## DCPI 68/2007

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 68 OF 2007

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BETWEEN

AQSA RANA (a minor suing by MUKHTAR,

MUHAMMAD her next friend and father) Plaintiff

and

TSUI LUK PUI Defendant

\_\_\_\_\_\_\_\_\_\_\_\_

Coram: Her Honour Judge H.C. Wong in Court

Dates of Hearing: 11 to 13 September 2007

Date of Delivery of Judgment: 24 September 2007

JUDGMENT

1. In the present action the Plaintiff claimed against the Defendant for injuries suffered at the traffic accident on 25 October 2004 at or about 5:15 p.m. on Tak Yan Street, Hong Kong. The Plaintiff, Aqsa Rana, was borne on 27 June 1999. She was aged 5 years and 4 months at the time of the accident. At the date of trial, she was 8 years and 3 months old. It is the Plaintiff’s case that the Plaintiff was crossing the junction of Oi Kwan Road and Tak Yan Street at about 5:14 p.m. on 25 October 2004 after attending class at Masjid Amman and Osman Ramju Sadick Islamic Centre (“the mosque”) on Oi Kwan Road when the Defendant driving vehicle registration No. FN5288 owned by the Defendant’s wife, collided with and knocked down Aqsa. It is not disputed that the Defendant drove into Tak Yan Street from Wanchai Road, intending to turn left into Oi Kwan Road at the time. It is the Plaintiff’s case that the front of the Defendant’s vehicle hit Aqsa, knocking her down, resulting in the Defendant’s car trapping Aqsa’s right foot, injuring her right foot.
2. It is the Defendant’s defence that Aqsa did not emerge onto Tak Yan Street from the direction of the mosque on Oi Kwan Road. He claimed Aqsa had emerged from the front of a taxi parked outside the playground on top of Tak Yan Street, run into Tak Yan Street, collided with the Defendant’s car and was knocked down. The Defendant claimed the point of impact with the Defendant’s vehicle was the right i.e. offside front fender and the front wheel of the Defendant’s vehicle.

The Plaintiff’s Case

1. Aqsa and her father Mr. Muhammad Mubhtar did not give evidence at the trial. The Plaintiff’s evidence came from Mr. Atiq-Ur-Rehman who was the religious studies teacher at the mosque. He told the Court Aqsa and her 2 brothers had been attending the class at the mosque on the day of the accident between 2:30 p.m. to 5:00 p.m. He further said that Friday is the main religious day of the week for Muslims and classes of religious studies for Muslim children between the ages of 3 to 16 are held weekly on Friday afternoons. 25 October 2004 was such a day. Across the road on Tak Yan Street is the playground where parents would pick up their children after the religious studies class. It was Mr. Rehman’s evidence that as soon as he was informed of the accident involving Aqsa he rushed to the scene, he found blood on the street and Aqsa injured. He saw the car involved in the accident and the driver and his wife were a Chinese couple. He said the Chinese lady told him that she was sorry and it was their mistake. He claimed the lady went to the mosque and asked for the phone number of Aqsa’s parents on the next day. He told her the girl was in hospital and gave her the phone number of the parents. She phoned the father in Mr. Rehman’s presence.
2. The 2nd witness for the Plaintiff was Mr. Mahmood Sajid who resided at the same address as Aqsa and her parents in Wanchai. On the day of the accident, he was asked by Aqsa’s father to pick up Aqsa and her 2 brothers from the mosque because her parents had a hospital appointment. Mr. Sajid said in his witness statement he was waiting for the children to come out from the mosque under a tree outside the playground on Tak Yan Street and he was chatting to a friend when the accident took place. He claimed Aqsa was walking from the mosque to the playground on Tak Yan Street, while she was crossing the road at the top of Tak Yan Street to get to the playground on the opposite side of the road, the accident happened. He also claimed that there were many children crossing the road, parents and their children walking down Tak Yan Street and children playing at the playground on Tak Yan Street. He admitted there were cars driving up Tak Yan Street and cars parked along Tak Yan Street which is a one-way street linking Wanchai Road and Oi Kwan Road. He claimed, after the accident, Aqsa was trapped under the car tyre, the driver stopped, then reversed his car. He went up to help Aqsa and carried her onto the pavement.
3. The 3rd witness for the Plaintiff was Mr. Muhammad Hassan. Mr. Hassan claimed he had just finished praying at the mosque and was walking down Tak Yan Street. He saw many children who had just finished their religious studies crossing Tak Yan Street to the playground. As he passed the entrance to the playground, he saw the Defendant’s car driving at a high speed. Within seconds, the accident happened. He went up to help Aqsa and found her foot bleeding. He shouted for someone to call the ambulance and found that someone had done so. Later on, the ambulance arrived and took the little girl to the hospital.
4. The Plaintiff produced medical reports from the Pamela Youde Nethersole Eastern Hospital and Dr. Richard K.M. Poon, a specialist in Orthopaedics and Traumatology. Medical chits and referral for physiotherapy treatments for Aqsa were produced under a hearsay notice. These have not been challenged by the Defendant.
5. The report from Dr. Leung Man Fai, Chief of Service, Department of Orthopaedics and Traumatology at the Pamela Youde Nethersole Eastern Hospital confirmed that Aqsa was:-

