# DCPI 54 / 2005

## IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 54 OF 2005

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## BETWEEN

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|  | TENG WEI YAN | Plaintiff |
|  | and |  |
|  | KWOK KAI WING | 1st Defendant |
|  | CHENG WING SAN | 2nd Defendant |
|  | BANK OF CHINA GROUP INSURANCE COMPANY LIMITED | 3rd Defendant |

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## Coram: Deputy District Judge Mimmie Chan in Court

Dates of Hearing: 25th & 26th April 2006

Date of Handing Down of Judgment: 26th May 2006

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| JUDGMENT |

1. This is an action for damages sustained by the Plaintiff for personal injuries suffered by her arising out of a traffic accident that happened at about 0410 hours on 17 June 2002. At the time of the accident, the Plaintiff was 24 years old, single, and had travelled to Hong Kong from the Mainland for a holiday with her two friends. At the time of the accident, the Plaintiff was a passenger on board a private car bearing registration number HD 8085 (“**the Vehicle**”). In the Statement of Claim, it was pleaded that the 1st Defendant was the driver of the Vehicle whereas the 2nd Defendant was the registered owner and the front seat passenger on board the Vehicle. It was claimed that the 1st Defendant so negligently drove the Vehicle when it was travelling along the first lane of Ching Cheung Road that the Vehicle left the first lane, bumped into a concrete barrier and rammed into the hillside to the left of the road.

2. The Plaintiff sustained injuries as a result of the accident, and was taken to the Caritas Medical Centre (“**CMC**”) for emergency medical treatment. She retained consciousness, and physical examinations at the Accident & Emergency Department of CMC revealed that the Plaintiff had pain and tenderness on the right shoulder and left posterior chest, and bruise and swelling on the left leg. X-rays of her chest and pelvis showed multiple fractured ribs on the left posterior side, with left pneumothorax. The Plaintiff was admitted to the Surgical Department of CMC, where she was found to have abrasion over the forehead and chin, fractured ribs (5th-8th) on the left side with hemo-pneumothorax, and a fracture of the right clavicle. Chest drainage was done immediately. An emergency laparotomy was also performed, which revealed hemoperitoneum due to a ruptured spleen. A splenectomy was performed.

3. After the operation, the Plaintiff’s condition was complicated with pneumonia. Bronchoscopy was done on 18 June 2002 and she was prescribed with antibiotics treatment. Pneumovax vaccine was given to her to provide for the increased risk of pneumonia after splenectomy and the Plaintiff was required to have a booster dose 4 years later. The Plaintiff stayed in CMC for 11 days and was discharged on 28 June 2002. She last received follow-up treatment at CMC on 11 July 2002, when she still complained of pain over the right clavicle and left ribs.

4. The 1st and 2nd Defendants filed a Defence through their solicitors, admitting that the 1st and 2nd Defendants were respectively the driver and registered owner of the Vehicle. It was denied that the 1st Defendant had been driving the Vehicle in a negligent manner. It was claimed in the Defence that whilst the 1st Defendant was travelling along the first lane of Ching Cheong Road on the night of the accident, there was an unknown vehicle travelling along the second lane on the 1st Defendant’s left at a high speed from behind. This vehicle suddenly cut into the first lane in front of the Vehicle, such that the 1st Defendant had no alternative but to swerve the Vehicle to the right to avoid collision. As a result, the Vehicle bumped into the concrete barrier and rammed into the hillside to the left of the road.

5. The action was originally fixed for trial commencing on 31 October 2005. On 29 October 2005, Messrs Day and Chan ceased to act for the 1st and 2nd Defendants, and on the same day, the insurer of the Vehicle (which had hitherto appointed Messrs Day and Chan to act for the 1st and 2nd Defendants) applied to be joined in the proceedings as 3rd Defendant. The trial date was adjourned on the 3rd Defendant’s application, and subsequently fixed for April 2006.

