#### DCPI 115/2006

IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INURIES ACTION NO. 115 OF 2006

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| BETWEEN | CHIU PO LING, a minor suing by his mother and next friend, SHEK KAM KIU | Plaintiff |
|  | and |  |
|  | WONG YUET | Defendant |

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##### Coram: Deputy Judge A. B. bin Wahab

Date of hearing: 7 February 2007

Date of handing down judgment: 22 February 2007

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JUDGMENT

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1. This is an assessment of damages for injuries suffered by the Plaintiff who was bitten by a dog (“the Dog”) owned and controlled by the Defendant. The attack took place in the morning of 20 February 2005 when the Plaintiff was just under 10 years old. No notice of intention to defend having been given, interlocutory judgment against the Defendant was entered on 26 May 2006 with damages to be assessed.
2. The Defendant did not appear for the hearing on assessment. The Plaintiff applied for and I acceded to hold an ex parte hearing. I shall return to this topic towards the end of this judgment.
3. Through Counsel, the Plaintiff asked for i) damages for pain, suffering and loss of amenities in the sum of $100,000; ii) future medical expenses in the sum of $30,800 and iii) special damages relating to medical treatment already received i.e. medical expenses ($1,569) as well as travelling expenses ($510) in the total sum of $2,079.
4. I make the awards asked for. Pre-trial interest up to the date of handing down of this judgment is thus ordered: 2% per annum from the date of Writ for damages for pain, suffering and loss of amenities ($100,000) and 1/2 judgment rate from 20 February 2005 (date of incident) for special damages (total sum of $2,079). There will be interest at judgment rate on the total award of $132,879 from the date of handing down of this judgment until payment.
5. I order costs to the Plaintiff on common fund basis, to be taxed if not agreed. There will be certificate for Counsel.
6. I explain my decision on quantum in the following text.

1. Pain, suffering and loss of amenities

The Dog bit the Plaintiff just below his left eye. The Plaintiff immediately attended the Accident and Emergency Department of Alice Ho Miu Ling Nethersole Hospital. Physical examination showed wound with tissue loss over left infra-orbital area. The Plaintiff was given dressing and an injection of first dose of anti-rabies vaccination. He was transferred the same day to Prince of Wales Hospital (“PWH”) for further treatment.

1. Doctors at PWH found a wound measuring 1.5 cm x 1 cm just below the left eye of the Plaintiff. The wound was managed by daily dressing. The Plaintiff was discharged from PWH on 23 February 2005. He thereafter attended regularly the outpatient clinic at PWH and last attended that hospital on 5 May 2005. The Plaintiff was granted a total of 18 days sick leave.
2. On 12 September 2006 the Plaintiff was examined by Dr. Ho, a private medical practitioner specialising in plastic surgery.
3. Dr. Ho found a 33 mm x 2mm pale, atrophic scar over the medial aspect of the Plaintiff’s infra-orbital area causing mal-functioning of his left lower eyelid. The scar was mature and stable. It was unlikely to improve without surgical intervention. Dr. Ho recommended scar revision surgery to release the scar, correct the mal-functioning of the left eyelid as well as to improve the quality and appearance of the scar.

The cost of this surgery was $28,000 plus provision of $2,800 for follow-up treatment making a total cost of $30,800.

1. When the Plaintiff gave evidence before me, I noticed that the scar below his left eye was, fortunately, not too conspicuous. I accepted the evidence of the Plaintiff and his mother that the left eyelid cannot close tight with the result that some light can still filter through. I also accepted that the left eye would often be too dry, that there was itchiness and that the Plaintiff would often rub this eye. The Plaintiff developed a certain degree of cynophobia. His schoolmates made fun of him, accusing him of being a rabies-carrier or a monster. I digress to say that I consider these as totally unwarranted and cruel remarks emanating from immature, and perhaps even sick, minds.

1. Counsel directed my attention to a number of cases: Chau Fung Yee v Lee Chi Ming, HCPI 76 of 1999; Leung Ka-yee v L & Y Beauty Centre Limited, DCPI 1196 of 2003; Chan Tsz Sing v Lo Ching Pong and another, CAAV 176 of 2004 and Susi Yanti and Lo Ka-ying etc. v Chu Shiu-chuen, HCPI 1176 of 2006. The emphasis of awards in the first 3 cases is on scarring or cosmetic injury. In the present case, cosmetic injury is relatively minor. I do not find these 3 cases helpful.
2. It is more worthwhile to look at Susi Yanti and Lo Ka-ying etc. (supra). The relevant part concerned the 2nd Plaintiff Lo Ka-ying, a girl aged 4 when attacked by a pack of dogs owned by the defendant. She suffered 3 laceration wounds over both thighs and multiple minor bite and scratch marks over her thighs and left arm. She was treated with analgesics, dressings and antibiotics. She also received a course of anti-rabies vaccinations. She suffered from nightmares and her former fondness of dogs metamorphosed into a fear of them. About a year later, medical examination found a faint pale scar over her left shoulder, a slightly noticeable pale scar on her right thigh near the knee region, a raised pale scar on the front of the left upper thigh as well as several barely perceptible bite marks and a slightly pigmented raised irregular laceration scar with 2 noticeable pairs of stitch marks on the back of her upper thigh. Plastic surgery was not indicated as visible scarring would still be evident. An award of $130,000 was made for pain, suffering and loss of amenities.
3. Like Lo Ka-ying, the Plaintiff here developed cynophobia. However, unlike Lo Ka-ying, a) the Plaintiff suffered from the left eye going dry and itchy; b) his left eyelid cannot close properly resulting in light infiltration; c) scarring/ cosmetic injury to the Plaintiff can only be described as minimal and d) the Plaintiff had to put up with teasing from his schoolmates. As I understood Dr. Ho’s medical report, the proposed surgery will mitigate to a large extent (if not remove) conditions a) and b).
4. Counsel for the Plaintiff submitted an award of $100,000 under this head. I consider this reasonable. I make the award accordingly.
5. Future medical expenses

This is in relation to surgery recommended by Dr. Ho. I accept this item as reasonable both in nature and amount. I make the award asked for.

