carry him in and out of the car. He also borrowed a pram to transport Matthew. Due to the accident, Matthew was absent for school for 7 days and then one day per week for the next 3 weeks after the accident for follow up consultation and treatments.
4. In the evening of 17 April 2013, his family was “harassed” by a “representative” of the 2nd defendant (ie the landlord), because the representative wanted to see Matthew and was peeping through the window of House 5. The representative attempted to give the Family 2 boxes of gifts, but the family refused to accept them.
5. Since the Mother and Matthew were in unsettling conditions, the Father took a week off work to take care of them. The Father was unable to attend to his business causing him a loss of income.
6. On or about 10 May 2013, he was told by the Buildings Department that the gate was “most likely” to be an unauthorized building work.
7. On or about 1 June 2013, the Father opined that for the safety of the Family, the Family has to move away from House 5. The intention to move out was first made known to the 2nd defendant on 1 June 2013.
8. In October 2013, he was informed by the same government department that it was confirmed that the gate was an unauthorized building work. On 8 November 2014, the Lands Department emailed him and stated that House 5 was an unauthorized structure.
9. Under cross-examination, the Father stated that Matthew even now continues to suffer from occasional nose bleed. He also testified that Matthew limped for 2 weeks after the accident. He denied that there was any exaggeration in his claims.
10. He said that his family has limited financial means. His family may not be able to afford the medical fees for Matthew and the Mother.
11. The Father confirms that Matthew is now attending a normal school in Australia. Matthew is presently well.

*EVIDENCE OF THE MOTHER*

1. The Mother adopted her witness statement dated 7 June 2014 as her evidence in chief. Her evidence is largely the same as the one of the Father.
2. On 7 October 2011, the family moved into House 5.
3. On 16 April 2013, she drove her car home with Matthew on board. After the car was driven passed the gate, Matthew alighted the car and helped the Mother to close the gate. Just after the Mother had parked her car and turned off the engice, she heard a loud bang and saw Matthew crying. She then ran over to the gate and saw Matthew being pinned under the gate with substantial amount of blood over Matthew’s face and head. With the help of other neighbors, she lifted up the gate and saved Matthew. Ambulance was then called.
4. She said she suffered from the shock of the event and from severe back pain for lifting up the gate.
5. Matthew was granted sick leave for the period from 17 April 2013 to 23 April 2013 by the Union Hospital. She also stated that Matthew’s face and nose were bruised. Matthew suffered from nose bleed occasionally. The Father and the Mother had to take special care of Matthew when they bathed Matthew and cleaned Matthew’s face. Matthew was unable to do any physical activity due to his right hip injury. Matthew could not sleep alone and was having some bad dreams. His appetite was reduced. He could hardly stand and walk.
6. After the Accident, the Mother was suffered from shock, anxiety attacks, nausea and insomnia. She had the images from the accident in her dreams. She was unable to leave House 5 or drive. She was unable to cook or clean. She cried uncontrollably.
7. On 24 April 2013, the Mother received medical treatment at the Union Hospital.
8. On 24 April 2013, Matthew had also received medical treatment at the Union Hospital.
9. On 25 April 2013, Matthew returned to school. He was unable to attend physical education classes and extra care had to be given to him by his teachers when he interacts with other children.
10. On 3 May 2013, Matthew received further medical treatment. After that day, he was able to resume his physical education classes, but with additional care.
11. Sometime in May and June 2013, the Mother felt very stressful, suspecting that others were keeping an eye conducting surveillance on her Family. ,
12. As a result, she claimed that she had lost a substantial amount of hair.
13. In early 2014, she received medical consultation for alopecia (hair loss) at the Union Hospital.
14. The Mother had received further psychiatry treatment.