6. At the commencement of the trial on 25 April 2006, the 3rd Defendant applied for a further adjournment. The grounds were that as the result of enquiries made by the 3rd Defendant’s solicitors on 13 April 2006, it was revealed to them that the Police were conducting investigations and, according to a letter dated 22 April 2006 from the Cheung Sha Wan Police Station, the 1st and 2nd Defendants in these proceedings had been arrested by the Police for investigation in connection with a case of suspected perversion of the course of justice. The 1st and 2nd Defendants were on police bail and further police investigations were continuing. The 3rd Defendant sought to adjourn the trial of these proceedings in light of these on-going investigations against the 1st and 2nd Defendants. The 3rd Defendant also referred to a Chinese statement made by the 2nd Defendant on 25 July 2005, which was filed in the proceedings herein by way of the 3rd Defendant’s Hearsay Notice on 22 April 2006. I shall refer to this statement dated 25 July 2005 as “**2nd Defendant’s Statement**”. According to the 2nd Defendant’s Statement, the driver of the Vehicle at the time of the accident was not the 1st Defendant, but one Chan Yick Shing (“**Chan**”). The 2nd Defendant himself was in the front passenger seat. The 1st Defendant was actually sitting in the middle in the rear passenger seat. The Plaintiff was seated on the 1st Defendant’s left, and the other lady passenger (Cheung Lai Hung) was seated on the 1st Defendant’s right. According to the 2nd Defendant’s Statement, Chan caused the Vehicle to collide into the hillside on the left side of the road as a result of his careless driving. As the Plaintiff was injured as a result of the collision, the 2nd Defendant called the Police. Whilst they were waiting for the Police to arrive at the scene of the accident, Chan informed the 2nd Defendant that he was not yet 18 years old, and did not have a driver’s licence. The 2nd Defendant claimed that when he had permitted Chan to drive the Vehicle, Chan had told him that he did have a driver’s licence. According to the 2nd Defendant, it was agreed amongst the Plaintiff, the 1st and 2nd Defendants, Chan and Cheung Lai Hung that the 1st Defendant would be named as the driver of the Vehicle (as opposed to Chan), and that they would make up a story about a private car cutting into the lane of the Vehicle and causing the accident. The 2nd Defendant claimed that the Plaintiff and the 1st Defendant had been wide awake at the time of the accident, and that the Plaintiff had known that the driver of the Vehicle was Chan, and not the 1st Defendant. According to the 2nd Defendant, it was agreed between the Plaintiff and the 1st Defendant that the Plaintiff would make a claim for damages against the insurers, and that the compensation so recovered would be shared.

7. The 3rd Defendant’s application for adjournment was opposed by the Plaintiff. It was pointed out by Counsel for the Plaintiff that it was wholly uncertain how long the Police investigations would take, the results of such investigations were unknown and even if criminal prosecution should take place, it was unknown how long such criminal proceedings would take to conclude.

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8. The 1st Defendant did not appear in Court. The 2nd Defendant was present in Court in the morning of the first day of the trial. He appeared in person. He supported the 3rd Defendant’s application for an adjournment, and confirmed his understanding that he was being investigated by the Police. After hearing the parties, I refused the 3rd Defendant’s application for an adjournment as it would not be in the interests of justice generally to delay the trial of these proceedings further for an indefinite and unknown period of time pending the Police investigations which may be lengthy. The 2nd Defendant was warned that any evidence given by him in these proceedings may be made available to the Police in their investigations and may be used in any criminal proceedings that may be issued against him or other parties in the future. He was also reminded to take legal advice.

9. The trial thus proceeded but it should be pointed out that the 2nd Defendant did not appear after the lunch adjournment on the first day of the hearing, whilst the Plaintiff was still in the course of giving her evidence in Court. The 2nd Defendant had heard part of the Plaintiff’s evidence, and left in Court a list of questions which he had written down and which he apparently had for the Plaintiff as a result of hearing the part of the evidence which she had given whilst the 2nd Defendant was in Court. These questions were later put to the Plaintiff by me, after the Plaintiff had been cross-examined by Counsel for the 3rd Defendant.

