DCPI 2652/2015

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 2652 OF 2015

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BETWEEN

CHAU WING CHUEN Plaintiff

and

JENKINS ROY IAN 1st Defendant

MAINTOWN INDUSTRIES LIMITED 2nd Defendant

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Before: Deputy District Judge C. Chow in Court

Date of Hearing: 8 December 2017

Date of Judgment: 19 December 2017

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JUDGMENT

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*BACKGROUND*

1. An accident occurred on 8 December 2013 with the car driven by the plaintiff (registration No GC8689) being crashed into at the back by the car bearing registration No KY22 which was driven by the 1st defendant (“Accident”). The 2nd defendant was the owner of the car KY22 at the time of the Accident. As a result of the Accident, the plaintiff sustained bodily injuries.
2. Interlocutory judgment was entered against the 1st defendant on 31 October 2016. Shortly before the trial, the plaintiff and the 2nd defendant agreed on the settlement of the action between them. The only outstanding matter for the court is therefore an assessment of the damages to be paid by the 1st defendant.
3. Details of the claim of the plaintiff are set out in the Revised Statement of Damages. The plaintiff has filed a witness statement which he adopted as his testimony.
4. The plaintiff was born on 31 October 1974. He was 39 at the time of the Accident. He returned to his work as a marine police officer in August 2014 and his claim for damages is based on his income at the time of the Accident being HK$28,000 per month.

*INJURIES SUSTAINED*

1. After the Accident, the plaintiff could get out of the car himself. He was taken by ambulance to the Accident & Emergency Department of Tuen Mun Hospital (“TMH”) on 8 December 2013. Tenderness over posterior neck was noted. X-ray and CT scanning were carried out which showed no bony fractures or intracranial lesions. The plaintiff was treated conservatively and discharged with painkillers, analgesic balm and given sick leave.
2. Feeling an increase in pain in his neck and right upper limb, the plaintiff attended Tsuen Wan Adventist Hospital (“TWAH”) on 10 December 2013 and was admitted for testing and observation. MRI scanning of cervical spine showed loss of the normal cervical lordosis and minimal broad-based posterior disc bulges at C4/5 and C5/6 levels with slight indentation of the thecal sac. There was no associated spinal cord compression or exiting nerve root impingement. A MRI scan was done of the right shoulder too and that revealed mild focal thickening with increased signals of his right subscapularis tendon near its insertion site at less tuberosity. There was no complete tendon disruption but the features were suspected of partial tear.
3. The plaintiff was discharged on 12 December 2013. The plaintiff then went to other clinics to receive pain medication and/or sick leave, including Lady Trench General Out Patient Clinic (“LTGOPC”), Tsing Yi Town General Out Patient Clinic and one Dr Lai Sing Hung.
4. On 10 January 2014, the plaintiff was assessed at the Physiotherapy Department (“PD”) of TMH. He then underwent a total of 25 sessions of physiotherapy at TMH until 25 August 2014, when he was discharged due to static progress. In addition, he attended 4 sessions of hydrotherapy from 9-30 May 2014. 35 sessions of occupational therapy were also received by the plaintiff, from 21 August 2014 up to 2 March 2016.
5. At his follow-up appointment for his left wrist injury (unrelated to the Accident) on 30 January 2014 at the Department of Orthopaedics & Traumatology (“DOT”) of TMH, the plaintiff also complained of neck, back and right shoulder pain with tenderness at the subacromial region. He was noted to have limited ROM due to the pain and X ray of his shoulder was normal. The back and neck pain was described as being compatible with cervical radiculopathy.
6. The next follow-up with DOT of TMH was on 27 February 2014. The MRI films of the plaintiff were reviewed and the doctor agreed that there was an element of right supraspinatus tendinitis and partial subscapular tear, as well as mild 4-5th cervical intervertebral disc prolapse. The report of DOT of TMH referred to progressive improvement in the three regions of complaint of the plaintiff. It also recorded the complaint of symptoms and signs of left lateral epicondylitis when the plaintiff was seen on 10 September 2015, as well as the doctor’s assessment on 10 March 2016 that the symptoms of the neck, shoulder and back had become mild and static.
7. From 12 January 2016 to 18 April 2016, the plaintiff attended 7 further sessions of outpatient physiotherapy in TMH. The discharge summary recorded no overall subjective improvement with similar neck pain.