*MEDICAL EVIDENCE OF MATTHEW AND THE MOTHER*

1. The injuries sustained by the 1st plaintiff in the accident, and the consequences thereof, are fortunately rather minor. This is supported by the medical report of the A&E Department of the North District Hospital dated 24 June 2013 and by 2 other Reports signed by Dr Ho Kin Kei Joseph and Dr Chan Lai Man, Raymond, respectively of the Union Hospital.
2. The medical report of the A&E Department of the North District Hospital dated 24 June 2013 stated that:-
3. Matthew was attended by Dr Li Chun Kwong at 1635 hours on 16 April 2013;
4. the symptoms were nose and right thigh hit by falling gate;
5. general condition was satisfactory;
6. tenderness nasal bridge and right thigh;
7. x-ray of nasal bone, pelvic and right thigh did not reveal any bone fracture;
8. the provisional diagnosis was nasal bridge and right thigh contusion;
9. analgesic treatment was given to Matthew; and
10. Matthew was discharged on the same day at 17:50.
11. Dr Ho Kin Kei Joseph certified on 17 April 2013 that:-
12. Matthew’s right hip and head were injured by a falling gate on 16 April 2013;
13. there was no internal hematoma;
14. a chip fracture over the nasal bone was found; and
15. Matthew was recommended for observation for any deviation of nose or persistent right hip pain.
16. Dr Chan Lai Man, Raymond examined Matthew on 17 April 2013 by CT scan and found, inter alia, that:-
17. Chip fracture of the inferior tip of the nasal bone right to midline is detected;
18. no significant deviation of nasal septum is noted; and
19. no vault fracture or pneumocephaly is evident. Mild degree of mucosal thickening is seen lining bilateral ethmoidal and maxillary sinuses.
20. The joint orthopaedics experts report dated 17 July 2014 further confirmed, inter alia, that:-
21. The diagnosis was multiple contusions mainly head and face injuries with a chip fracture of the nasal bone;
22. though Matthew had a few follow-ups at the Union Hospital and limped for about 2 weeks and was off school for about 1 week, there was no further medical attendance thereafter;
23. Matthew has no complaint of being in pain, attends school regularly and takes part in all activities;
24. Matthew is healthy, walks around normally, has no distortion of any frail fractures, has no deformity of any kind; and has normal hip joints with full range of movement and power, it was not necessary to take any x-ray;
25. Matthew sustained contusion on head and face (with a chip fracture of the nasal bone) and contusion of the of right thigh and hip in the accident;
26. there is no injury to the musculoskeletal system;
27. there is no need for any further treatment;
28. there is no permanent physical impairment;
29. Matthew is able to continue his life with normal development; and
30. impairment percentage and loss of earning capacity is 1%.
31. The joint ENT experts report dated 7 January 2015 also confirmed, inter alia, that:-
32. The injury was a chip fracture of the nasal tip;
33. Matthew suffered from occasional epistaxis for 2 months; but there was no further epistaxis since July 2013;
34. Matthew can smell normally;
35. Matthew does not have frequent crusting of the nose;
36. Matthew does not have dryness of the nose or throat;
37. the nasal septum is straight without depression of nasal bones into the inside of the nose, and the nasal septum is not thickened and there is no nasal blockage with normal and equal airflow in both nostrils;
38. there is no loss of nasal function;
39. the nose looks straight and smooth, and looks the same as before the accident;
40. there is no laceration or abrasion on the face, head or neck area, nor damage to the teeth;
41. there is no change in cosmesis (ie disfigurement or alteration of external appearance of the face or nose) for Matthew;
42. the eyes, ear, nose and throat are unremarkable;
43. no further investigation was ordered by the experts;
44. there has been no change in his lifestyle; and
45. there is no permanent disability or impairment from the accident.
46. The medical evidence of the Mother’s alleged injuries is entirely insufficient.
47. The Mother is merely relying on a 2-line medical chit dated 24 April 2013 signed by a “Specialist in Emergency Medicine” stating that her “back was sprained while lifting a falling gate” and was “scared at the scene and suffered from insomnia, depressed mood and stress-related dyspepsia”.