##### Liability

10. The evidence is that the 2nd Defendant was the registered owner of the Vehicle on the day of the accident. There is no dispute as to this. However, although the Plaintiff avers in the Statement of Claim and the 1st and 2nd Defendants originally admitted in the Defence filed by their former solicitors that the 1st Defendant was the driver of the Vehicle, the 2nd Defendant’s Statement claims this was actually untrue, and that the driver of the Vehicle was at all material times Chan. The Plaintiff, in her evidence given in Court, maintained that the 1st Defendant was the driver of the Vehicle at the time when she first met up with the men in the Vehicle. It is also her evidence that she fell asleep shortly after she got into the Vehicle, and did not know what had happened until after the collision occurred. The only evidence which contradicts the Plaintiff’s evidence is the 2nd Defendant’s Statement. The Plaintiff had given notice of objection to the Hearsay Notice filed on 22 April 2006 in respect of the 2nd Defendant’s Statement. As the 2nd Defendant absented himself before the Plaintiff completed her evidence, he never gave evidence to the Court to explain the circumstances of the accident or to elaborate on the making of the 2nd Defendant’s Statement. I have to exercise my discretion as to whether or not to admit the 2nd Defendant’s Statement, and also decide on the weight to attach to such Statement. Under section 47(1) of the Evidence Ordinance, hearsay evidence shall not be excluded unless the party against whom the evidence is to be adduced objects to the admission of the evidence and the Court is satisfied, having regard to the circumstances of the case, that the exclusion of the evidence is not prejudicial to the interests of justice. In view of the circumstances in which the 2nd Defendant came to make his Statement, and having regard to all the circumstances of the case, the exclusion of the 2nd Defendant’s Statement would be prejudicial to the interests of justice, and the 2nd Defendant’s Statement should be admitted into the evidence. In deciding the weight to be attached to the 2nd Defendant’s Statement, I obviously take into account and have regard to the fact that he was not in Court to give evidence and to be cross-examined in relation to either the Statement, or the earlier admission he had made to the Police and to his former solicitors instructed by the insurers not long after the accident. The 2nd Defendant, acting in person, has not sought leave to amend the Defence to withdraw the admission made as to the identity of the driver. No explanation was given as to why he put forward the stance reflected in the 2nd Defendant’s Statement. I can only infer from reading the said Statement that he had seen fit to change his mind about maintaining the lie made up and agreed to, as he alleged, in the early hours of 17 June 2002 after the accident.

11. The onus is on the Plaintiff to prove the Defendants’ liability. When the Plaintiff gave evidence in Court, I found her to be evasive and selectively elusive in her recollection of relevant events. Her evidence in court was in many respects inconsistent with her Statement which was prepared by her own lawyers, signed by her on 5 July 2005 and filed in these proceedings. In her Statement, she had said that she had gone out on 16 June 2002 with her friend Cheung Lai Hung, Cheung Lai Hung’s boyfriend (Chan Yick Shing), and his 2 friends for dinner and disco after dinner. In Court, her evidence of her recollection of the evening of 16 June 2002 was vague. Contrary to what she had stated in her Statement, she said she had gone to the disco with Cheung Lai Hung only, and they had somehow met up with the men after the disco, as she could not remember if the men were at the disco with her. I do not find that very credible, even after taking into consideration the fact that the accident had happened 3 years ago. If the men had been at the disco with her, it was something which she would have remembered, so her evidence could have been clearer. I consider that she was being evasive in her evidence so as to avoid being questioned about the details of the evening up to and including the accident. The Plaintiff claimed in any event that she and Cheung Lai Hung met up with the men in the Vehicle HD 8085 which was involved in the accident, and that they were going on a pleasure ride. According to her, the 1st Defendant was behind the driving wheel; the 2nd Defendant was in the front seat next to the driver; the Plaintiff herself sat in the middle in the rear passenger seat, with Chan on her left and Cheung Lai Hung on her right. According to the Plaintiff’s evidence, she did not know the 1st and 2nd Defendants before she met them in the Vehicle, they were in the Vehicle when she first saw them just before she got into the Vehicle, she fell asleep shortly after getting into the Vehicle, and she was asleep until the collision had occurred.

12. The Plaintiff changed her evidence in many respects, which I will particularise here as her overall credibility as a witness is relevant to my consideration of the different issues which arise on the questions of liability and quantum. Apart from the inconsistencies described in paragraph 11 above in relation to the Plaintiff’s evidence on the events of the evening of 16 June 2002, there were many other inconsistencies between the evidence which she gave in the Statement which was prepared by her lawyers and which she signed on 5 July 2005 and the evidence which she gave in court. In her Statement, she described her own job at the time of the accident as an “assistant accounting manager”. In her oral evidence, she said she was assistant to the manager. In her Statement, she stated unequivocally that her monthly salary was “RMB6,000 per month”. In her oral evidence, when examined by her own counsel, she said that her monthly salary at the time of the accident was “around RMB4,000 to 5,000”. In her oral evidence, she also said she could not remember when she arrived in Hong Kong, or when she had returned to the Mainland after the accident. In her evidence-in-chief, the Plaintiff said she returned to work after the accident in the middle of 2004, but this was changed to July 2005 in re-examination.