*JOINT MEDICAL REPORT*

1. Dr Lam Kwong Chin and Dr Fu Wai Kee, the experts appointed by the plaintiff and the 2nd defendant, prepared a joint medical report dated 26 January 2017. The assessment of the plaintiff was carried out by them on 15 November 2016.
2. The experts recorded the plaintiff having a fall during work in 2012 which resulted in his left wrist being injured. The plaintiff was then treated in TMH and Pok Oi Hospital (“POH”) with two operations done. Upon resuming work in late 2012 after the sick leave granted then, the plaintiff was switched to indoor post, with no plan of resuming normal duty by the time of the Accident. In respect of this past injury, the two doctors agreed that the plaintiff was still affected by the left wrist scapho-lunate ligament injury when the Accident occurred.
3. After setting out the various treatments received by the plaintiff, the then current complaints of the plaintiff were noted. They included persistent stretching pain and pin-prick sensation at posterior neck and occiput, more on the right side; on and off paraesthesia of right upper limb, from shoulder to elbow; and residual left wrist pain, weakness and numbness.
4. The experts agreed that the plaintiff probably had a neck sprain with soft tissue involvement. As for the complaint of mild right upper limb numbness, the doctors opined that the plaintiff did not have well-defined neurological deficit. They also agreed that the loss of the normal cervical lordosis could be due to muscle spasm or degenerative changes of the cervical spine.
5. As for the broad-based posterior disc bulges revealed by the MRI, both doctors agreed that the changes were more likely due to degeneration, something very common in people of the age of the plaintiff. They differed on whether the plaintiff became symptomatic because of the Accident.
6. Dr Lam opined in the negative because a disc bulge or protrusion from a single accident is highly unlikely, not to say multiple ones as in the case of the plaintiff, pointing out that based on biomechanical studies, the disc is stronger in vertical loading than the vertebral bodies, hence loads high enough to rupture a disc would tend to fracture a vertebral body first. Dr Fu, on the other hand, only referred to people with such degenerative changes being asymptomatic or mildly symptomatic and there was no evidence to suggest the plaintiff was symptomatic before the Accident. It is the opinion of Dr Fu that the plaintiff should have remained asymptomatic by the time of the joint examination had the Accident not happened.
7. I find the opinion of Dr Lam in this regard to be supported by scientific analysis while that of Dr Fu is more in the nature of guesswork. For this reason, I prefer the opinion of Dr Lam and find the symptoms of the posterior disc bulges to be pre-existing condition.
8. As for the mild focal thickening with increased signals in the subscapularis tendon near its insertion at less tuberosity, Dr Lam pointed out that the subscapularis muscle, located in the front of the shoulder, is the most powerful rotator cuff muscles. He indicated that isolated subscapularis tendon injury is relatively rare, usually after a rather distinct traumatic event with pulling on the muscle and the injured would typically present with tenderness at the front of the shoulder. Referring then to the described mode of the Accident and the subsequent clinical findings, Dr Lam was of the view that it is very unlikely for the plaintiff to have a genuine partial tear of subscapularis tendon. Having set out the complaints of the plaintiff relating to his right shoulder, Dr Lam commented that they were rather non-specific and did not support a diagnosis of partial tear of subscapularis tendon. He attributed the mild focal thickening with increased signals to tendinosis and the right shoulder pain to pain referred from the neck.
9. Based on the documents available after the Accident showing that there was tenderness over the right shoulder with positive impingement sign, Dr Fu opined that the plaintiff should have sustained right shoulder injury in the Accident. I find the approach of Dr Fu to be problematic. He seemed to have worked back from a pre-determined conclusion rather than coming to a view after careful analysis of the empirical data on the medical conditions of the plaintiff. There is no professional input from him. I therefore prefer the opinion of Dr Lam on the cause of the shoulder pain of the plaintiff.
10. The experts made reference to the comments about the MRI of the plaintiff’s thoracic spine in the report of LTGOPC, noting though that they could not find related documents. The only MRI reports were those done at TWAH and there was no mention of MRI of thoracic spine. There is thus no evidence of any such injury on the part of the plaintiff.
11. With the complaints of on and off paraesthesia of right upper limb, from shoulder to elbow, after noting the subjective claim of 10-20% sensory loss in right arm and the mild weakness in the right upper limb, both doctors agreed that there was no well-defined neurological deficit or radioculopathy.
12. The two doctors agreed that the treatment given to the plaintiff was standard and appropriate and that he had partial recovery in his physical condition. That notwithstanding, they agreed that further conservative treatment probably would not change the present condition of the plaintiff significantly and neck or shoulder surgery is not indicated.
13. As for the symptoms and signs of left lateral epicondylitis that the plaintiff still had at the time of the joint examination, the two doctors agreed that those were unrelated conditions. They also agreed that the residual left wrist pain, weakness and numbness of the plaintiff was a pre-existing condition.
14. There is agreement of the two doctors on the arrangement of the plaintiff in resuming work in August 2014, but Dr Lam opined that the sick leave granted was more due to the left wrist injury rather than the Accident. On this, I do not accept the opinion of Dr Lam since all the sick leave certificates were issued for the injuries related to the Accident and not the left wrist injury. As for Dr Fu, it is his opinion that the severity of the neck and right shoulder injury of the plaintiff meant that he should have required indoor duty even if he did not have the left wrist impairment.
15. Dr Lam’s assessment of the plaintiff’s impairment of the whole person is 3% and the loss of his earning capacity is also 3%. With Dr Fu, his assessment is that the impairment of the whole person as well as the loss of earning capacity should be 6%. They agreed that there is no indication for the plaintiff to be examined by other specialists.
16. Since I have largely accepted the opinion of Dr Lam in respect of the extent of the injuries sustained by the plaintiff as a result of the Accident, I also prefer his assessment on the plaintiff’s loss of earning capacity.

