DCPI 98/2000

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 98 OF 2000

BETWEEN

NG MING WA Plaintiff

and

CHAN LAI MEI 1st Defendant

CHAN HONG LEUNG 2nd Defendant

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Coram : H.H. Judge Lam in Court

Dates of trial : 15th – 16th May 2001

Date of judgment : 30th May 2001

JUDGMENT

On 30th July 1998 at around 7:50 p.m., there was a traffic accident at Hip Wo Street, Kwun Tong, in which a motor cycle GK2319 collided with a private vehicle HU1864. The Plaintiff was the motor cyclist. He sustained personal injuries in the accident. The 1st Defendant was the driver of HU1864. The 2nd Defendant was the registered owner of that car. In this action, the Plaintiff claimed against the Defendants for damages in respect of his personal injuries and costs of repair of the motor cycle. The Defendants counterclaimed in respect of the costs of repair for HU1864 and damages for the loss of use during the period when the car was undergoing repair. Each party blamed the other for causing the accident. There has not been any police prosecution regarding this accident.

At the time of the accident, the Plaintiff was travelling along Hip Wo Street in the direction of Sau Mau Ping. The 1st Defendant was travelling with her boyfriend Wong Kin Chung [“Wong”] in the opposite direction. There was a road junction at which traffic at Hip Wo Street could turn into Wan Hon Street. The 1st Defendant intended to turn into Wan Hon Street. The junction was controlled by traffic lights. In addition to the usual red, amber and green, the traffic lights controlling the 1st Defendant’s side of Hip Wo Street also had an extra light, a green arrow (or as Mr. Surman for the Plaintiff called it, a green filter). According to the evidence from the Transport Department, the sequence of the traffic lights at the material time was that at Stage A, there would be solid green lights at both side of Hip Wo Street. This lasted for 52 seconds. Then at Stage B, the traffic light controlling the Plaintiff’s side of the road would turn to red. The green arrow on the 1st Defendant’s side would be switched on. This lasted for 23 seconds. At the last stage, Stage C, the traffic lights on both sides would be red to allow traffic from Wan Hon Street and Tsui Ping Road (at the other side of Hip Wo Street) to turn into Hip Wo Street.

The Plaintiff said when he reached the junction, the traffic light on his side of the road was green, viz. at Stage A. On the other hand, the 1st Defendant and Wong said that before she turned into Wan Hon Street, the green arrow was on, viz. at Stage B. This means that the traffic light on the Plaintiff’s side was red. They also said the 1st Defendant had stopped at the pocket to wait for the green arrow before turning into Wan Hon Street.

The Plaintiff gave evidence in the witness box. He said he was travelling at about 40 kmph. at the fast lane along Hip Wo Street. He first noticed the 1st Defendant’s car about 5 to 6 vehicle lengths away. That car had stopped at the pocket. The Plaintiff continued to move forward at the same speed and when he reached the yellow lines at the traffic light (those indicating the position where the pedestrians could cross the road), the 1st Defendant suddenly turned into Wan Hon Street at high speed. He tried to brake but could not stop in time. He did not swerve. He said he collided with the 1st Defendant’s car at the fast lane. The 1st Defendant did not stop until her car moved to the slow lane. As a result of the collision, the Plaintiff said he was thrown into air and landed in front of the 1st Defendant’s car. He later changed his evidence and said it was at the back of the 1st Defendant’s vehicle and he marked on Exhibit P-2 the position where he was when he hit the ground. After that, he got up, took off his helmet and walked to examine both vehicles.

