#### DCPI 145/2010

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 145 OF 2010

BETWEEN

WONG KA WAI JOHNNY Plaintiff

and

LEE MAN WAI Defendant

##### Coram: Deputy District Judge Kent Yee in Court

##### Dates of Hearing: 16 and 19 December 2011

Date of Judgment: 16 January 2012

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JUDGMENT

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*Introduction*

1. In this action, the plaintiff Wong Ka Wai Johnny (“**Johnny Wong**”) claims against the defendant Madam Lee Man Wai (“**Madam Lee**”) for damages for personal injuries sustained in the course of his employment with Royal Elite Service Company Limited (“**Royal Elite**”) at about 3:50 a.m. on 30 September 2008.
2. On the material day, Royal Elite was the manager of Manhattan Hill, 1 Po Lun Street, Lai Chi Kok, Kowloon, Hong Kong (“**the Development**”). The Development consists of five blocks, namely, Block 1, Block 2, Block 3, Block 5 and Block 6. Madam Lee was a resident of Block 6. All the blocks share the lobby on the ground floor.
3. At the material time, Johnny Wong, then 26 years old, was a security officer of Royal Elite working at the lobby of the Development (“**the Lobby**”). He then met with an incident involving Madam Lee, which turned out to have a far-reaching effect on his life.
4. Madam Lee was subsequently prosecuted by the Hong Kong Police. She agreed to the following contents of the brief facts prepared by the prosecution:

“At 0355 hours on 30 September 2008, Johnny Wong was working at the service counter when Madam Lee approached looking for the morning shift security guard. Having learned the security guard was not on duty, Madam Lee scolded Johnny Wong and smashed two vases and a glass notice board at the service counter. At the same time, Madam Lee also kicked Johnny Wong. A report was made (to the police). PC 6618 attended and arrested Madam Lee. Johnny Wong was sent to the hospital with the medical treatment. He was found to have tenderness and bruising on his right knee.”

1. On 14 November 2008, at the Kwun Tong Magistracy, on the basis of her admission to the brief facts, the charges (one count of criminal damage and one count of common assault) against Madam Lee were dismissed and a binding-over order was imposed upon her. Madam Wong was also ordered to pay Johnny Wong a cheque in the sum of HK$10,000 as compensation (“**the Compensation**”).

1. Mr Cheung, counsel for Madam Lee, indicated that she also agreed to the brief facts for the purpose of these proceedings. Hence, it is not in dispute that Madam Lee did kick Johnny Wong resulting in slight injuries on his right leg. Kicking is certainly a form of assault and/or battery. This assault and/or battery (“**the Assault**”) form the main prank of the claim of Johnny Wong.

*The Plaintiff’s pleaded case*

1. Johnny Wong was legally represented until a very late stage of these proceedings. His pleadings, clearly setting out his case, were prepared by his former solicitors.
2. Johnny Wong relies on three factual allegations to establish liability against Madam Lee. First, he relies on the Assault, the details of which are not in dispute. Secondly, he says that on 9 February 2009, when Johnny Wong met Madam Lee again at the Lobby, Madam Lee insulted him by saying loudly that he was a scum in public. She further made complaint to the management of Royal Elite. Johnny Wong says that this was an insult (“**the 1st Insult**”). He felt humiliated, frightened, annoyed, depressed and nervous as a result.
3. Lastly, Johnny Wong says that on 15 February 2009, he returned to work and was instructed to work at the Lobby. He met Madam Lee again. She then complained to the management office that she did not want to see him. Johnny Wong finds this complaint to be an insult (“**the 2nd Insult**”). Similarly, he felt humiliated, frightened, annoyed, depressed and nervous as a result.
4. Johnny Wong claims that the 1st and 2nd Insults have contributed to and exacerbated his injuries resulting from the Assault. His injuries, as pleaded in his Amended Revised Statement of Damages, include his suffering from Adjustment Disorder with Mixed Anxiety and Depressed Moods and symptoms suggestive of Post-traumatic Stress Disorder (“**PTSD**”). This diagnosis was given by the two psychiatrists, namely, Dr Chow and Dr Chen, respectively appointed by Johnny Wong and Madam Lee upon a joint examination.
5. Thus, Johnny Wong claims damages in the total sum of HK$453,516.13 having given credit for the sum of HK$30,971.87 received in the Employees’ Compensation proceedings and the Compensation.