*PRE-EXISTING DEGENERATION*

1. In the case of *Cham Kam Hoi v Dragages et Travaux Publics* [1998] 2 HKLR 958 (referred to in the case of *Li Tat Chuen v Yip Wing Chuen Jacky & Others* HCPI 581/2011 cited by Mr Cheung), the effect of pre-existing condition on the assessment of damages was categorized into three scenarios. The first is where the claimant was almost certain to have gone through life unaffected by the condition. The second is where there is a strong possibility that some other event, or natural progression of the condition, would have brought about the present state of the claimant. The third is where the claimant’s present condition would certainly have occurred at some stage in any event.
2. I have indicated in the above that I prefer the opinion of Dr Lam on the cause of the symptoms from the disc bulges at C4/5 and C5/6 levels of the plaintiff. That means that the plaintiff’s case is either the second or third scenario described in the *Cham Kam Hoi* case. Even if the opinion of Dr Fu was to be followed, since he only said the plaintiff would have remained asymptomatic for the time being instead of his being able to go through life without being affected by the degeneration, the plaintiff’s case would still be a second or third scenario.
3. According to the *Cham Kam Hoi* case, the court should then assess the discount to be applied to the damages to be awarded to account for the pre-existing degeneration. The neck pain is the main complaint in the present case. With the shoulder pain, in light of my finding that the opinion of Dr Lam that it owed its cause to the neck pain is to be preferred, the cervical degeneration is to partly account for it as well. Bearing all these matters in mind, I decide to apply 50% as the discount rate to account for the pre-existing degenerative condition of the plaintiff.