As I have already mentioned, the 1st Defendant said she stopped at the pocket and checked that there was no oncoming traffic at the opposite lane for 4 to 5 vehicle lengths. She waited until the green arrow was on. She shifted into first gear (her car was manual shift instead of automatic) and turned into the direction of Wan Hon Street. Soon after she turned, collision occurred. The front of her vehicle had almost reached Wan Hon Street at the safety island. She stopped immediately after the accident. Her first sight of the Plaintiff’s motor cycle was after the accident. After she got off, she saw the Plaintiff’s motor cycle lying on the ground at the left side of her car. There was also a patch of oil spilt out from the motor cycle. The Plaintiff walked to her and Wong holding his helmet. She asked the Plaintiff if there was something wrong with him in colliding into her vehicle like that. The Plaintiff knelt down to beg her not to report the matter to police as he did not mean to cause the accident. She insisted on reporting to police and Wong did so. At the scene she took photos and they are produced at Section D II p.39 of the Court Bundle. Wong also gave evidence and corroborated her.

I find the photos taken at the scene by the 1st Defendant (at Section D II p.39 and 40) and the photos taken by the Plaintiff (at Section D II p.41 and 42) very useful in this case in resolving the dispute of facts. Based on the Plaintiff’s own photos, I find that the accident could not have happened in the manner as deposed by the Plaintiff. If the 1st Defendant only started to turn when the Plaintiff reached the yellow lines, the point of impact should be at the front of the 1st Defendant’s car. Bearing in mind that the 1st Defendant’s car was a manual shift vehicle, it must be started with first gear after having stopped at the pocket. It could not be travelling very fast at that time. It is however indisputable that the impact was to the rear door of the 1st Defendant’s car. It can be seen from the Defendants’ photos that the motor cycle hit the private car at the left rear door although the central pillar and part of the left front door were also damaged. The first point of impact, judging from the photos, was at the rear door. The patch of oil on the ground was also shown on the photo. This indicated that the 1st Defendant did stop almost immediately after the accident.

From the Defendants’ photos, one can also see that the front of the Defendants’ car was near the safety island at Wan Hon Street (comparing the middle photo at p.39 with the bottom one at p.41). It was not that far from the junction as can be seen at the bottom photo at p.40. Although Mr. Surman cross-examined the 1st Defendant on this point based on the photos at p.41, he did not refer to the photo at p.39. The 1st Defendant said firmly that her car stopped near to the safety island. On the balance of probability, I find as a fact that the accident took place at the slow lane instead of the fast lane.

Further, if the Plaintiff was actually thrown into the air and landed in the position as he depicted in Exhibit P-2, it would imply that he was thrown across the 1st Defendant’s car over the air. This is a most unlikely scenario bearing in mind the relatively minor nature of the injuries sustained by the Plaintiff. In fact, the Plaintiff could stand up immediately after the accident and walked to examine the vehicles.

I do not believe the Plaintiff and I reject his evidence. However, I still have to examine the evidence of 1st Defendant and Wong. Mr. Surman criticised them by referring to their failure to include in their respective police statements the Plaintiff’s request for not reporting the matter to the police. The 1st Defendant and Wong explained that they did mention this to the police but were told by police officers that it was not useful. I accept their explanations in the witness box. Another criticism by Mr.Surman was that the Defendants’ car could not have stopped near the safety islands at Wan Hon Street. He made this submission on the basis of the photos at p.41 and 42 and the Plaintiff’s evidence that the accident happened at the fast lane. I have dealt with these previously. In short, I find as a fact that the accident happened at the slow lane and the photos at p.39-40 supported the 1st Defendant’s evidence.

It was also suggested that the sketch attaching to the 1st Defendant’s police statement indicated that before the 1st Defendant turned, she stopped beyond the pocket. Mr. Surman said the 1st Defendant altered her evidence in this regard. This was based on an answer given by the 1st Defendant under cross-examination where she agreed that she stopped at the position shown on the sketch. I have listened carefully to the court recording of that part of the evidence again (starting at around 12:23:45 on 15th May 2001), I must say that Mr. Surman was very skilful in his cross-examination. When he first asked the 1st Defendant question in that regard, he did not show her the sketch. Although the 1st Defendant agreed with his suggestion that the sketch showed the position where she stopped, she also said at the same time that she stopped at the position to give way (at about 12:24: 59). She reiterated again in the next answer that she did not go beyond the pocket (at about 12:25:23). When the sketch was shown to her later (at 12:25:40), she immediately explained that the sketch did not show where she stopped before she turned and only showed her route after she started moving again (12:26:10). In fact, if one read her police statement, she did clearly tell the police that she stopped at the give way position, viz. inside the pocket. The Plaintiff’s own evidence was that he saw the 1st Defendant stopped inside the pocket. Despite the forensic skill displayed by Mr. Surman, reading the evidence fairly as a whole, I do not regard this matter as reflecting adversely on her credibility.