13. Overall, therefore, I do not find the Plaintiff to be a totally honest or reliable witness. She was evasive in her evidence concerning how she had met up with the 1st and 2nd Defendants and Chan. She could not recall the name of Chan, at whose apartment she had stayed for one night together with Cheung Lai Hung during her stay in Hong Kong, but despite having only met the 1st and 2nd Defendants just before she got on the Vehicle, she could distinctly remember the 1st Defendant’s name in full and identified him as the alleged driver. Having only just been introduced to the 1st and 2nd Defendants when she got into the Vehicle, and having fallen asleep shortly after getting into the Vehicle, and considering her overall demeanour whilst giving evidence, I do not find her evidence on the identity of the driver to be reliable. Considering the claims made in the 2nd Defendant’s Statement, and even after taking into account the relevant factors outlined in paragraph 10 above as affecting the weight to be given to the 2nd Defendant’s Statement, I am not satisfied, on a balance of probabilities, that the 1st Defendant was indeed the driver of the Vehicle at the material time.

14. There is no further evidence regarding the vehicle which allegedly cut into the lane in front of the Vehicle other than that contained in the statements given by the 1st and 2nd Defendants to the Police, which now appear suspect as a result of the 2nd Defendant’s Statement. Without such further evidence, I accept that the collision would not have occurred but for the careless or negligent driving of the Vehicle. Whether the driver of the Vehicle was the 1st Defendant as the Plaintiff alleges, or Chan as alleged in the 2nd Defendant’s Statement, the 2nd Defendant had allowed either the 1st Defendant or Chan to drive the Vehicle. Hence, the 2nd Defendant is liable for the negligent and careless driving of the authorised driver, and for the injuries sustained by the Plaintiff as a result.

15. As the insurer of the Vehicle at the material time, the 3rd Defendant is liable to satisfy any judgment as a result of my finding of liability against the 2nd Defendant, if such judgment is not satisfied by the 2nd Defendant within 28 days.

##### Quantum

16. The Plaintiff relies upon the medical report of Dr. Lam Kwong Chin who examined the Plaintiff on 15 January 2003. The Defendants rely on the medical report of Dr. Daniel Tsoi Chi-wah, who examined the Plaintiff on 4 July 2005. There is not much dispute between the two orthopaedic surgeons on the Plaintiff’s injuries, the difference being only 3% in permanent impairment, which arose from the fact that Dr. Tsoi did not make any award for cosmetic impairment suffered by the Plaintiff for her scars.

17. When the Plaintiff was examined by Dr. Lam in January 2003, she complained that she was still suffering from left shoulder and chest pains, which became worse with exertions; residual pain in the right shoulder; left abdominal pain around the scar; irregular and infrequent menstruation after the injury; and frequent influenza after the injury. By the time of her examination by Dr. Tsoi in July 2005, the Plaintiff’s residual complaints were that there was pain around the scar over the abdomen; residual pain in the left chest wall; right shoulder pain triggered by carrying heavy objects with the right hand; and irregular menstrual pains. When she gave oral evidence in Court, her complaint was that she felt pain on her left sometimes when it rains. She also complained about the scar on her abdomen which apparently made her very self-conscious.

18. According to Dr. Lam’s report, although the Plaintiff had complained of residual right shoulder pain, there was no obvious deformity at the right shoulder, and the range of the Plaintiff’s shoulder motion and power was satisfactory. Dr. Lam considered it fair to rate the Plaintiff as having 1% impairment of the whole person due to clavicular fracture. In relation to the Plaintiff’s residual pain at the left shoulder and the upper chest area, again Dr. Lam did not find any significant abnormality and assessed the Plaintiff to have a 2% impairment due to the multiple rib fractures. However, Dr. Lam considered that the long and unsightly scar on the Plaintiff’s abdomen caused an impairment which he rated at 3%. He did not consider the irregular menstruation as any ratable permanent impairment. Neither did Dr. Lam give any ratable impairment in relation to the flu complaint which he regarded as having no direct relationship with the splenectomy. Overall, Dr. Lam considered there was a combined impairment of 6% of the whole person.

19. When Dr. Tsoi examined the Plaintiff 3 years after the accident, he concluded that the Plaintiff had recovered satisfactorily from the injuries. He was of the opinion that the Plaintiff had reached a stage of maximal medical improvement and further treatment was not required. Development of complication was not expected by Dr. Tsoi. He considered that the residual pain over the left lower chest accounts for 2% permanent impairment of the whole person. As the fractured right clavicle had healed up very satisfactorily, and the function of the right shoulder was unaffected, Dr. Tsoi concluded that the Plaintiff suffers from 3% permanent impairment of the whole person. He considered that the scar over the abdomen does not incur any functional disability and that orthopaedically, no permanent impairment was expected.