*PAIN, SUFFERING AND LOSS OF AMENITIES (“PSLA”)*

1. The plaintiff claims PSLA in the amount of $350,000. Mr Cheung referred me to four cases for the plaintiff’s claim for PSLA, *Muhammad Saddiq v Cheung Chi Keung* HCPI 1018/2006, 8 April 2008, *Anil Jhuremalani v Rodelio O Fajada & Anor* DCPI 134/2001, 9 May 2002, *Ko Hoi Seung Korin v Liu Kwok Keung* HCPI 1206/2014, 12 August 2016 and *Li Tat Chuen v Yip Wing Chuen Jacky & Others* HCPI 581/2011, 23 October 2014.
2. The award for PSLA was HK$250,000 in the *Muhammad Saddiq* case which was decided in 2008. The claimant in that case suffered whiplash injury to the neck and sprained his back. He was granted sick leave for one year and attended 17 sessions of physiotherapy, but he still had residual pain. The court also found that the claimant suffered slight degenerative changes to the lumbar region as a result of the accident.
3. The claimant in the *Anil Jhuremalani* case was awarded HK$200,000 for PSLA in this 2002 decision. The claimant used to be an outstanding tennis player but had to resign to a much less distinctive performance after the accident. He also lost enjoyment from the Thai boxing that he used to do before. The complaints of the claimant included neck pain and restricted rotation, tiredness, dull aching pain, disturbed sleep. The fact that his condition was a permanent one was also something that led the court to consider his case as a matter of some seriousness.
4. The *Ko Hoi Seung Korin* case was a more recent case, decided in 2016. The claimant in the case had neck pain, his right shoulder was injured, and there was also right upper limb numbness. The court found that the symptoms of the plaintiff were triggered on top of the cervical spine degeneration she had and the accident acted as a major triggering event. The claim of left upper limb numbness was rejected or considered minor, even if it were to be accepted. The court also concluded that the injury to the right shoulder and right upper limb numbness of the claimant to have almost fully recovered. The award for PSLA was HK$140,000.
5. The case of *Li Tat Chuen* was decided in 2014. The claimant in the case also suffered a whiplash injury to the neck and it was also observed that he had a pre-existing degenerative condition of the cervical spine. The court referred to exaggeration by the claimant of the injuries he sustained and made the award of HK$175,000 for PSLA on the basis of there being a neck sprain as a result of the accident, from which the claimant would have recovered after 9 months of treatment, and the claimant also suffered from stress and anxiety as a result of the trauma he experienced from the accident.
6. All the cases referred to can only offer guidance. Nonetheless, I take particular note of the finding of the court in the cases of *Muhammad Saddiq* and *Ko Hoi Seung Korin* that the degeneration of the spine was caused by the accident. That is not the position with the present case.
7. The plaintiff still has neck and shoulder pain. His complaints also include worsened relationship with his family. Although he is likely to be restricted to a desk job, that was firstly brought about by the injury to his left wrist which has nothing to do with the Accident. I take note that his left wrist injury was still bothering him at the time he was examined by the two experts. Having considered all these matters as well as inflation and the discount on ground of the pre-existing degeneration of the cervical spine, I award $80,000 as damages for PSLA.