17. Special damages

Medical expenses incurred are supported by documents issued by the various hospitals. I do not think there can be any argument against the claim for related travelling expenses I make the award as claimed.

18. Ex parte hearing

The Notice of Trial (Re: Assessment of Damages) dated 18 December 2006 (“the Notice”) was mailed by the Court to the Defendant at 38 Fong Ma Po Tsuen, Lam Tsuen, Tai Po, New Territories (“the Address”). The Notice was returned marked with the Chinese characters meaning “demolished” or “dismantled”.

1. Relying on Order 65, rule 9 of the Rules of the District Court (“RDC”), Counsel for the Plaintiff proceeded to ask for an ex parte hearing. The rule provides thus: “Where by virtue of these rules any document is required to be served on any person but is not required to be served personally or in accordance with Order 10, rule 1(2) and at the time service is to be effected that person is in default as to acknowledgment of service or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these rules otherwise provides.”
2. I should now set out certain background information.
3. Over the Dog biting the Plaintiff, the Defendant was summonsed in Fanling Magistracy for contravention of provisions of the Rabies Ordinance, Cap. 421. The address for service of the summons was 38 Fong Ma Po Tsuen, *Lam Kam Road*, Tai Po (“the Summons Address”). I note here that the Address refers not to Lam Kam Road but to *Lam Tsuen*. Save for this, the Address and the Summons Address are the same. The Defendant appeared in the Magistracy and was convicted.
4. Page 109 of the Assessment Bundle is an application form of the Agricultural, Fisheries & Conservation Department for claiming back the Dog. It is apparent that the Defendant signed it and her address is stated to be the Address. Page 112 of the Assessment Bundle is a Dog Licence for the Dog. The Defendant is stated to be keeper of the Dog and her address is the Address. I am satisfied that the Summons Address and the Address are one and the same. Even without these 2 documents, I would have come to the same conclusion. I consider it improbable that in Tai Po there would be 2 different addresses both being 38 Fong Ma Po Tsuen.
5. A letter before action was mailed to the Defendant at the Summons Address by the Plaintiff’s solicitors on 1 August 2005. The Defendant replied by a letter dated 20th of the same month (paragraph 3 of the 2nd Affirmation of Cheng Kim Wai filed on 6 February 2007. This affirmation will be known hereinafter as “the Affirmation”).
6. The Writ of Summons together with the prescribed forms, Notice of Checklist Review, Statement of Claim, Statement of Damages, list of Medical Reports, Consent of Next Friend and Certificate of Solicitor were sent by registered post on 24 January 2006 to the Defendant at the Address. These documents were never returned undelivered (paragraph 9 and 10 of the Affirmation).
7. A sealed copy of the Interlocutory Judgment against the Defendant was mailed to her at the Address on 2 June 2006. Thereafter, various documents in relation to the present claim were mailed by ordinary post to the Defendant at the Address. On 12 December 2006, further documents in relation to the present claim were inserted in the letterbox at the Address. None of these documents were returned (paragraph 11 and 12 of the Affirmation).
8. On 20 December 2006 the Notice was mailed by the Court to the Defendant at the Address. The Notice was returned undelivered (see also paragraph 18 above). The Plaintiff’s solicitors were informed accordingly.
9. On 1 February 2007 a Mr. Cheng from the office of the Plaintiff’s solicitors went to the Address. He found a new building erected there. The building was vacant. Residents nearby informed that the Defendant stayed at the Address before the new building was constructed. No one knew where the Defendant had moved (paragraph 4 to 8 of the Affirmation).
10. Based on matters stated in paragraphs 23 to 25 above, I am entitled to and do infer that the Defendant is well aware of the present claim against her. Considering further the matters stated in paragraphs 26 and 27 above, I also infer that the Defendant moved away to avoid contact by the Plaintiff or those representing him.
11. I return to Order 65, rule 9.The Notice is not required to be served personally or in accordance with Order 10, rule 1(2). The Defendant is in default of acknowledgment of service and has no address for service. The Notice therefore need not be served on the Defendant unless the Court otherwise directs or any rule of RDC provides otherwise. No rule provides otherwise. Should I “otherwise direct”? For example, fix a new date for hearing and direct substituted service by advertisement in local newspapers. I think the test here is whether it will be unfair or unjust to disregard the fact that the Notice was returned undelivered and to proceed in the absence of the Defendant. In view of the inferences I drew (paragraph 28 above), I do not see any unfairness or injustice to the Defendant. On the other hand, the Plaintiff has been diligently pursuing his claim. He is entitled to feel aggrieved if the hearing were deferred. I also bear in mind that any judgment decided ex parte may (for good reasons) be set aside on application (Order 35 rule 2 and Order 3 rule 5 of RDC). I thus acceded to Counsel’s request and held the assessment hearing ex parte the Defendant.

Abu B. bin Wahab

Deputy District Judge

Representation:

Mr. Steven C.L. Lau, instructed by Messrs. Huen & Partners, for the Plaintiff

Defendant absent