20. It is worth noting that both Dr. Lam and Dr. Tsoi considered that there is no increased risk of infection as a result of the splenectomy performed on the Plaintiff, and that there is no ratable impairment for the splenectomy.

21. There is a further report by Dr. Chow Sik Kuen, a specialist in plastic surgery. His report on the Plaintiff and the photographs attached to his report show that there is a midline vertical scar from the Plaintiff’s xiphisternum to her lower abdomen measuring 255mm long and 8mm at its widest part. The scar is partly raised and partly flat, thin, soft and irregularly pigmented. There are 2 smaller scars: one on the lower left side of the abdomen measuring 24mm, and one oblique scar 24mm long and 1mm wide near the left 7th rib which is flat, thin, soft and pale. Dr. Chow’s opinion is that the Plaintiff has 3% permanent impairment of the whole person as a result of the scars. I accept that the Plaintiff, being young and single, has suffered and will suffer some impairment as a result of the scars.

**Pain, suffering and loss of amenities**

22. I have considered the cases referred to by Counsel for the Plaintiff, including *Ho Wai-yee* v. *Yip Chuen and another*, HCPI 291 of 1996, unreported, 3 June 1999; *Lee Yuen Ngai, Amy Lawrence* v. *Lau Wing Hop*, HCPI 223 of 1999, unreported, 4 June 2001; *Chung Chun Man* v. *Chow Wai Kin and others*, HCPI 713 of 2004, unreported, 21 June 2005; and *Chan Kin Fu* v. *Lee Kam Hung and others*, DCCJ 6844 of 1984, unreported, 23 November 1984. I have taken into consideration the fact that the Plaintiff’s injuries were generally not very serious, and fortunately, the scars left on the Plaintiff were not as serious as those described in *Ho Wai-yee* v. *Yip Chuen and another.* I also note that the medical evidence before me suggests, and as both Dr. Lam and Dr. Tsoi appear to have accepted, that the modern view of physicians is that patients who have undergone splenectomy do not have a higher chance of suffering from infection, particularly more than two years after splenectomy. I therefore come to the view that an award of **HK$330,000** under this head would be appropriate.

##### Medical and other expenses

23. With the exception of the last item, the following expenses sought by the Plaintiff were agreed to by the Defendants: -

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|  | 1. Fee paid to Immigration Department for extension of stay in Hong Kong ($135 x 2) | | HK$ 270 |
|  | (2) Fee paid for follow-up at CMC | | HK$ 455 |
|  | (3) Travel expenses incurred by Plaintiff in  attending medical treatment in Hong Kong  (To CMC $30 x 2) | | HK$ 60 |
|  | (4) Cost of tonic food | | HK$1,500 |
|  | 1. Medical expenses for follow up treatment in   Mainland | | RMB2,470 |
|  | 1. Costs of visit to Hong Kong from Dongguan for   medical examination by Dr. Lam Kwong Chin | | HK$1,400 |
|  |  |  | RMB 500 |
|  | 1. Costs of unused return air tickets from Hong   Kong to Bangkok | | HK$1,670 |

24. In relation to the cost of the unused return air tickets from Hong Kong to Bangkok, the Plaintiff has not adduced any evidence on the sum of HK$1,670 claimed. Her evidence is that she had lost her ticket in the accident. However, she has not been able to produce her passport showing that she had obtained a visa to go to Thailand for her holiday after her stay in Kong Kong, nor did she produce any other evidence such as an invoice or a receipt showing that the costs of the ticket had been incurred. In these circumstances, I am not prepared to allow the sum of HK$1,670.

25. All the other items of expenses claimed by the Plaintiff are allowed, totalling **HK$3,685** and **RMB2,970**.

##### Loss of earnings

26. The Plaintiff’s job just before the accident has been inconsistently referred to in the evidence as: “assistant to manager” (in the certification of income issued by her former employer, and as described to Dr. Tsoi in Dr. Tsoi’s report); “secretary” (as described in Dr. Lam’s report); “assistant accounting manager” (as described in her Statement dated 5 July 2005); and as “manager’s assistant” in her evidence-in-chief. In cross-examination, she agreed with Counsel for the 3rd Defendant that at the time of the accident, she was working as a secretary or accounts clerk, and not as assistant to accounting manager.