*The Defendant’s pleaded case*

1. Madam Lee admits the Assault and the 2nd Insult but denies the 1st Insult. She further denies that the psychiatric problems are in any way related to or caused by the Assault and the 2nd Insult.
2. Madam Lee has a plea of contributory negligence in her Amended Defence. Mr Cheung confirmed in his closing submissions that Madam Lee would abandon this allegation.

*The Defendant’s position*

1. Mr. Chang, in his closing submissions, indicated that Madam Lee accepted that she was liable to Johnny Wong in respect of the injuries sustained directly as a result of the Assault, namely, the physical injuries to the leg of Johnny Wong and Johnny Wong’s psychiatric illness insofar as it is associated with flashbacks of the Assault.

1. The leg injuries caused by the Assault were of a very minor nature. There was only mild bruising and tenderness over his right knee and he was discharged from the hospital with analgesic on the day of the Assault, according to the medical report of Dr. Chu of the Accident & Emergency Department of Princess Margaret Hospital. The real controversy is about the extent of the alleged damage that the Assault has caused to the psychological and/or psychiatric well-being of Johnny Wong.

*The Plaintiff’s evidence*

1. Only Johnny Wong himself testified for his claim. He adopted the contents of his pleadings and witness statements and had little to add. There, he gave the details of the Assault. He said that Madam Lee was known among his colleagues to have a habit of returning home in the small hours being drunk. Therefore, his colleagues would normally open the door for her when she appeared in front of the door. However, Johnny Wong said he had just heard about her without knowing what she looked like.
2. On the material day, Johnny Wong was on duty at the Lobby. Madam Lee came back and made a great commotion. She hit out at Johnny Wong when he told her that the colleague she was looking for was off already. She even went behind the front desk and attempted to kick his lower part thrice. He evaded but his right thigh near his knee was kicked. He was alarmed and ran out of the Lobby to keep himself away from Madam Lee. He said he had never been assaulted and this was a traumatic experience to him.
3. He agreed that Madam Lee did not single him out to assault. He knew that Madam Lee was so drunk that she simply could not control herself. He just happened to be there when she needed someone to vent her anger.
4. Johnny Wong was petrified by the Assault. He was sent to Princess Margaret Hospital by an ambulance for treatment and a statement was taken from him by the police afterwards.
5. Johnny Wong was granted two days’ sick leave for his leg injury. When he resumed work, he felt pain in his legs but what really troubled him was that he felt humiliated by the Assault. He said he could never envisage an unprovoked abuse/attack in public and he found it insulting that he had to run away to avoid further attack like a coward. He was afraid that his cowardice had become a laughing stock among his colleagues and the residents of the Development. He had flashblacks of the Assault and he dreaded seeing Madam Lee again whilst he was at work. He suffered insomnia and felt tired always. He was unable to concentrate on his work and he was always in an uptight state of mind.
6. On 9 October 2008, he went to Kwong Wah Hospital to deal with his leg injury and psychological problems. He said he collapsed emotionally at the hospital and caused a great commotion. He was then sent to Kwai Chung Hospital and was hospitalized for 6 days. He was then referred to Li Ka Shing Outpatient Clinic.
7. When he returned to work, he said whenever he saw Madam Lee, he would become very nervous and worried. He would not be able to focus on his job and could only pretend that he did not see her so as to avoid any eye contact with her.
8. He said his condition was improving slowly after treatment until 9 February 2009, i.e., the date of the 1st Insult. Due to the shortage of manpower during the Lunar New Year, he was deployed at the Lobby, outside the main door. He met Madam Lee again and she was leaving via the main door. He then pretended not to see her. Madam Lee called him rubbish and reported to his duty supervisor that she did not want to see him in the Development.
9. He was later assigned to work at other areas of the Development. When he found out that the assignment was due to the complaint by Madam Lee, he felt very scared, uneasy and worried. After work he went to Caritas Medical Centre (“**CMC**”) for treatment. He was given 3 days’ sick leave and he was advised to seek follow-up treatment at Lee Ka Shing Outpatient Clinic with an appointment fixed on 9 June 2010.
10. On 15 February 2009, when he resumed work, he saw Madam Lee leaving the Development. She then complained to the control room that she did not want to see him again. He was then assigned to patrol around the car park of the Development for the rest of the day. He felt strongly about the complaint and he became depressed. He thought that he was worthless and he did not want to work at the Development anymore. He did not want to go anywhere near the Development again. He went to CMC and was referred to Prince of Wales Hospital.
11. His mental condition did not improve and he was still worried that Madam Lee would insult and/or complain about him again. He took many days off. He could not work well. He eventually resigned in early 2010 (it turns out that he gave notice of resignation back in late January 2009).
12. He claimed that his social life was seriously affected and he now had a low self-esteem. He was in despair all the time and he did not take up any gainful employment after his resignation. He still receives regular medical treatments for his psychiatric problems.
13. Under cross-examination, he denied having asked Madam Lee to give him a compensation in the sum of HK$60,000 to clear his credit card debts when she called him after the Assault. He disclosed for the first time that he had met Madam Lee about 2-3 weeks before the Assault and had a conversation with her. He told her that he was not happy with his job and wanted to have a change of working environment. Then Madam Lee told him that her ex-husband was also in the same trade and might be able to assist. She then asked Johnny Wong to give her his mobile phone number for further contact. He did so as he also wanted to see whether he could change his job. Johnny Wong said that during the encounter he did not know Madam Lee was the notorious drunken lady.
14. Johnny Wong went on to say that on 2 October 2008, after the Assault, when he was working on the night shift, Madam Lee phoned him and sounded very concerned. She asked him not to sue her. She even told him that she had hit someone before but she did not need to pay any compensation. He felt that she was not remorseful at all. Thus, he made up his mind to take legal action against Madam Lee. He insisted that he did not discuss compensation with her during the telephone conversation.