“alert and fully conscious. A 3 x 3 cm skin defect was found over right foot dorsum. Her ankle and toe movement were intact sensation and circulation of her right foot and ankle were normal. There was no other injury. She received two operations as excisional debridement of wound on 25 October 2004 and debridement and split-thickness skin graft on 31 October 2004. She was discharged on 13 November 2004. She was last seen on 17 November 2004. At that time both donor site of skin graft and her right foot wound healed. She will be follow up in our out-patient clinic later.”

The Defence Case

1. The Defendant, Mr. Tsui, gave evidence at the hearing. He claimed that he had been driving for 22 years and had never been convicted of careless driving. On the day of the accident, he was driving his wife and himself back to his home in Happy Valley from his office in Wanchai. He admitted he would drive through Tak Yan Street on his way home on a daily basis. He was familiar with Tak Yan Street and Oi Kwan Road. He claimed he was driving at a speed of 15-20 kmph at the time and there were cars parked along the right side of Tak Yan Street up to the entrance of the playground on the top end of Tak Yan Street near Oi Kwan Road. When he passed Tak Yan Street on the day of the accident, there were 2-3 taxis parked on the right side of the street outside the playground. As he was driving close to the 1st taxi parked at the top of Tak Yan Street, Aqsa suddenly emerged from the front of the taxi, dashing out into the road. He immediately braked and swerved his car to the left and the child crashed onto the right front part of his car. He stopped his car and saw a pedestrian signalling to him telling him not to move.
2. According to Mr. Tsui’s witness statement, he alighted from the car and saw the little girl at the right front part of his car, her right foot was bleeding. He also saw a man holding the child and a lady was calling the police. Soon after, the police and the ambulance arrived.
3. At the hearing, Mr. Tsui admitted he did reverse his car after he collided with the girl, then he alighted from his vehicle to look at the little girl whom he collided with. He claimed that after the accident he found a dent on top of the front right fender of his vehicle. Other than that, there were no damage to his car. He claimed he took a picture of the dent on the right fender of his car on 10 September 2007, the night before the trial. He claimed his car had not been repaired since the accident in October 2004.
4. The Defendant’s 2nd witness was Ms. Mable Tam Mei Po, a police inspector, who happened to be passing by Tak Yan Street on the day of the accident. Inspector Tam told the Court that just before the accident, she had been teaching at the Lady Trench Training Centre on Oi Kwan Road. As she was walking down Tak Yan Street to catch the tunnel bus on her way home, she witnessed a little girl running from her left into the road emerging from the front of a car parked on Tak Yan Street. The girl was hit by a car that was coming up Tak Yan Street. She also witnessed this car (registration No. FN5288) reversed for about half a foot to allow the little girl’s trapped foot to be released. She claimed she told the driver not to leave and then she called the police. She agreed there were a lot of children of similar age to the injured child of Indian/Pakistani descent coming out from the park and gathered round the site of the accident.