*PRE-TRIAL LOSS OF EARNINGS*

1. A number of questions were raised on the claim of the plaintiff in his witness statement that he was earning HK$32,000 per month at the time of the Accident. According to the plaintiff, the HK$32,000 sum would include allowance of about HK$1,000 odd payable to officers working on the front line, and he mistakenly thought that he should include the amount of the allowance when setting out his salary in the witness statement. He had no answer to offer when asked about the remaining HK$2,000 odd that is still unexplained.
2. The plaintiff testified to having been off front line work for two years at the time of the Accident. He also confirmed being paid the allowance only when he was working as front line officer, but not after he had been switched to indoor duties.
3. Despite Mr Cheung’s attempt to attribute the plaintiff’s mistake of stating HK$32,000 as his monthly salary by referring to the increased rate applicable to the fiscal year of 2014/15, I do not accept that as the true reason. There is no ambiguity in the witness statement of the plaintiff that he was referring to his salary at the time of the Accident. I note the plaintiff is now basing his claim on the basis of his salary being HK$28,000 at the time of the Accident, but this matter is relevant in the overall assessment of the credibility of the plaintiff as a witness.
4. The plaintiff was granted a total of 263 days of sick leave from 9 December 2013 to 28 August 2014. As a police officer, the plaintiff received full salary for the first 182 days of the sick leave period, but he only received half salary for the remaining 81 days. The claim under this head is therefore HK$37,800 (HK$28,000/2 x 81/30).
5. I have explained in the above discussions why I do not accept the opinion of Dr Lam about the reasons for granting the sick leave to the plaintiff. I therefore accept the sick leave period as claimed and the computation of the damages in the preceding paragraph. Taking into account the discount of 50% for pre-existing degeneration, the award for pre-trial loss of earnings is thus HK$18,900.

*POST-TRIAL LOSS OF EARNINGS*

1. There is no claim for post-trial loss of earnings.

*LOSS OF EARNING CAPACITY*

1. The claim of the plaintiff for loss of earning capacity is HK$150,000. Mr Cheung stressed that even though the employment of the plaintiff is secure for the time being, his employment opportunities will be severely undermined when he retires from the Police Force at the age of 55. He also asked me to have regard to the reduction in work efficiency, the significant handicap faced by the plaintiff in the labour market, the limited education received by the plaintiff, as well as the fact that he would be precluded from undertaking manual work duties.
2. I accept what Mr Cheung said are relevant factors to be considered. There are nonetheless other matters that I need to take into account. The disciplinary forces have pensions or retirement benefits upon retirement and not all officers opt for re-entering the labour market after they retire. Further, nowadays people retiring do not always take up employment mainly for gain. There is also no evidence from the plaintiff on whether, and if so how, he has mapped out his retirement plan.
3. Having taken into account all relevant considerations, including the percentage loss of earning capacity suffered by the plaintiff as a result of the Accident and the effect of the pre-existing degenerative condition of the plaintiff, I award HK$30,000 as damages for loss of earning capacity.

*SPECIAL DAMAGES*

1. There are five heads of claims set out in the Revised Statement of Damages for special damages suffered by the plaintiff, making up to a total of HK$72,739. They are listed below:

|  |  |
| --- | --- |
| Medical expenses | HK$33,000.00 |
| Nourishing/tonic food | HK$5,000.00 |
| Travelling expenses to and from treatment | HK$12,000.00 |
| Repair fees for GC8689 | HK$16,739.00 |
| Car rental for 1 month while GC8689 was undergoing repairs | HK$6,000.00 |
|  | HK$72,739.00 |

*Medical expenses*

1. Among the HK$33,000 claimed for medical expenses is the bill of TWAH for HK$27,584 when the plaintiff was treated as an in-patient from 10-12 December 2013. Apart from the bill of TWAH, there are only four other relevant bills, two of Dr Lai Sing Hung and two others of Herbal Medicine Clinic[[1]](#footnote-1) where the plaintiff had acupuncture and fire cupping therapy. They add up to HK$2,306[[2]](#footnote-2). By simple arithmetic, it can be worked out that there is still a HK$3,110 difference in respect of the claim for medical expenses that has no documents in support. They cannot therefore be allowed.
2. The award for medical expenses should therefore be HK$29,890.

