DCPI 60/2001

IN THE District COURT OF the

HONG KONG special administrative region

Personal injuries Action No.60 of 2001

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BETWEEN

Lo Hin Fong *Plaintiff*

and

Chan Chi Shing *Defendant*

Coram: Deputy Court Judge K. Lin in Court

Date of hearing: 1 August 2002

Date of delivery of judgment: 1 August 2002

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Judgment

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*Introduction*

1. In this action, the plaintiff claims damages for injuries he allegedly suffered as a consequence of an assault on his person inflicted by the defendant. The claim arises out of an incident which took place on the morning of 6 May, 1999 at the staircase leading to the second floor of the office building at Shek Lei Pui Reservoir Filters Factory (“the Factory”). At that time, both the plaintiff and the defendant were workers employed at the Factory.
2. After the issue and service of the writ of summons, the defendant filed a defence on 1 March, 2001. In his defence, the defence did not deny liability. All he said was simply that the injury the plaintiff suffered on 6 May, 1999 was very minor and he was willing to pay a compensation of $500.00. After the filing of the defence, the defendant did not turn up at all the interlocutory hearings. Nor did he appear at the trial.

*Liability*

1. The plaintiff was born on 23 June 1948 and is now aged 54. In about April, 1990, he joined the Water Supplies Department and had since worked as a Grade II worker there until he retired on 12 April, 2001. The defendant was also a Grade II worker, and he and the plaintiff were colleagues. Both of them were assigned to work at the Factory. However, they did not get on well with each other. According to the plaintiff, they had had a big row before, and the defendant had resorted to violence.
2. On 6 May, 1999, at around 8:13 a.m., the plaintiff and the defendant met at the staircase leading to the second floor of the office building of the Factory. While the defendant was carrying 2 buckets of water sample with his both hands, he used his elbow and one of the buckets he carried to hit the plaintiff. Upon being asked by the plaintiff as to why he hit him, the defendant put down the buckets and punched the plaintiff on the nose 3 or 4 times. The plaintiff then struggled with the defendant in order to stop the defendant from hitting him. After both of them fell to the ground, the defendant then left the scene. The plaintiff complained that his nose was bleeding severely and was seriously injured. Subsequently, a report was made to the police. On 28 May, 1999, the plaintiff admitted the assault at North Kowloon Magistracy and was bound over to keep the peace in the sum of $2,000.00 for 12 months.
3. Having considered all the evidence, I accept the account of the plaintiff. I am satisfied that the defendant did unlawfully and violently assault the plaintiff on 6 May, 1999 as the plaintiff described, thereby causing him to suffer personal injury.
4. I, therefore, find for the plaintiff against the defendant on liability. Now I turn to quantum.

*Quantum*

1. After the assault, the plaintiff attended the Accident & Emergency Department of Caritas Medical Centre. He was found to have sustained fracture of the nasal bone with nose bleeding. Analgesic medicine was given. On 7 May 1999, he was treated in Yan Chai Hospital. He was found to have sustained a mild depression of nasal bridge and a deviation of the nasal septum to the right side. He now complains of persistent right nasal obstruction.
2. The plaintiff was later examined by Dr. Lo Siu Sing on 16 November, 2000. Dr. Lo prepared a medical report dated 12 December, 2000. The plaintiff did not call Dr. Lo to give evidence, but only relies on his medical report. The medical report was served on the defendant who was informed by the plaintiff’s solicitors by letter dated 11 July, 2002 that, unless they were otherwise notified by the defendant, they would not call Dr. Lo to give evidence in order to save costs. No objection has been indicated by the Defendant to this proposed course. In the circumstances, I am satisfied that it is not necessary to call the doctor to give evidence. I therefore accept the medical report of Dr. Lo and admit it into evidence.
3. According to Dr. Lo, there was a depression on the left side of the nasal bridge. The inferior turbinates were small while the middle turbinates were bulky .The nasal septum was slightly deviated to the right side dorsally. In his view, the plaintiff has depression of the nasal bridge due to the assault on 6 May 1999. The deviation of nasal septum and the enlarged middle turbinates may cause discomfort and a delusive sense of obstruction. According to him, the deviation of the nasal septum may be related to the assault on 6 May 1999, but the enlarged middle turbinates were not caused by injury. Dr. Lo is of the opinion that the nasal injury amounts to 1% permanent disability, and that the plaintiff suffered no loss of earning capacity as a result of the injury.

*PSLA*

1. The plaintiff now claims a sum of $100,000.00 as the damages for pain and suffering and loss of amenities. Having considered the injury sustained by the plaintiff, I accept the amount claimed is reasonable: see *Cheng Lai Kuen v Nan Fung Textiles Ltd* [1998] 2 HKC 730. I therefore award the sum of $100,000.00 under this head.

### Loss of Earnings

1. According to the evidence of the plaintiff, after the assault, he was given sick leave from 10 May, 1999 to 15 May, 1999, and, during this period of 6 days, he only received half his usual wage, the loss he claims under this head is $1,969.00 on the basis of his then monthly salary of $10,175.00. I see no reason why he should not succeed in claiming this sum of $1,969.00, and I award the sum of $1,969.00 as damages under this head.

### Special Damages

1. The plaintiff’s claim for special damages is as follows:
   1. Medical Expenses $120.00
   2. Bone Setter’s fees $600.00
   3. Travelling expenses $400.00
   4. Tonic food $6,000.00
2. Apart from the claim for tonic food which, I think, is on the high side, I accept the other amounts claimed above are reasonable. As regards the claim for tonic food, no receipt has been produced. Nor has the details been given in evidence. In the circumstances, I am only prepared to allow a sum of $3,000.00 for tonic food. As a result, I make a total award of $4,120.00 for special damages.

### Future Medical Expenses

1. A sum of $30,000.00 is claimed by way of future medical expenses. According to Dr. Lo, the depression of the nasal bridge may be corrected by plastic surgery. The operation costs about HK$30,000. The plaintiff told me in evidence that he did not have the money to undergo the operation, and he would do so if he had the money. I accept his evidence in this respect. I am of the view that the plaintiff is entitled to the sum of $30,000.00 as the future medical expenses. Accordingly I make an award of $30,000.00 under this head.

*Summary*

1. The plaintiff’s damages are assessed as follows:
   1. PSLA $100,000.00
   2. Loss of Earnings $1,969.00
   3. Future Medical Expenses $30,000.00
   4. Other Special Damages $4,120.00

*Conclusion*

1. There will accordingly be judgment in favour of the plaintiff for $136,089.00 with interest on the general damages at 2% from the date of the service of the writ, and on the special damages at half the judgment rate from 6 May, 1999 to the date of judgment, and thereafter at judgment rate until payment, and costs to be taxed if not agreed. The plaintiff’s own costs are to be taxed in accordance with the Legal Aid Regulations.

(K. Lin)

Deputy District Judge

Representation : -

Mr Timothy Y C Ling instructed by Messrs. Yip, Tse & Tang assigned by DLA for the Plaintiff

Defendant : Chan Chi Shing, in person, absent