Findings

1. There is a major dispute between the Plaintiff’s and the Defendant’s witnesses on how the accident happened. According to the Plaintiff’s witnesses, Aqsa was walking from the direction of the mosque to the park on Tak Yan Street, while she was crossing Tak Yan Street she was knocked down and injured by the Defendant’s car that was coming up from the Wanchai Road end of Tak Yan Street as it reached the junction with Oi Kwan Road. According to the evidence of PW2 at the hearing, Mr. Mahmood Sajid, he had picked up the children from the mosque and was walking with the children to the park when the accident happened. He was 2½ metres behind Aqsa and was chatting to a friend on the way to the park. He did not notice what was happening to Aqsa because he was pre-occupied and as soon as he realized what had happened he rushed up to the girl, by which time, the vehicle had already stopped moving. Mr. Sajid admitted he did not see Aqsa crossing the road. His evidence in Court is somewhat different from his witness statement where he claimed he was waiting under a tree at the park on Tak Yan Street for the children to come from the mosque. He admitted that there were a number of cars parked on Tak Yan Street close to the entrance of the playground at the time. He confessed he did not notice how fast the Defendant’s vehicle was travelling before the accident, but he claimed he did see the vehicle before the accident coming up from Tak Yan Street while he was standing at the junction of Tak Yan Street and Oi Kwan Road chatting to his friend. He claimed there were many children who had come out from the mosque after their religious studies. Some of them and their parents were walking behind him on Oi Kwan Road, some were in front of him and some were in the playground and pavement of Tak Yan Street.
2. The Plaintiff’s 3rd witness Mr. Muhammad Hassan said he had passed the playground when he saw the Defendant’s vehicle coming up the road at speed. He claimed he also saw Aqsa crossing the road when she was knocked down. By that time, he had already passed the playground and was some 15 feet away from the entrance when the accident occurred, and he was not sure on which side Aqsa had crossed the road.
3. Mr. Tsui claimed Aqsa had dashed out from the top of the taxi parked outside the playground onto the road when his car drove past the entrance. He claimed he was traveling at a speed of 15–20 kmph at the time.
4. The evidence of the Defendant’s 2nd witness Inspector Tam supported the Defendant’s evidence that Aqsa was crossing the road from the playground side of the pavement on Tak Yan Street when the accident happened.
5. As Aqsa herself did not give evidence we have no first hand evidence from the Plaintiff as to what happened from the injured person herself. The Court is left with the evidence of bystanders who were in the vicinity at the time and the evidence of the Defendant. It is difficult to ascertain which version reflected what really happened at the accident. It is not disputed that Aqsa and her brothers had just finished their religious studies at the mosque and they were supposed to be walking from the mosque to the direction of the playground on Tak Yan Street. On the other hand, the evidence from the Defendant and Inspector Tam was Aqsa had dashed out from the playground side of Tak Yan Street emerging from the front of a parked taxi which had presumably blocked her view of the oncoming vehicle on Tak Yan Street. The illegally parked taxi outside the pavement to the playground entrance presumably also blocked the Defendant’s view of pedestrians crossing Tak Yan Street from the playground side.
6. On the other hand, none of the Plaintiff’s witnesses saw the accident. Mr. Sajid admitted he was chatting to his friend. Mr. Hassan had walked passed the playground and was some 15 feet away from the entrance to the playground. As the accident took place before the entrance to the playground near the top end of Tak Yan Street, it would not have been possible for Mr. Hassan to have witnessed the accident which happened behind him. He admitted in cross-examination that he was looking in the direction of Wanchai Road when he walked down Tak Yan Street. Mr. Hassan, however, made an important observation that the Defendant was travelling at speed, coming up from Wanchai Road to Tak Yan Street before the accident took place. Mr. Tsui admitted that he was travelling at a speed of 15-20 kmph after turning into Tak Yan Street from Wanchai Road, he did not slow down his vehicle when he drove past the entrance to the playground as he was approaching the junction Oi Kwan Road. There is ample evidence from all witnesses that Tak Yan Street was full of pedestrians with about 22-30 children and parents walking down Tak Yan Street on the pavement and in the playground nearby.
7. Mr. Tsui admitted driving up Tak Yan Street was his routine on his way home in Happy Valley from his office in Thomson Road; he would turn into Oi Kwan Road from Tak Yan Street. He was familiar with this area of Wanchai having worked in this area for over 20 years. Because of his familiarity with this area, he must have been aware that there is a mosque on Oi Kwan Road and on Friday afternoons he would expect children finishing their religious studies coming out of the mosque. Some of them would be playing in the playground on Tak Yan Street or parents would be waiting to pick them up in the vicinity of the playground. This is also an area where there is a school and a swimming pool. It is to be expected that there would be children in the vicinity of a playground, and they would be crossing the road and walking down Oi Kwan Road and Tak Yan Street. It is incumbent upon drivers driving up Tak Yan Street to take special care because young children crossing the road on their own near the playground are to be expected.
8. In the words of the author of Clerk & Lindsell on Torts p. 182 para. 3-53:-