*ANALYSIS OF EVIDENCE, FINDINGS, RULINGS AND DISCUSSION*

1. Subject to the medical reports produced at trial and to the production by the Mother for positive and corroborative medical evidence (which the Mother did not), generally speaking, I find the Father and Mother to be honest and reliable witnesses. Although there may be minor inconsistencies between their evidence and other documentary evidence, I do accept their testimony overall.
2. As parents, they must be very concerned about the well-being of Matthew. It is understandable that as the events had happened some 3 years ago, their memory cannot be perfect. It is also understandable that they are at times sentimental and that their evidence may be based on their subjective belief. I do see that both the Father and the Mother care and love Matthew very much. They would both for sure suffer from emotional distress when they see Matthew being hospitalized though no fault of their own.
3. I now turn to Matthew’s conditions. Since the defence did not dispute the accuracy and veracity of the two joint medical reports respectively dated 17 July 2014 and 7 January 2015, the medical report issued by the Union Hospital dated 17 April 2013, the medical report issued by the Union Hospital’s Medical Imaging Department (undated) and the medical report of the A&E Department North District Hospital dated 24 June 2013, I give these medical documents regarding Matthew’s conditions full weight as they were made contemporaneously and were compiled by independent professionals.
4. I now turn to the Mother’s conditions. As for the 2-line medical chit dated 24 April 2013 issued by the Union Hospital and the payment advice dated 16 January 2014 also issued by the Union Hospital, I appreciate that the defence did not object to the same being admitted as evidence. Nonetheless, with respect, I disagree with the counsel for the plaintiffs’ submission that I must and am duty bound to accept the contents and place full weight thereon to arrive at the conclusion that the Mother is suffering from nervous shock and psychiatric illness. The court is not a rubber stamp.
5. I have great reservation as to how to interpret the contents therein, because both documents’ contents are extremely brief. Symptoms, personal medical history, particulars of checks carried out (if any) and procedure for diagnosis (if any) are lacking. I am not able to be satisfied one way or the other as to whether the Mother was diagnosed with such symptoms (ie insomnia, depression, dyspepsia and/or alopecia) and whether the medical doctor was merely reciting the complaints by the Mother. The 2 medical documents could at best confirm that the Mother made some recent complaints to the doctors at a certain time, date and venue. Thus I can only accept that the Mother had sprained her back when she was rescuing Mathew (as the toppling of the gate was agreed by the defendants). However, in the absence of medical evidence, I do not know how minor or serious the back sprain was. Since such injury necessitates professional medical evidence, I refrain from accepting the Mother’s testimony on its face value based on the assertions of the Mother regarding the seriousness of her back pain.
6. Certainly in law, a person may recover damages for a “recognized psychiatric illness” suffered as a result of the accident. But in the absence of a proper pleaded case and detailed and thorough medical evidence for the diagnosis for the alleged psychiatric illness and nervous shock, I am unable to find that the symptoms of insomnia, depression and/or dyspepsia of the Mother were not merely grief, distress or other normal emotion. In *Mcloughlin v O-Brian* [1983] 1 AC 410 at 431 Lord Bridge of Harwich said:-

“The common law gives no damages for the emotional distress which any normal person experiences when someone he loves is killed or injured. Anxiety and depression are normal human emotions. Yet an anxiety neurosis or a reactive depression may be recognizable psychiatric illnesses, with or without psychosomatic symptoms. So, the first hurdle which the plaintiff claiming damages of the kind in question must surmount is to establish that he is suffering, not merely grief, distress or any other normal emotion, but a positive psychiatric illness.”

1. Pursuant to the House of Lords decision in *White v Chief Constable of the South Yorkshire Police* [1999] 2 AC 455, claims for psychiatric harm, expert evidence is often required. At p 493 G to H, Lord Steyn said:-

“…… there is the complexity of drawing the line between acute grief and psychiatric harm …… . The symptoms may be the same. But there is greater diagnostic uncertainty in psychiatric injury cases than in physical injury cases. The classification of emotional injury is often controversial. In order to establish psychiatric harm expert evidence is required. That involves the calling of consultant psychiatrists on both sides. It is a costly and time consuming exercise. If claims for psychiatric harm were to be treated as generally on a par with physical injury it would have implications for the administration of justice. …”.

1. For the same reason, I am unable to be satisfied that the diagnosis of alopecia on 16 January 2014 was a recognized psychiatric illness or nervous shock caused by the accident. At the trial, there was no other positive evidence to corroborate the claims of nervous shock and psychiatric illness.

*ASSESSMENT OF DAMAGES AND QUANTUM*

*PSLA*

1. Principles pertaining to the assessment of damages for PSLA are stated in *Lau Che Ping v Hoi Kong Ironwares Godown Co Ltd* [1988] 2 HKLR 650, Acting Chief Justice Cons said at page 653:-

“The starting point is a comparison of the injuries in the case in question with injuries in similar cases in which awards have already been made by the court. Consideration must next be given to any special feature or features which might influence the award in the particular case and only then, when a tentative conclusion will have been reached, should attention be turned to the established guidelines.”

1. Moreover, notwithstanding the fact that comparable cases are used as the yardstick for assessing damages for PSLA, cases only provide a guideline or range of awards. They can do no more than indicating a range of views taken in respect of different plaintiffs, of different ages and sexes usually with a different combination of injuries. Each case must be considered in the light of its own unique circumstances. See Hong Kong Personal Injury Service, by Michael Turnbull & Others II [751,752].

