#### DCPI297/2010

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 297 OF 2010

BETWEEN

LEUNG KANG WAI Plaintiff

and

DUSSMANN SERVICE HONG KONG Defendant

LIMITED

Formerly known as

P. DUSSMANN HONG KONG

LIMITED

##### Before: Deputy District Judge Shipp in Chambers (Open to public)

Date of Hearing: 29 July 2011

Date of Ruling: 29 July 2011

## R U L I N G

1. The plaintiff was employed by the defendant as a cleaner. On 27 March 2007 whilst working at the Hong Kong International Airport, the plaintiff stepped on a plastic sheet with a plastic film roll underneath. He slipped and fell on the ground, landing on his buttocks first and then his left shoulder. According to the joint expert report of two orthopaedic surgeons, the plaintiff did not lose any consciousness nor suffer from any head injury. The plaintiff was x-rayed and he suffered no bone injury. In fact, the plaintiff was treated and discharged on the same day of admission. It was what is called a ‘slip and fall’ accident.
2. Paragraph 2 of the Statement of Claim dated 16 March 2010 pleaded that as a result of the accident the plaintiff developed post-traumatic stress disorder (PTSD). The only basis for one to plead PTSD as at the date of the Statement of Claim was a report dated 25 February 2009 prepared by Miss Cho, a clinical psychologist at the Caritas Medical Centre. Miss Cho said the plaintiff was seen on 14 March 2008, a year after the accident, and Miss Cho stated in paragraph 3 of her report the following:

“According to Mr Leung’s information, he suffered from sleeping difficulties, irritability, excessive worries, death wish, nightmare about the accident, mild intrusions and avoidant behaviours after an accident at workplace which happened in March 2007. He was found to be suffering from symptoms of PTSD. He was also found to have difficulties adjusting to the pain and a new role in the family after the incident.”

1. Two issues arise from Miss Cho’s report. The first issue is that Miss Cho said the plaintiff was suffering from symptoms of PTSD and not suffering from PTSD itself. She never made any clinical diagnosis that the plaintiff was suffering from PTSD. The second issue is that PTSD is a very serious condition. Medical literature suggests that for PTSD to develop a person has experienced or witnessed or was confronted with an unusually traumatic event that has both of these elements:

(1) the event involved actual or threatened death or serious injury to that person or to others; and

(2) the person felt intense fear, horror or helplessness (quoted from Diagnostic and Statistical Manual of Mental Disorders, 4th Edition at page 435).

1. In the present case, the plaintiff’s accident was a slip and fall one and can by no stretch of imagination come within a trauma of such magnitude. I refer to *Ho Man Fong v Sime Darby Motor Service Limited*, HCPI1096/2003, unreported, Suffiad J, 19 July 2005, at paragraphs 54 to 56.
2. Based on the opinion of a clinical psychologist that the plaintiff was suffering from symptoms of PTSD, the plaintiff’s lawyers took it upon themselves to plead paragraph 2 of the Statement of Claim the way it is so pleaded. It was only on 25 August 2010 that the plaintiff’s lawyers obtained the first of four reports from Dr Cheng, a psychiatrist. From that report we now learn that the plaintiff was in a traffic accident in 1993 and was awarded in excess of $600,000 in damages. The plaintiff was diagnosed as suffering from PTSD as a result of the accident in 1995. The plaintiff was diagnosed to be suffering from recurrent depressive disorder, moderate, with somatic syndrome and not PTSD in August 2010.
3. In the second report of Dr Cheng dated 20 December 2010 he gave a fuller background of the plaintiff’s PTSD caused by the plaintiff’s accident in 1993. The plaintiff was receiving psychiatric treatment on and off between 1995 and 2002. The diagnosis was reversed from PTSD to mild cognitive mood disorder and organic mood disorder in 2001. In paragraph 7 of the said report the doctor said that the plaintiff was no longer depressed.
4. The last two reports were dated 1 February and 29 April 2011. Dr Cheng basically stated that the plaintiff was still bothered by the pain and he would be depressed at times when stressed. That is understandable.
5. It is clear that the plaintiff was not suffering from PTSD now or at the time when the Statement of Claim was filed. There was no basis for the plea and no basis to adduce evidence from a psychiatrist on the issue of PTSD. However, Mr Chan, counsel for the plaintiff, now seeks to argue in paragraph 17 of his submissions, and I quote:

“For the court to deny psychiatric expert evidence would amount to making a finding summarily that the plaintiff does not have depression.”

1. I do not think that is the proper issue. The issue is assuming that the plaintiff is suffering from depression, is psychiatric evidence relevant, necessary and probative?
2. Depression is no longer a rare human condition in modern urban society. People suffer from depression from all sorts of reasons ranging from unhappy human relationships to money issues.
3. The defendant does not deny that the plaintiff is suffering from depression but argues just because the plaintiff is suffering from depression after the accident it does not mean that the accident caused the depression.
4. In light of the medical reports of Dr Cheng, I fail to see any relevance between the plaintiff’s depression and the accident.
5. If I accept the plaintiff’s argument in paragraph 17 of Mr Chan’s written submissions, then in each and every case where a person who suffers from depression after an accident, expert psychiatric evidence should be ordered. That is the logical conclusion of his argument. The outcome of the plaintiff’s argument is contrary to what the courts have said regarding the proliferation of expert evidence. I refer to the cases of *Ip Sau Lin v The Hospital Authority*, DCEC584/2007, unreported, HH Judge Ng, 9 April 2009 at 43; *Ho Man Fong v Sime Darby Motors* at paragraph 100.
6. Furthermore, even if the issue of relevance is satisfied, the expert evidence is not necessary in this case. The trial judge can come to a decision on the issues of PSLA and the plaintiff’s loss of earning capacity by looking at the medical reports.
7. The psychological treatment received by the plaintiff concentrated on pain treatment and depression arising from his relationship with his employer and stress from litigation. Further explanation by psychiatrists are unlikely to be required as necessary in the sense of being useful to the trial judge (I refer to the case of *Ip Sau Lin*, paragraphs 40 to 42).
8. By reason of the foregoing, expert psychiatric evidence is neither necessary nor cost-effective.

(Discussion re costs)

1. The plaintiff’s appeal is dismissed.

2. Costs of the appeal to the defendant, to be taxed if not agreed, with certificate for counsel.

3. The plaintiff’s own costs be taxed in accordance with Legal Aid Regulations.

# Deputy District Judge Shipp

Mr Alwin Chan, instructed by Messrs Au & Vrijmoed, for the Plaintiff

Mr Alfred C P Cheng, instructed by Winnie Leung & Co., for the Defendant