*Travelling expenses*

1. The plaintiff has produced over 100 receipts for taxi fares for travelling to and from treatments, covering the period from 9 December 2013 to 22 September 2014. Having cross-checked them against the dates on which the plaintiff had sought treatment from the various doctors, physiotherapists and occupational therapists as noted in the medical records of the plaintiff, only 5 receipts can be matched with dates on which the plaintiff did in fact consult any of the aforesaid practitioners. For instance, out of the 23 sick leave certificates issued to the plaintiff for the injuries sustained from the Accident, only on 4 of those dates on which the plaintiff attended the hospital in question can the taxi fare receipts be found. This can of course be explained away by a suggestion that the plaintiff did not take a taxi to go there on the other 19 days.
2. Of greater concern however are the receipts for days when there is no record of the plaintiff seeking any treatment at all. These type of receipts form the majority, rather than the exceptions. I have not disregarded the fact that not all the dates on which the plaintiff has consulted the various practitioners can be discerned from the medical records. For example, according to the physiotherapy reports and occupational therapy reports, the plaintiff had 25 sessions of physiotherapy from 10 January 2014 to 25 August 2014, 4 sessions of hydrotherapy from 9-30 May 2014, 35 sessions of occupational therapy from 21 August 2014 to 2 March 2016. For the sessions between the start date and the end date, I do not know when they were held. Even taking the plaintiff’s case to the highest by assuming all the in-between sessions can be matched with the taxi fare receipts submitted, there are still more than half of the receipts that cannot be so matched.
3. I find this to be an alarming feature and I should take heed of this red flag in assessing whether these receipts are genuine record of the expenses incurred by the plaintiff for travelling to and from treatment. Given that the onus is on the plaintiff to prove his case, my decision is to allow only the 5 taxi rides that I have been able to match with dates on which the plaintiff had indeed consulted the various practitioners – 30 December 2013, 13 January 2014, 28 January 2014, 30 January 2014 and 25 August 2014. Although it is anybody’s guess as to whether the plaintiff did in fact take the taxi rides and whether the taxi rides were for the purpose he claims, the onus of proof is only on a balance of probabilities and I find that onus to have been discharged in relation to the 5 receipts.
4. The total of the amounts billed under the 5 receipts is HK$389.50. I award this amount for the travelling expenses incurred by the plaintiff.

*Repair costs*

1. The plaintiff testified to his taking his car to the Volkswagen service centre in Tsuen Wan for repair 1-2 days after the Accident and his getting the car back after about a week. With the costs of repair for GC8689, a few documents relating to the amount have been disclosed. The earliest document is a service quote dated 10 December 2013. The plaintiff confirmed that the quotation was made on the spot when he drove the car over to the service centre. The amount quoted was HK$16,739, what he is claiming now.
2. There is then an Invoice issued by Volkswagen service centre dated 3 April 2014. This shows an insurance claim made on behalf of the plaintiff by Direct Asia Insurance Company (“Direct Asia”) and the amount of total repair cost is only HK$15,043. After deducting the excess of HK$3,000, the claim payment noted in the Invoice is HK$12,043. The plaintiff confirmed that Direct Asia was the insurer from whom he had purchased full cover for his vehicle at the material time, and HK$3,000 was the amount of excess under the policy.
3. The plaintiff said he did make a claim under the insurance policy, but he has no idea whether Direct Asia had paid up. As to why he did not follow up on the claim he had made, the plaintiff said it was too long ago and he had passed the matter to the lawyers for handling.
4. The last piece of document relating to repair is the Official Receipt of Volkswagen service centre. The amount received tallies with the Invoice referred to in the preceding paragraph although the invoice no. noted in the receipt is not the same. This receipt was issued to Direct Asia and not the plaintiff and it recorded payment of the amount by a cheque, a copy of which has not been produced.
5. When asked about the difference between the amount of repair costs in the Service Quote on the one hand and the Invoice and Official Receipt on the other, the plaintiff had no explanation to offer. When asked whether the plaintiff had himself paid for the repair costs or whether it was Direct Asia that had paid, the plaintiff also had no answer to offer. When asked whether he paid any money at all when he picked up the car from Volkswagen service centre after the repair was completed, he said he could not remember as it was a long time ago. He said he had no impression of making payment himself.
6. With the plaintiff having no memory of his paying for the repair costs, I find the repair costs that have actually been paid to be that shown in the Invoice and Official Receipt. Hence, the repair costs that can be recovered from the 1st defendant should be HK$15,043 and not HK$16,739 as claimed.

