IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 271 OF 2000

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| BETWEEN | Sit Ka-yee | Plaintiff |
|  | and |  |
|  | Lai Wai-ho | Defendant |

Coram: H H Judge Carlson in Chambers

Date of Hearing: 22 October 2001

Present

at Hearing: Mr Eric Yu, of Eric Yu & Co., for the Plaintiff

Mr Lam, instructed by Messrs Au Yeung, Lo & Chung, for the Defendant

Date of Judgment: 29 October 2001

Present: Mr Eric Yu, of Eric Yu & Co., for the Plaintiff

Mr W K To, of Messrs Au Yeung, Lo & Chung, for the Defendant

R U L I N G

1. This matter raises a short but important point concerning the jurisdiction of this court to hear personal injury actions where the worth of the claim is acknowledged to be less than $50,000. It comes about as follows.
2. The plaintiff was riding her motorcycle in Kowloon when it is alleged that the defendant, who was driving a motorcar, turned across her path without warning and with the result that she had to brake suddenly and steer away. She lost her balance, fell off her motorcycle, was injured and her motorcycle was damaged. Fortunately, her injuries were slight.
3. The Statement of Damages values damages for pain, suffering and loss of amenity at $30,000 and special damages, including the cost of repair of the motorcycle, at $12,085. The total claim, therefore, is in the amount of $42,085, which is within the $50,000 jurisdictional limit of the Small Claims Tribunal.
4. In these circumstances, it is submitted on behalf of the defendant that this court has no jurisdiction to hear this matter. Mr Lam, who appears for the defendant, says that by virtue of section 5(2) of the Small Claims Tribunal Ordinance, only the Small Claims Tribunal may hear and determine it. It is necessary to recite all the material parts of section 5 which are in these terms:

“(1) The Tribunal shall have jurisdiction to hear and determine the claims specified in the schedule.

(2) Save as provided in this Ordinance, no claim within the jurisdiction of the Tribunal shall be actionable in any other court in Hong Kong.

(3) A claim within the jurisdiction of the Tribunal may be brought in another court if there is included in such a claim a claim for some other relief, redress or remedy other than a claim for costs.”

The schedule provides for any monetary claim founded in contract, quasi-contract or tort where the amount claimed is not more than $50,000 whether on balance of account or otherwise.

1. Mr Yu, in resisting this application, submits that this cannot be so. The District Court’s minimum jurisdiction has now been removed by virtue of the repeal of section 37A of the District Court Ordinance. He submits that whilst there is an upper limit of $600,000 (see section 32) there is no restriction going the other way and, by way of comment, he observes that it would be odd indeed where the court has now been provided with a specialist personal injury list, with a judge in charge of that list and the Practice Direction 18.1 with its elaborate regime has now been applied to this court, that personal injury claims under $50,000 should be removed from this court.
2. Whilst I can see why Mr Yu should say that, this is essentially a matter of statutory construction.
3. Mr Lam also draws attention to section 40 of the District Court Ordinance which is a saving provision and is as follows:

“This part does not affect the provisions of the Small Claims Tribunal Ordinance, Cap. 338, The Landlord and Tenant Consolidation Ordinance, Cap. 7, or the Labour Tribunal Ordinance, Cap. 25, or any other ordinance conferring exclusive jurisdiction on a court or Tribunal other than the court.”

This has the effect of preserving the exclusive jurisdiction of the Small Claims Tribunal as provided for in section 5 of the Small Claims Tribunal Ordinance. But Mr Yu has also submitted that by virtue of section 5(3) of the Small Claims Tribunal Ordinance supra. which permits a claim within the jurisdiction of the Small Claims Tribunal to be brought in another court, if there is included in such a claim a claim for “some other relief, redress or remedy”, in this case, Mr Yu says, his client’s head of damage for damages for pain, suffering and loss of amenity is such “relief, redress or remedy”.

1. In my judgment, that is not right. This is a monetary claim to compensate for pain, suffering and loss of amenity. “Other relief, redress or remedy” would include, for example, a claim for an injunction or for a declaration which would be outside the range of the Small Claims Tribunal’s jurisdiction. Therefore, section 5(3) cannot assist the plaintiff.
2. I am satisfied that Mr Lam is right. This claim belongs in the Small Claims Tribunal. It can only be issued in that Tribunal which has sole jurisdiction to hear it. This action must therefore be struck out because I have no power to transfer it down to the Tribunal.
3. This having been said, there is force in Mr Yu’s submission that a personal injury action which can bring forensic difficulties for an unrepresented litigant who may have to call medical experts or other technical evidence, is best dealt with in a court that permits legal representation. Some personal injury actions in the Small Claims Tribunal will present such difficulties and some will not. If they are complex, the Tribunal does have the power to transfer a case to this court or to the High Court if it considers that to be appropriate to the particular case (see section 7 of the Small Claims Tribunal Ordinance) but that is a matter for the Tribunal to decide when a claim is brought before it.
4. The order that I make, therefore, is for a declaration as sought by the defendant. The action will be struck out for want of jurisdiction.

(Submissions on costs)

1. Costs of the action will be to the defendant with Certificate for Counsel for the hearing in which counsel was instructed.

Ian Carlson

District Court Judge

I/we certify that to the best of my/our ability and skill, the foregoing is a true transcript of the audio recording of the above proceedings.

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Liz Shore

30 October 2001