*PSLA of Matthew*

1. The plaintiffs’ counsel referred me to different cases. They are *Khan Sabz Ali v Ko Kim Development Co Ltd* DCPI1254/2014, *Ko Kam Wai v Sze Hak Fung & Another* HCPI 292/2005, *Yeung Shan Yee Sandy v Singway (BVI) Co Ltd and another* DCPI 1030/2005, *Cheng Yuk Chun v Winson Cleaning Service Co Ltd and others* DCPI 629/2006, *Ho Suk Man v Sit Tim Mau And others* HCPI 122/2011, *Leung Kwok Lung And another v Lam Joyce Alicia* DCPI 1521/2008, *Cheung Yuk Chun v Mitsui Construction Co Ltd & Anor* HCA 12597/1982 and *Mak Yun Tai v Kwong Kwok Fai* HCA 1427 /1983.
2. The defence counsel also referred me to different cases. They are *Lo Hin Fong v Chan Chi Shing* DCPI 60 of 2001, *Amrol v Rivera* [2008] 4 HKLRD 110, *Ngai Chi Man & Anor v Yip Yung Tong & Anor* DCPI 202 of 2010, *Fong Kam Chi v Wong Wai Shing* HCPI 910 of 1997, *Chan Tsz Sing v Lo Ching Pong* CACV 176 of 2004, *Cheng Lai Kuen v Nan Fung Textiles Ltd* [1998] 2 HKC 730 (CA) and *Hong Kong Macao Hydrofoil Co Ltd v Ng Chan Wai & Ors* HCA 209 of 1984.
3. I have considered the case of *Cheung Yuk Chun* and the case of *Mak Yun Tai*, but I do not agree with the plaintiffs’ counsel that a higher PSLA must be awarded to a victim of tender age. This is because the injuries suffered by the victims in those 2 cases are permanent and are way more serious than the ones of Matthew. Furthermore, the medical reports show that he has now healed. The Father also confirmed that he is now a normal kid in a private school in Australia.
4. Having considered the cases, inflation, submissions of both parties, medical evidence of Matthew and all circumstances, I find that a PSLA of HK$ 180,000 is just, fair and reasonable.

*PSLA of the Mother*

1. The plaintiffs’ counsel referred me to different cases. They are *Ko Kam Wai v Sze Hak Fung & Another*, HCPI 292/2005, *Ng Yu Fu v Wong Shek Ming & Another*, HCPI 252/2004, *Chan Kwok Chu v Morning Spring Limited*, DCPI 355/2007, *Ahmed Masood v Chung Kau Engineering Company Limited*, DCPI 517/2003 and *Cheng Lai Kwan v Nan Fung Textiles Ltd*, HCPI 175/1996.
2. The defence counsel also referred me to different cases. They are *Chan Sau Lan v Chesterton Petty Limited* HCPI 1123 of 2002, *Wong Pou Yin Kennie v Maxim’s Caterers Limited* HCPI 753 of 2009, *Fu Chuen Sing v Ryan (HK) Limited* DCPI 2135 of 2009, *Lo Yin Fong v Maxim’s Caterers Limited* DCPI 1424 of 2009, *Lo Yim Fong v Ho Po Yin* DCPI 654 of 2010, *Wong Fung Nui v Leung Yat Ho* DCPI 455 of 2006, *Wong Chiu Wa v Ng Yuk Chun* HCPI 258 of 1999, *Cheung Yu Tin Alvin v Ho Hon Ka* DCPI 853 of 2004, *Wong Ngai Shing Preston v Yiu Kwong Yung* DCPI 1115 of 2007 and *Limbu Saram Kumar v Cheng Man Chung* HCPI 382 of 2003.
3. As I have found above, I am only satisfied that she had sprained back when she was trying to rescue Matthew by lifting the gate (weighing about 120 kilograms as pleaded by the plaintiffs) up. Given the pain that she had suffered from the date of the accident on 16 April 2013 to sometime around the date of her visit (indeed, the only medical visit for the back pain) at the Union Hospital on 24 April 2013, having considered the cases, inflation, submissions of both parties and all circumstances, I grant a minimal but meaningful PSLA of HK$ 30,000 to the Mother.

*Pre-trial loss of earnings and MPF*

1. This claim is made by the Father.
2. There is simply no evidence in the trial to show how much the Father was earning and how much MPF he was entitled to.
3. Counsel for the plaintiffs asked me to draw inferences for the Father’s income from the rents that the family for House 5 and from the fact that he was in the wine business in Hong Kong. With respect, I am unable to make any inferences or guesses, if at all.
4. This claim fails.