“**3-53 Anticipating danger** A reasonable claimant must not expect that others will always observe due care in their conduct. “A prudent man will guard against the possible negligence of others, when experience shows such negligence to be common.” Normally, a clamant should, for his own protection, keep his eyes open and take proper precautions to guard against the occurrence of an accident……”

**“3-54 Contributory negligence of children** Conduct on the part of a child which contributes to an accident will not necessarily be judged in the same light as similar conduct by an adult. What is negligence in an adult is not necessarily negligence in a child. The exercise of “ordinary care must mean that degree of care which may reasonably be expected of a person in the [claimant’s] situation”, which in the case of a very young child could be nil. So in *Gardner v Grace*, where a child, aged three-and-a half years, ran out into a road and was knocked over by the defendant’s cart, it was held that the defence of contributory negligence did not apply……”

“**3-55** In considering whether a child has taken reasonable care for his own safety regard must be had to the age of the child, the circumstances of the case and the knowledge by the particular child of the dangers to which the defendant’s negligence has exposed him. In *Gough v Thorne*, Lord Denning M.R. said that a very young child cannot be guilty of contributory negligence; an older child may be, but it depends on the circumstances. A judge should only find a child guilty of contributory negligence if he or she is of such an age as reasonably to be expected to take precautions for his or her own safety. This is not an entirely subjective test, because the question is whether an “ordinary child” of the claimant’s age could be expected to have done any more than the claimant, and an ordinary child is neither a “paragon of prudence” nor “scatter-brained”. Theoretically, there is no age below which , as a matter of law, it can be said that a child cannot be guilty of contributory negligence, but in practice it is unreasonable to exact a high standard.”

1. Mr. Wong, Counsel for the Defendant, relied on the case of *Chan Hwai Yan v. Cheng Yip Chi* HCPI 510/2000 where Seagroatt J. found the defendant not liable because he was too close to stop in time to take any effective avoiding action when the minor plaintiff was moving quickly from her mother’s left across the front of the mother and the sister when she was knocked down. The second case referred to by Mr. Wong was the case of C*han Chi Lung v. Lam Shek Wu* HCPI 401/2001. The plaintiff had walked suddenly from the pavement onto the road when the defendant’s taxi came in to contact with the plaintiff. Seagroatt J. found the Defendant not negligent. The third case referred to by Mr. Wong is the English case of *Moore (an infant)v Poyner* [1975] RTR 127 where the infant who ran on to the roadway in front of a parked coach was struck by a passing car. The Court of Appeal found the driver of the passing car who was driving at a safe speed was not liable. In the case of *Lau Shun Hing v. Ng Ching Hung* [1991] 1 HKC [179] the Court of Appeal found the defendant not liable to the accident where the plaintiff suddenly ran out from a maxicab onto the road and was hit by the defendant’s vehicle. The defendant did not see the plaintiff before the accident because his view was blocked by the maxicab. Mr. Beel, Counsel for the Plaintiff, referred to the cases of *Yuen Yan Ting, an infant suing by her father* *and next friend Yuen Hon Kit* *v. Yan Yan Motors Ltd & Another* HCPI 956/2000 where Deputy High Court Judge Longley held that the 3 years and 9 months infant was not guilty of contributory negligence for running out from a traffic island at a public light bus stand in Luen Wo Market. Deputy Judge Longley referred to the judgment of Lord Denning MR in *Gough v Thorne* [1996] 3 ALL ER 398 at p. 399 H to I:-

“I am afraid that I cannot agree with the judge. A very young child cannot be guilty of contributory negligence. An older child may be; but it depends on the circumstances. A judge should only find a child guilty of contributory negligence if he or she is of such an age as reasonably to be expected to take precautions for his or her own safety: and then he or she is only to be found guilty if blame should be attached to him or her. A child has not the road sense or the experience of his or her elders. He or she is not to be found guilty unless he or she is blameworthy.”

1. Another case relied on by Mr. Beel is *Chan Hoi Shan (by her father and next friend, Chan Chi Kin) v. Chan Man Hing & Another* HCPI 199/2005 a judgment of Sakhrani J. of 8 December 2006. At para. 40 on p. 10 of the judgment he held:-

“In my judgment the accident was caused because the 1st defendant was negligent as he had failed to keep a proper lookout for children stepping or running out onto the road and he had also failed to reduce his speed as he was approaching the Green Man crossing and the school. Although the lights were green in his favour, it did not entitle him to lower his standard of care. A green light is permission to a driver to drive beyond a certain point but does not entitle him to lower his standard of care (*Au Cheung v. Choi Lai-fan & another*  [1979] HKLR 543).”