Another point which Mr. Surman relied upon to advance a submission that the 1st Defendant was a witness who “improved” her evidence is an alleged inconsistency between her police statement and her evidence in the witness box on the distance to which she paid attention. Again, this was achieved by the skilful cross-examination by Mr. Surman. I have also listened to the court recording of the relevant part of evidence (from about 12:46) before I write this judgment. Although the 1st Defendant did agree to a suggestion put to her by Mr. Surman that she paid attention to the stretch of Hip Woo Street beyond 12 metres before turning, she also said quite firmly that her evidence was that she made sure that there was no traffic for 4 to 5 vehicles length before she turned. In fact, she honestly told the court that she could not be sure whether there were traffic coming beyond 4 to 5 vehicle lengths. Although she did look down the road beyond 8 to 12 metres, she could not be sure whether there was no vehicle beyond 5 to 6 vehicle lengths and there could be something coming which she did not know (at about 2:34:39 to 2:41:10). This is consistent with her statement given to the police. I again do not regard this matter as reflecting adversely on her credibility.

Mr. Surman also referred me to other peripheral matters on which he suggested the 1st Defendant was improving her evidence. I have considered those and I mean no disrespect to him in not alluding to each and every one of those matters in this judgment. However, having regard to the evidence before me as a whole, I do not find these as sufficient to cause me to doubt the credibility of the 1st Defendant. I find the 1st Defendant and Wong to be honest and credible witnesses with regard to how the accident happened and I accept their evidence. I find as a fact that the 1st Defendant had stopped within the pocket and before she started to drive her car beyond the pocket, the green arrow had been turned on.

Mr. Surman submitted that even if I accept the 1st Defendant’s version as to how the accident occurred, she should still be liable. Even if the green arrow was on, he submitted that the 1st Defendant should pay attention to the traffic and the fact that she did not see the Plaintiff coming is sufficient in establishing her negligence. Whilst I accept that the green arrow did not give the 1st Defendant a licence to turn without regard to the then traffic condition, I hold that in the circumstances of this case, the 1st Defendant has discharged her duty as a reasonable driver before she proceeded from the pocket. Since the collision occurred at the slow lane and it was the rear door of the 1st Defendant’s car that was hit by the Plaintiff, when the 1st Defendant proceeded from the pocket the Plaintiff was probably quite far away. Since the traffic light was in her favour, she was entitled to expect that even if there were oncoming traffic, it would stop at the junction. There is no suggestion from Mr. Surman that the Plaintiff was speeding towards the junction in a manner which would have stop a reasonable driver from proceeding from the pocket although the green arrow had been turned on. Further, the photos of the scene at p.41 do suggest to me that that stretch of Hip Woo Street has a gradient and this could explain why the 1st Defendant could not be sure about the traffic further down the road although it was a straight road.

For these reasons, I hold that the Plaintiff is 100% liable in respect of the accident.

**Quantum**

In respect of the Counterclaim, there is no dispute with regard to $600 motor survey fee and $45 search fee. As to the repairing costs of HU1874, Mr. Surman said they were excessive and he suggested a further 25% discount should be imposed on top of the 25% discount made by the loss adjuster on the original estimate. The adjuster Mr. Benny Hui gave evidence before me and I find him to be credible and reliable. I accept his assessment that after the 25% discount and the deletion of certain items in the original estimate, the repair costs of $49,493.50 was reasonable. I do not think the Defendants could be criticised as being unreasonable by asking Dah Cheong Hong to repair the car instead of some smaller garage. HU1874 was a new car, its first registration was dated 25th June 1998, just over one month before the accident. In any event, the Plaintiff has not called any evidence as to what would be the charges of a smaller garage and how their standards compared with Dah Cheong Hong. Neither did the Plaintiff call any surveyor to dispute the evidence of Mr. Hui.

