#### DCPI1320/2004

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 1320 OF 2004

BETWEEN

NG WAI SUN Plaintiff

and

CHINA OVERSEAS 1st Defendant

(HONG KONG) LIMITED

CHINA STATE CONSTRUCTION 2nd Defendant

ENGINEERING (HONG KONG)

LIMITED

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

Date of Hearing: 27 September 2005

Date of Delivery of Ruling: 27 September 2005

## R U L I N G

1. This is an application for transfer to the High Court because the plaintiff claims that the estimated amount of damages is in excess of the District Court jurisdiction. This case has been set down for the running list, not to be warned before 3 October 2005 with an estimated time of three days.
2. The main issues are the estimates for the loss of earning capacity and the post-trial loss of earnings. Previously, they were assessed at $50,000 and $144,000 respectively. Now the estimates have been revised to $100,000 and $885,360.
3. The plaintiff, according to his witness statement, says that after the accident he was able to have jobs at different times. He worked for only five days in the first job in July 2004 when he felt too painful to continue. He worked in his other job was work from September 2004 to April 2005 at $13,300 per month, which exceeds his earnings at the time of the accident. However, the plaintiff in his witness statement explains that he was able to handle that job because his colleagues were accommodating and the nature of the job did not require him to often ascend or descend the stairs. He also persevered because he was the breadwinner of the family. Thereafter, the plaintiff was unable to find any job.
4. The plaintiff’s orthopaedic expert, Dr Wong Sze-hoi, in his expert medical report suggests that in view of the plaintiff’s injuries, a more sedentary type of job will be suitable for him. Miss Chan for the plaintiff submits that the present estimate of the post-trial loss of earnings was arrived at on the basis of the statistics of the Census and Statistics Department on the average wage of a cleaning worker at about $5,000 a month.
5. The defendants’ arguments are that the plaintiff, despite all along having the information to hand, puts the estimates at substantially lower figures in the statement of damages, and now attempts at the eleventh hour to revise them substantially upwards. This amounts to an abuse.
6. I do not agree that there is any an abuse of process. It is true that the witness statement was filed in June of this year and the revised statement of damages filed in July still maintains the lower estimates. But the plaintiff thereafter took counsel’s advice, and upon seeking such advice, he proposed to revise the estimates for loss of earning capacity and the post-trial loss of earnings amongst other figures. There is no abuse of process that I can see that amounts to any overreaching.
7. I refer to the judgment of Suffiad J in HCPI1061 of 2003 *Wong Miu Kwan v* *FPDSavills Property Management Limited formerly known as First Pacific Davies (HK) Limited* where he gave guidelines on the practice for transfer of personal injury cases from the High Court to the District Court. I am of the view that the same principles apply in the vice-versa situation (as in the present case) of an application to transfer from the District Court to the High Court.
8. Suffiad J set out the principles as follows:

“(a) In the absence of abuse, a plaintiff should be entitled to frame his case in the manner that he wishes.

(b) At an interlocutory stage, it would not be proper for the court or a master to view the plaintiff’s claim in the same way as it would be viewed at trial by weighing the different evidence or by believing or disbelieving some or all of the evidence. That exercise can only be carried out when all the evidence, cross-examination and submission have been heard, particularly where there are factual and or other disputes between the parties, as for instance disputed expert opinion.

(c) Accordingly, the plaintiff’s case on quantum as framed by him ought to be viewed at its highest when determining the proper jurisdiction where the case should be brought.”

1. In light of the aforesaid guidelines and my view that there is no sufficient evidence of abuse in this matter, and given the plaintiff’s witness statement and expert medical opinion, I conclude that this case ought to be transferred to be dealt with in the High Court.

# (Marlene Ng)

# District Court Judge

Ms Winnie Chan, of Messrs Huen & Partners, for the Plaintiff

Ms Jane Lee, of Messrs Tsang, Chan & Wong, for both Defendants