*The Defendant’s evidence*

1. Madam Lee is a divorcee. She suffers from a Bipolar Disorder (Manic-Depressive) associated with alcoholism. She has been receiving psychiatric and psychological treatment since 1998.
2. On the day of the Assault, she was under the influence of both alcohol and medicine. She was emotionally unstable and broke two vases and a glass noticeboard at the Lobby. She also kicked Johnny Wong for several times.
3. She was subsequently arrested and brought to Princess Margaret Hospital for medical treatment. Eventually she was charged with two offences on 6 October 2008.
4. On or about 7 October 2008, she met Johnny Wong at the Lobby. He told her that he wanted to quit the job as he found the current working environment complicated. He further told her that there were two other colleagues in the management office at the time of the Assault but they did not come out to assist him. She then asked him for his telephone number.
5. Two days later, she called Johnny Wong. He asked her to pay HK$60,000 to him to settle the whole matter as he had an outstanding credit card debts in a similar amount. Madam Lee rejected his request and hung up.
6. On 14 November 2008, apart from the Compensation, Madam Lee was ordered by a Magistrate to pay another sum of HK$7,000 to Royal Elite. She was bound over for 12 months in the sum of HK$1,000 for each of the two charges against her.
7. Madam Lee recalled that she only complained to the management of Royal Elite about Johnny Wong once after the Assault in mid-February 2009. She said that on that occasion she forgot to bring her access card and Johnny Wong refused to open the door for her. She felt the unfriendliness of Johnny Wong and concluded that it would be better if Johnny Wong could be deployed elsewhere within the Development so as to avoid any embarrassment arising in future encounters. She denied having ever verbally abused Johnny Wong after the Assault.

*Medical evidence*

1. Dr Chow instructed by the former solicitors of Johnny Wong and Dr Chen instructed by the solicitors of Madam Lee jointly interviewed and examined Johnny Wong in the office of Dr Chen on 6 October 2010 for 3.5 hours. After the interview, they prepared a joint psychiatric report dated 17 March 2011 on Johnny Wong (“**the Report**”).
2. In the Report, extracts of relevant medical reports relating to Johnny Wong were contained. I do not intend to set them out in full here and I just refer to the material parts of such reports.
3. In a medical report prepared by Dr Fong of the Psychiatry of Kwai Chung Hospital dated 23 April 2009, he made some observations about the behaviour and mental condition of Johnny Wong. These observations are in my view of particular importance as they were made closest to the date of the Assault. I prefer to reproduce them as follows:

“Mr Wong was admitted to our hospital from 9 October 08 to 14 October 08 for management of his aggressive behaviour exhibited in Kwong Wah Hospital.