As to the loss of use, Mr. Pang for the Defendants conceded that he could only claim for 2 months. That is a sensible concession in the light of the evidence that the return of HU1874 to the Defendants were delayed beyond 7th October 1998 by matters unrelated to the accident. Mr. Surman submitted that the 1st Defendant should take a mini-bus instead of taxi. I am of the view that for a person who used to drive herself to work, it is reasonable for the 1st Defendant to take a taxi during the time when the vehicle was being repaired. I allow a sum of $6,000 under this head.

The total sum awarded in favour of the Defendants is therefore $56,138.50.

Although I have found that the Plaintiff to be wholly liable for the accident, I shall also make an assessment of damages recoverable by him just in case that the matter is being taken further. No case has been cited to me with regard to the appropriate award for pain and suffering. The medical evidence showed that the Plaintiff suffered a fracture of the right clavicle. He was taken to the United Christian Hospital after the accident. He was given an arm sling. He was discharged on the same day and followed up by the Department of Orthopaedics & Traumatology until 2nd September 1998. He remained in the same job. He did not suffer any loss of income. He can still play soccer although he said he played less than before. He cut down his nocturnal activities. According to X-ray taken on 31st March 2000 in respect of his clavicles, no bony lesion was noted and the acrominoclavicular and stenoclavicular joints were intact. Dr. Chan Kwok Pui examined the Plaintiff on 31st March 2000. He assessed that the Plaintiff suffered 1% impairment of the whole person. The Plaintiff’s complaints are pain and stiffness of the right shoulder.

Mr. Surman asked for a figure of $150,000 under PSLA. I think that would be too high. His case is less serious than the plaintiff in the case of **Lau Choi v. Szeto Wai Hung (1984) HKLJ 265** cited in Section V [2154] of **Butterworths’ Hong Kong Personal Injury Service**. In that case the plaintiff was hospitalised for 1.5 month and the court awarded $20,000 under PSLA which was equivalent to $84,105 in 1998. In **Joean Wong Peter v. Mak Yiu Sum (1988) HKLJ 150** cited in Section V [5651] of **Butterworths’ Hong Kong Personal Injury Service**, a sum of $10,000 was awarded to a plaintiff who suffered fractures to the right clavicle and the 4th rib. Her fracture did not unite, resulting in ‘frozen shoulder’. The equivalent was $34,650 in 1998. In the instant case, I would assess a sum of $50,000 under PSLA to the Plaintiff.

The Plaintiff also asked for an award for handicap in the labour market. He said he needed to ask for help in lifting heavy objects and this adversely affected his promotion prospect. No evidence has been led as to the risk of his losing his current job. He remains in the job and it is now more than 2 years after the accident. I am not satisfied that there is such a risk. See **Chan Wai Tong v. Li Ping Sum [1985] 1 HKLR 176 at p.183B to E** as to the evidence required to establish this head of claim. With regard to the loss of promotion prospect, in the absence of evidence as to the promotion prospect of the Plaintiff but for the accident and his employer’s appraisal of his performance after the accident, and without any evidence as to the income he would achieve if he is promoted, I am not prepared to make any assessment under this head. I am not satisfied that the Plaintiff’s injury has so affected his promotion prospect that it would justify an award. I shall therefore make no award for loss of earning capacity in any event.

There is no dispute as to the special damages set out under paragraph 8 of the Revised Statement of Damages in the total sum of $11,103.

I therefore order that the Plaintiff’s claim be dismissed and judgment be entered against the Plaintiff in the Counterclaim in the sum of $56,138.50 with interest from 5th July 2000 up to today. Unless parties wish to argue otherwise (in which event, the case is to be restored before me), the interest would be at judgment rate. There will be a cost order nisi that the Plaintiff do pay the Defendants’ costs of this action, such costs to be taxed if not agreed.

J. Lam

District Judge