*Future medical expenses*

1. The future medical expenses claim for HK$20,000 was made by both Matthew and Mother. One should note that the pleaded case for the plaintiffs is unclear on this point. There was no mention as to how much of the HK$20,000 should be awarded to Matthew and how much of that sum should be awarded to the Mother.
2. For Matthew, there is simply no evidence in the trial to show how much future medical expenses are necessary. Furthermore, according to the 2 joint experts reports for Matthew, it appears that no medical follow-ups are necessary and that Matthew had completely healed. counsel for the plaintiff asked me to draw inferences based on the evidence of the Father and Mother that Matthew continues to suffer from nose bleed. Without the assistance from experts in the medical field, even if Matthew occasionally suffers from nose bleed, I am unable to find that, even on the balance of probabilities, that there is a linkage and causation between the accident (or injury to the nose) and the present occasional bleeding. There is nothing objective to show that future medical expenses for Matthew are required. It is also difficult, if not impossible, to make an assessment on overseas medical expenses for Matthew as he is now attending school in Australia. The claim for future medical expenses for Matthew fails.
3. For the Mother, although she succeeded on the PSLA for her back pain, for the same reason that there is simply no evidence in the trial to show how much future medical expenses are necessary, if at all. There is no independent medical evidence to show the persistence of the back pain and what kind of medical care and expenses are needed. The claim of the Mother also fails.

*Removal cost and return of rental deposit*

1. The plaintiffs claim a removal cost of HK$3,500 and the return of the rental deposit of HK$13,800. One should note that the factual basis of such claim was unclear in the pleadings of the plaintiffs and in the evidence of the Father and the Mother.
2. Counsel for the plaintiffs submitted that given the gate was unsafe and that House 5 was allegedly an illegal structure, it was necessary for the plaintiffs to move away prior to the expiration of the tenancy agreement with the 2nd defendant. I disagree.
3. First, there is no conclusive evidence for either or both House 5 and the gate being illegal structures. The moving out of the Family could be an overreaction to the unfortunate accident.
4. Secondly, given House 5 has 2 vehicular accesses (one of which was where the gate was situated) and 2 pedestrian pathways, even if the gate was defective or was under repair, the Family could still have used the other vehicular access point. At no time did the Father or the Mother aver that because the gate was under repair, crime prevention was compromised.
5. Thirdly, it appears that the Family only had the idea of moving out of House 5 in late May of early June in 2013, when they were informed and believed that it was an illegal structure. Hence, it was not that the family had incurred the removal cost and loss of the rental deposit, but for the accident.
6. Fourthly, the family’s decision to move out was probably because of their dislike of the alleged harassment and secret surveillance by their neighbors on the family and not because of the accident and/or the alleged status of illegal structures.
7. Lastly, the facts in the 2 cases of *Li Tin Yau v Leung Chi Tai & Another* HCA 7524/1986 and *Ng Kwok Wing v Lau Ping Kwan & Others* HCA PI 101 of 1995 submitted by the counsel for the plaintiffs are entirely different to the situations of the present case. Hence, the rationale and legal principles therein are inapplicable.
8. I find that these claims are too remote and not reasonable. They fail.

*Special damages*

1. Since the defendants agree that they are liable to the plaintiffs for the pre-trial medical expenses of HK$7,416 and pre-trial travelling and miscellaneous expenses of HK$345. I allow them in total for HK$7,761.

*CONCLUSION AND ORDER*

1. I award HK$ 180,000 to Matthew as PSLA.
2. However, since Matthew is still a minor, I direct that the whole of HK$180,000 awarded for Matthew’s PSLA be paid into Court and invested pursuant to Order 80 Rule 12, Rules of the District Court, Cap 336 H.
3. I award HK$30,000 to the Mother as PSLA.
4. I award a total of HK$7,761 for special damages of (HK$7,416 + HK$345) to the Father. For the avoidance of doubt, I direct that these sums for special damages are to be paid to the Father direct and need not be paid into court.

*INTEREST*

1. Interest on general damage shall run at the rate of 2% per annum from the date of writ until the date of judgment.
2. Interest on special damages should run at half judgment rate from the date of the Accident until the date of judgment.

*COSTS*

1. Since the plaintiffs are the overall winners of the litigation, costs should follow the event. I make an order nisi that the defendants shall pay the plaintiffs costs of this action with certificate for counsel, to be taxed if not agreed.
2. The order nisi shall become absolute in the absence of any application to vary the same within 14 days from the date of this judgment.

*OTHER REMARKS*

1. This court sends its warmest regards to Matthew.
2. Lastly, I thank both counsel for their helpful assistance in the course of the trial.

( Lawrence Hui )

Deputy District Judge

Miss Amanda WY Lee, instructed by WT Law Offices, for the 1st and 2nd plaintiffs

Mr Lee Tung Ming, instructed by Rene Hout & Co, for the 1st and 2nd defendants