1. Sakhrani J. found the major portion of fault must lie with the Plaintiff who was 9 years old at the time because she ran across the road when the red man light was on and without making sure the road was clear. He found the extent of her contributory negligence to be 60%.
2. I have been referred to the Road Users’ Code published by the Transport Department. P. 50 of the code stated:-

“Drivers have the legal and moral responsibility to take proper care to avoid accidents with pedestrians at all times and places – even if the pedestrian is jaywalking. Always try to give way to a pedestrian on the roadway.”

“**Crossing the road**

Junctions are a common place for pedestrians to cross the road, particularly across a side road where it joins a main road.

Give way to pedestrians crossing the road into which you are turning.

When approaching a major road give way to pedestrians crossing or waiting to cross.

Look out for pedestrians crossing the road using gaps between parked vehicles.”

“**Child pedestrians**

Children cannot judge speeds very well and younger children also have difficulty in concentrating on and understanding the dangers of the road. Small children are also more easily hidden by parked vehicles, roadside objects and other pedestrians. Children may step or run on to the road when you do not expect them.

Drive slowly near schools and look out for children getting on or off buses.

Drive slowly near children’s playgrounds.”

1. The code gives sound advice to drivers on the road. It is unfortunate that the Defendant failed to heed these guidelines when he was driving down Tak Yan Street on the day of the accident. He knew the area well for he drove into Tak Yan Street on a daily basis. He knew there are schools in the vicinity, there is also a mosque and a swimming pool in the area of Morrison Hill. He admitted he was maintaining a driving speed of 15-20 kmph after he turned into Tak Yan Street. 15-20 kmph cannot be described as high speed in urban area, but unfortunately, he had failed to slow down his car in a playground and school area and upon reaching the junction between Tak Yan Street and Oi Kwan Road; in particular he failed to keep a proper look out for pedestrians crossing the road at the top end of Tak Yan Street where a children’s playground is situated. He knew very well there were a lot of children in the area for he admitted he saw children walking down Tak Yan Steet. According to the Plaintiff’s and the Defendant’s witnesses, there were at least 20-30 children at the junction of Oi Kwan Street and Tak Yan Street and in the playground, yet he failed to slow down his vehicle as he approached the junction to Oi Kwan Road where children coming from the mosque were expected to cross the road in the direction of the playground. I find the Defendant negligent and is liable for the accident.

## Contributory Negligence

1. As to whether Aqsa had contributed to the negligence, one has to look at the circumstances that led to the accident. Given the positions of various witnesses at the time of the accident, it seems to me that Inspector Tam gave a more credible version of what happened at the accident even though it may not be logical for Aqsa to be running back from the playground to the direction of the mosque by crossing the road from the playground to the mosque side of Tak Yan Street. Examining the photographs showing Aqsa’s injuries and comparing them to the description in the medical reports of her wounds from doctors who attended to her at Pamela Youde Nethersole Eastern Hospital and from Dr. Richard Poon, her injury was on the outside of her right ankle. The photographs on pages 110D-110E showed the post-operation scars covering the front middle part of her right foot stretching from the outside of the ankle area. Para. 3 of the report of Dr. Leung of Pamela Youde Nethersole Eastern Hospital on p. 88 said:-

“A 3 x 3 cm skin defect was found over her right foot dorsum. …… There was no other injury.”

1. According to para. 2 of Dr. Richard Poon’s medical report (p. 91) he said:-

“According to her father, Ms. Rana sustained injury to her right ankle and foot when a motor vehicle ran over the foot, causing her to collapse onto the ground.

According to the report by Dr. Leung Man Fai, her right foot was trapped by the car wheel. She was alert and fully conscious. Examination showed a 3cm x 3cm skin defect at the dorsum of her right foot.”