27. On the basis of the oral evidence which the Plaintiff gave in Court, I do not accept her original claim that she was earning RMB6,000 a month on her job prior to the accident. Under cross-examination, her evidence was that she had received varying amounts by way of monthly earnings, sometimes as low as “RMB3,000- something” in 2002, to RMB6,000 once in January 2002 only. I accept the submission of the Plaintiff’s Counsel that on the basis of the evidence which she gave in Court, she made average monthly earnings of RMB4,800.

28. In her Statement, the Plaintiff said that physically, she could return to work about 6 months after the accident. Dr. Tsoi had recommended sick leave of about 3 months only, whereas Dr. Lam considered sick leave of 3 to 6 months as being usually justified. In the light of such evidence, I would allow the Plaintiff’s loss of earnings on the basis of RMB4,800 x 6 months, totalling **RMB28,800**.

**Loss of earning capacity**

29. According to the oral evidence of the Plaintiff, her job at the time of the accident involved the processing of information such as client information and processing of general documents. It was clerical or secretarial in nature according to her description and did not require her to exert a great deal of physical labour. After the accident, she first returned to work in October 2002 as a salesgirl, but was only able to work for a week as she found that she could not stand for a long time without feeling pain in the area of her abdomen. Starting from either mid 2004 or July 2005, the Plaintiff took on irregular jobs as a clerk or as a sales assistant, but could not stay permanently on these jobs or secure a regular job because, she said, she had to apply for leave all the time to come to Hong Kong and to tend to documents, presumably for the purpose of pursuing these proceedings. When asked by her own Counsel in Court as to whether her injury had affected her performance in her job, the Plaintiff had answered that it had not. Dr. Lam had also stated in his report of January 2003 that the Plaintiff should be physically capable to continue to work as a secretary, or have other manual jobs. Dr. Tsoi’s opinion was just as clear, if not clearer. He was of the opinion that the Plaintiff is orthopaedically fit to resume her pre-injury job, that change in occupation was unnecessary and that the Plaintiff’s future employability is basically unaffected.

30. In the light of such evidence, and bearing in mind that the Plaintiff appeared to have recovered very well from her injuries apart from the scars, which would be improved after the proposed cosmetic treatment, I can find no real support for the proposition that the Plaintiff’s future earning capacity would be affected. It seems from the evidence that her inability to secure a regular or permanent job was due to the preparations she had to make and the visits she had to make to Hong Kong in preparing for trial. According to the doctors who had examined her, her injuries have healed well, and once she puts her heart to the matter, the Plaintiff should have no great difficulty in securing a job as secretary or clerk, carrying out the same type of work which she had done prior to be accident. Adopting the test in *Moeliker* v. *Reyrollen & Co Limited* [1977] 1 WLR 132, I am not satisfied that the Plaintiff will in the future suffer a real risk of being handicapped in the labour market, or that she will encounter difficulties in finding employment similar to that in which she was engaged prior to the accident. I make no award under this head.

##### Costs of future medical care

31. Dr. Chow Sik Kuen has recommended treatment for the Plaintiff’s scars. The treatment appears reasonable, and the costs involved of **HK$20,100** are agreed. I would allow these costs accordingly.

32. The total award is accordingly for: -

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|  | (1) Pain, suffering a loss of amenity | HK$330,000 |
|  | 1. Interest at 2% from date of Writ   (14 January 2005) to Judgment |  |
|  | (3) Special damages | HK$3,685 and RMB2,970 |
|  | (4) Loss of earnings | RMB28,800 |
|  | (5) Interest on pre-trial special damages at  5.355% from the date of accident  (17 June 2002) |  |
|  | (6) Costs of future medical treatment | HK$20,100 |

33. There will be a costs order nisi that the 2nd Defendant pays the Plaintiff her costs of this action, to be taxed if not agreed, with Certificate for Counsel, and the Plaintiff’s own costs to be taxed in accordance with the Legal Aid Regulations. The Plaintiff’s claims against the 1st Defendant are dismissed, and there will also be a costs order nisi that the Plaintiff pays the 1st Defendant’s costs of the action, to be taxed if not agreed. The said costs orders nisi shall become absolute after 14 days from the date of handing down the judgment.

(Mimmie Chan)

Deputy District Judge

Mr. S.H. Lee instructed by Legal Aid Department for the Plaintiff.

The 1st Defendant, unrepresented, absent.

The 2nd Defendant, unrepresented, appearing in person (for part of the hearing only).

Miss Christina Lee instructed by M/s Chau & Lau for the 3rd Defendant.