*Car rental*

1. It is the plaintiff’s case that the repair of his car was carried out and completed in about a week’s time in December 2013. The reference to 1 month of car rental in the Revised Statement of Damages was, Mr Cheung submitted, an obvious mistake and that it should refer to one week instead. That is a relatively minor issue in respect of this head of claim.
2. The documents submitted by the plaintiff in respect of the car rental are the AVIS rental agreement and credit card payment slip for HK$7,275. The rental agreement has recorded the time in and time out of the car rented, being 29 March 2014 and 5 April 2014 respectively. There can therefore be no doubt that this particular car rental in March-April 2014 has nothing to do with the repairs of the plaintiff’s own car in December 2013. The plaintiff has not shown that it has suffered such loss.

*Nourishing/tonic food*

1. This is the only item of special damages where documentary evidence has not been provided. The court does sometimes award the amount claimed if it considers it to be reasonable and it is otherwise satisfied with the genuineness of the claim. That is not the case with the plaintiff’s claim. Given that the claims under the other heads of special damages are found to have been advanced despite contradiction with the documentary record, I have doubts as to whether the amount now claimed for nourishing/tonic food had been incurred for the injuries he suffered as a result of the Accident.
2. The doubts I have are accentuated by the fact that the plaintiff has bothered to produce the very many receipts for taxi fare and have them tabulated in support of a claim for travelling expenses to and from treatment. The earliest of the taxi fare was for the day after the Accident, so the plaintiff knew all along the importance of keeping records of the relevant expenses. There is no explanation from him as to why no receipt for nourishing food can be produced.
3. In light of the above, and with the onus on proof squarely on the plaintiff, I make no award for nourishing food to the plaintiff.
4. The award for special damages is therefore the sum of HK$45,322.50, as detailed in the summary below.

|  |  |
| --- | --- |
| Medical expenses | HK$29,890.00 |
| Nourishing/tonic food | HK$0.00 |
| Travelling expenses to and from treatment | HK$389.50 |
| Repair fees for GC8689 | HK$15,043.00 |
| Car rental for 1 month while GC8689 was undergoing repairs | HK$0.00 |
|  | HK$45,322.50 |

*SUMMARY*

1. The following table sums up the computation of the damages assessed to be payable by the 1st defendant to the plaintiff:-

HK$

PSLA $80,000.00

Pre-trial loss of earnings $18,900.00

Loss of earning capacity $30,000.00

Special damages $45,322.50

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

Total $174,222.50

1. I award damages to the plaintiff in the sum of HK$174,222.50, together with interest on damages for PSLA from date of writ to date of judgment at 2% per annum and interest on the pre-trial loss of earnings and special damages at half of the judgment rate from date of accident to date of judgment. Interest at judgment rate is to be paid on the net amount of HK$174,222.50 from judgment until payment.

*COSTS*

1. On a *nisi* basis, I award costs of the assessment, including all costs reserved, to be paid by the 1st defendant, with certificate for counsel, to be taxed if not agreed.

( C. Chow )

Deputy District Judge

Mr Jeremy Cheung, instructed by B Mak & Co, for the plaintiff

The 1st defendant was not represented and did not appear

1. The two bills of Herbal Medicine Clinic are inexplicably included in the list of taxi fares. [↑](#footnote-ref-1)
2. The plaintiff is claiming HK$670 in respect of the bill of Dr Lai dated 2 January 2014, but the amount written in Arabic figure is ambiguous and judging from the amount written out in words on the actual receipt, the amount should be HK$640. [↑](#footnote-ref-2)