1. The witnesses giving evidence at the trial also testified that the skin at the top dorsum of the right foot of Aqsa had been torn during the accident. The torn and ripped skin on the dorsum of Aqsa’s right foot close to the outside of her ankle would suggest that the car had come from her right side and the wheel ran over the top of her right foot, her outside foot, which had stepped forward. If she had, as claimed by the Defendant, dashed out from the front of the taxi on the right side of Tak Yan Street outside the playground, the injury would either be on the outside left ankle or the inside of the right foot. I have invited Mr. Wong Counsel for the Defendant, to explain why Aqsa’s injury was on the outside of her right ankle. Mr. Wong suggested that Aqsa might have been walking towards the Defendant’s car when she collided with the Defendant’s vehicle. He further proposed that she might have even been playing hide and seek at the time and was running into the Defendant’s car from the front end. However there were no such evidence to suggest Aqsa was playing hide and seek at the time of the accident or running down Tak Yan Street from the top end. The evidence from the Defendant was, she had dashed out from the front of the taxi after the Defendant’s vehicle had passed her and she collided with the right front fender of the Defendant’s car. The Defendant also produced a photograph of his car taken 3 years after the accident that showed a dent on the top of the bonnet. He claimed the dent was caused by Aqsa during the collision. Mr. Wong was unable to explain how a dent could be caused by 5 years old girl who collided with the front offside and right wheel of the Defendant’s car. There was no dent on the front right fender of the Defendant’s car at all. I find the evidence of the photograph taken 3 years after the accident highly suspicious and of no probative value whatsoever.
2. Judging from the injury on Aqsa’s right foot, it is highly likely that her injury was caused by the effect of the front wheel of the Defendant’s car running over her right foot. It is also likely that the injury was made worse by the Defendant backing his car without first checking on Aqsa after the collision. Mr. Tsui admitted he did not step out of his car before reversing his car. It is likely that by reversing the car the tyre on his car could well have caused further injury to Aqsa’s right foot trapped underneath the car causing the skin on top of the right foot to be ripped and torn off. That can be the only possible explanation why Aqsa’s right ankle was injured on the outside when she ran from the playground side of Tak Yan Street onto the road.
3. In considering whether Aqsa had contributed to the negligence, the Court must look at her age, the circumstances of the case and the knowledge of the child to the dangers to which the Defendant’s negligence had exposed her. Aqsa was 5 years old at the time of the accident, she was not as young as the infant in the *Yuen Yan Ting* case but she was younger than the child in the *Chan Hoi Shan* case. In the C*han Hoi Shan* case, the driver had the right of way because the traffic light was against her when Chan Hoi Shan crossed the road. In the present case, there was no traffic light and no pedestrian crossing at Tak Yan Street, it is a stretch of road where pedestrians would be expected to cross close to the junction with Oi Kwan Road and children are known to cross on their way to the playground. It is undisputed that a 5 years old child would not have appreciated the danger on the road as an older child might have; furthermore, this is in a quiet school area where children with their parents are seen in the vicinity, this may have given her a false impression of safety crossing Tak Yan Street even if she had emerged from the top of a parked taxi outside the playground on Tak Yan Street. For this reason, I find the contributory negligence from Aqsa is no more than 20%.