On the day of admission to our ward, he presented to the Accident and Emergency Department of Kwong Wah Hospital. He requested to see a psychologist for psychological trauma caused by that assault. He also complained of poor sleep and suicidal idea. He was detained in an observation room awaited for psychiatric assessment. He received a phone call from a friend who wanted to meet him out for a meal while waiting. He then requested to leave but was rejected. He displayed temper by throwing a chair and an umbrella to the door of the observation room. He did not injure anyone and claimed he just wanted to threaten the staff so that he could leave. In view of his aggressive behaviour, he was sent to Kwai Chung Hospital for further management.

He was calm and co-operative with good eye contact. His mood was euthymic and his affect was congruent. His speech was coherent, relevant and unsophisticated. He was not suicidal or psychotic. He requested discharged.”

1. In his psychiatric report dated 4 June 2009, Dr Wong of Prince of Wales Hospital observed that Johnny Wong gradually developed mild anxiety symptoms after the Assault including apprehensive about work, insomnia and flashbacks of the Assault. He was not noted to have mood/anxiety symptoms during his hospital stay. He was then referred to Li Ka Shing Outpatient Clinic. He was diagnosed as having Adjustment Disorder and would require further psychological treatment.
2. In his medical report dated 2 April 2009, Dr Fung of CMC recorded that on 9 February 2009 Johnny Wong complained that since the Assault he had a sense of fear because of Madam Lee’s hostile gesture and action. He also complained about poor sleep for 3 days with anxiety and fear. There was nevertheless no reference to the 1st Insult, which Johnny Wong alleged to have taken place on that day.
3. It was also recorded that on 14 February 2009, Johnny Wong met Madam Lee at the Lobby and he was frightened by her hostile look. Hence he went to CMC after work and was given reassurance and discharged with medication.
4. In a medical report of Dr Wu of Prince of Wales Hospital dated 20 May 2009, it was reported that Johnny Wong attended the hospital and complained about insomnia for one week. There was no hallucinations, suicidal or paranoid ideas though.
5. In a psychiatric report of Dr Quinney Chan of Prince of Wales Hospital dated 4 June 2009, it was reported that Johnny Wong was not noted to have any mood/anxiety symptoms during his hospital stay at Kwong Wah Hospital from 9 October 2008. He was diagnosed as Adjustment Disorder after being referred to Li Ka Shing Outpatient Clinic.
6. Lastly, in a psychological report of Ms Amy Kwok of Prince of Wales Hospital dated 1 December 2009, it was reported that Johnny Wong was unemployed and appeared to be rather withdrawn socially. He himself reported less nightmare and occasional flashback of the Assault. Johnny Wong reported to Dr Kwok that he had joined social activities with his relatives’ encouragement and company. Johnny Wong reported independent travelling or outing at times. Nevertheless, his mood remained depressed and further cognitive restructuring was needed.
7. The Report further depicted the background information of Johnny Wong as follows: he was born in Guangzhou and came to Hong Kong at the age of seven. He completed F.5 education. He obtained a licence to work as a security guard in 2005 and prior to joining Royal Elite he had worked for a few companies as a security guard. He had worked for Royal Elite for a few months only before the Assault. He did not mix well with his colleagues. They disliked him and were jealous of his promotion. They even framed and accused him of stealing.
8. As regards his family, he has a younger sister who is still a student at the Institute of Education. He could not get along with her. His parents were divorced and he did not keep a close relationship with them.
9. He suffered from childhood adversity. During his childhood, he saw his parents fighting with each other. He had to hide himself. He had insomnia due to such fights. He was badly hit by them using rattan stick and leather stick when they were in a bad mood. He was often scolded as being useless. He complained about his parents’ favouritism towards his sister. She was never beaten by his parents and was given pocket money when Johnny Wong received none. He took refuge in his school.
10. He had poor social skill and could not get along with his colleagues. He had a few friends but he only had outings with them a few times a year even before the Assault. He did not trust anyone including his former legal advisors.
11. He claimed that he feared Madam Lee. When he patrolled the floor where Madam Lee resided, he would quicken his pace and his heart would beat faster. He said he resigned in July 2009 because he did not want to meet her. He should be mistaken about the date of his resignation. By a resignation notice dated 29 January 2009 signed by Johnny Wong (“**the Notice**”), he gave one month’s notice of his resignation and his last date of service fell on 27 February 2009.
12. Under examination, he appeared to be attentive and calm. He was in the beginning paranoid to the interviewers and was evasive. His speech was coherent and relevant. He looked distressed and depressed. He thought someone could read his mind since 2000. He had a fear that he was being followed in the street and he watched out for such followers.
13. Both Dr Chow and Dr Chen agreed that Johnny Wong suffered from (1) Adjustment Disorder with Mixed Anxiety and Depressive Mood (Code 309.0) and (2) PTSD (Code 309.81).
14. Their difference is that whilst Dr Chow opined that the foregoing disorders were entirely caused by the Assault, Dr Chen opined that Johnny Wong’s adverse childhood experience and the possibility of previous mental illness had rendered him more vulnerable to succumb to stress like the Assault. He however agreed that the Assault was likely to have inflicted more severe suffering to a person who has already been psychologically weakened.
15. Dr Chen’s opinion that there is a distinct possibility of pre-existing mental illnesses is based on the assertion of Johnny Wong that he thought someone could read his mind since 2000.
16. Both Dr Chow and Dr Chen agreed that Johnny Wong was likely to be able to return to his pre-injury job as a security guard but with significant degree of disturbance. He will be fearful of being attacked as a security guard and he will be less willing to work night shift.
17. Both of them also agreed that the prognosis of Johnny Wong was guarded. He has yet to reach maximal medical improvement as most of the psychiatric disturbances remain active. Further biweekly follow-up treatment by both psychiatrist and clinical psychologist for six months is considered necessary.
18. Mr Chow assessed Johnny Wong’s permanent loss of earning capacity and the degree of whole person impairment at 7% and Dr Chen at 5%.