Quantum

Pain, Suffering, Loss of Amenities

1. Aqsa received 2 operations on her right foot. She was hospitalized between 25 October 2004 and 13 November 2004. Her right foot and ankle were supported in a cast when she was discharged. According to Dr. Poon’s report (p. 91), the cast was changed from time to time and there were recurrent discharges from the wound. The cast was eventually removed after 3 months.
2. Due to the thickness of the skin graft, a further operation might be required as Aqsa become older to ensure more stable and durable skin coverage over the right ankle and foot. According to Dr. Poon, it had taken one year of repeated dressing changes before the wound finally healed up completely in February 2006 after Aqsa’s last follow-up in February 2005. During this period she had problems walking properly and going to school.
3. Aqsa is now left with an unsightly scar on the right ankle and foot, mild hypersensitivity at the skin graft donor site in the right thigh and pain in the bone under the grafted site on rough contact. This scar from the donor site is 8 cm x 7 cm and the scar on the right ankle and foot is 16 cm x 5 cm. The area over the right ankle and foot is now healed and she has normal right ankle and foot function. According to Dr. Poon, “the grafted area is pigmented, unsightly and anaesthetic, and will probably remain so as she grows up. The split thickness skin graft is also less durable than normal or full thickness grafted skin because it lies over mostly bones and ligaments rather than muscle, and across the ankle joint which stretches, compresses and twists with each motion making it even less durable and more susceptible to breakdown”. That was why her doctor had advised a replacement with the skin flap to ensure more stable and durable skin coverage. In Dr. Poon’s estimation, the skin flap procedure requiring the expertise of a plastic surgeon done at a private hospital would cost in the region of $40,000. The scar would likely be more extensive following a skin flap procedure, which will add to the scarring on Aqsa. The unsightly scar in the right ankle and foot and the donor region would be socially awkward when she puts on shoes without socks, during swimming and in communal changing rooms. She will also not be expected to pursue a career as a photographic or fashion model or jobs that require a normal looking ankle and foot. Dr. Poon assessed in the light of the loss of muscle bulk in the right calf, disfigurement caused by the grafted area and its possible future problems, there is a 8% impairment of the whole person resulting from the traffic accident.
4. Mr. Beel accepted that the Plaintiff’s injury cannot be categorized as “serious injury” defined in the case of *Lee Ting Lam*. He referred to the case of *Chiu Wing Lai* *v. Chung Dok Restaurant & Pang Heung Lin* 1995 HKLD 467 where the 2½ year old infant was scalded by a mixture of bleaching liquid and boiling water in a plastic bucket. He received a conservative treatment including split skin graft and had to wear pressure garments for 6 years leaving conspicuous scarring on trunk, thighs and left hand. Master O’Donnell awarded the sum of $300,000 in 1995 which is equivalent to $500,850 in 1998. A further sum of cosmetic disability assessed at $200,000 was awarded.
5. In the case of *LeungYuk Kwan v. Maple Professional Beauty Centre Limited* HCPI 274 of 2002, Master de Souza awarded the sum of $300,000 on PSLA to the Plaintiff who suffered ugly scars over the front and back of her right lower extremity included small dots of pigmented scar over the upper part of the right thigh, a large round pigmented scar over the upper right leg, a long vertical linear scar beside the round scar on the right leg and a small pigmented scar at the medial side of the posterior surface of the right leg.
6. Mr. Wong referred to the case of *Susi Yanti & Lo Ka Ying v. Chu Shiu Chuen* HCPI 1176 of 2000 an assessment by Master de Souza on 2 November 2001 where he awarded a PSLA sum of $380,000 to the 1st plaintiff who suffered from 19 very conspicuous, darkly pigmented, raised and scattered scars of significant dimensions on the back of the 1st plaintiff’s right leg, 4 obvious unsightly scars and scattered abrasions and puncture markings on the left thigh. There were 2 further thickened and pigmented scars on her upper right arm. The permanent cosmetic disability was assessed by the doctor to be 5% impairment of the whole person on account of her psychiatric disability estimated at 8%. Mr. Wong suggested the sum of $180,000-$200,000 to be the appropriate award under this head in the present case.
7. After considering the authority cited to me, I find the pain suffered by Aqsa in this case had been prolonged by the failure of her wound to be completely healed in the 1½ year that followed the accident. The pain, suffering and loss of amenities have to cover the cosmetic aspect for this little girl because the scar would affect her more when she grows up. I find the sum of $300,000 to be an appropriate award under this head.

Future Medical Expenses

1. I accept the recommendation by the doctor at Pamela Youde Nethersole Eastern Hospital that a future skin graft would be necessary to improve Aqsa’s foot in order to give a more stable and durable skin covering on her right ankle. I further accept Dr. Poon’s recommendation that it should be done by a cosmetic surgeon because it would make the scars on the donor site and on the injured right ankle look better cosmetically. Therefore I would allow the sum of $40,000 to be awarded for future medical expenses.
2. I accept Mr. Beel’s submission that since the Court had not heard any evidence that supported the claim for clinical psychology treatments to help Aqsa deal with the trauma of the accident, surgery and the scarring. I would make no award under this head.

Special Damages

1. The Plaintiff claimed $1,879 under this head for medical and travelling expenses. This had been agreed by the Defendant and I so award.

Summary

1. PSLA $300,000.00

Future medical expenses $40,000.00

Special Damages $1,879.00

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$341,879.00

Less: 20% Contributory Negligence

Total $273,503.20

Interests

1. Interests on general damages at 2% from date of writ to the date of judgment. Interests on special damages at half judgment rate from date of accident to the date of judgment.

Costs

1. Costs to the Plaintiff with certificate for Counsel to be taxed if not agreed on common fund basis.

( H.C. Wong )

District Court Judge

Parties:

Mr. Trevor Beel instructed by Messrs. Massie & Clement for the Plaintiff.

Mr. C.K. Wong instructed by Messrs. Waller Ma Huang & Yeung for the Defendant.