*Analysis and Findings*

1. On the evidence which is undisputed, liability is clearly established against Madam Lee for the personal injuries sustained by Johnny Wong as a result of the Assault. I shall proceed to resolve certain factual disputes between the parties.
2. Johnny Wong appeared to me to be a dishonest witness. Throughout the trial he kept his head down and I could barely see his eyes. I note in the Report that he did the same when he was interviewed by Dr Chow and Dr Chen. He was quick-thinking and very intelligent. He was articulate and his speech was coherent. He was even-tempered under cross-examination and was able to detect the tricky part of a question.
3. About the 1st Insult, when he was asked about his colleague allegedly standing next to him, he promptly said that Madam Lee only uttered “rubbish” softly to him and thus his colleague could not hear it. In saying so, he however forgot his pleaded case about the 1st Insult; the pleaded case is that Madam Lee insulted him in public by calling him a scum loudly.
4. When Mr Cheung asked him about the statement in the Report to the effect that his colleagues framed him up for stealing, he firstly said that he could not understand this simple question and then answered that his colleagues were merely suspicious.
5. On the issue of pre-existing mental illness, Johnny Wong was defensive and he even denied the truthfulness of his personal history that he had related to Dr Chow and Dr Chen as recorded in the Report.
6. When asked about his assertion that someone could read his mind since 2000, which might be suggestive of psychiatric problems, Johnny Wong denied having told the doctors so. He clarified that it should be the other way round. However, he added that he could only guess what other people were thinking without any basis.
7. When asked about his childhood adversity, he denied having told the doctors that he was beaten up by his parents when they were not in good mood. He said that he would be beaten by his parents only when he was naughty.
8. I cannot accept Johnny Wong’s assertion that those contents of the Report were incorrect. I do not believe the doctors made such mistakes in the first place. Nor do I believe that Johnny Wong and his former solicitors would have overlooked such serious mistakes and hence failed to have them corrected before trial.
9. In stark contrast, Madam Lee was a straightforward and forthcoming witness and I am convinced that she was trying her best to tell the court a truthful account. I prefer her evidence wherever it was in conflict with that of Johnny Wong.
10. It is common ground that there was a friendly conversation between Madam Lee and Johnny Wong in which he revealed to Madam Lee he wanted to leave Royal Elite and Madam Lee told him that her ex-husband might be able to help. It is also indisputable that he had given Madam Lee his telephone number. However, knowing that this friendly conversation might work against his case of intense fear of Madam Lee after the Assault, he insisted that this friendly conversation only took place before the Assault.
11. I do not believe him at all. At the early stage of cross-examination, Johnny Wong clearly told the court that he did not know or meet Madam Lee prior to the Assault and only heard about her unsuccessful attempts to assault his colleagues on previous occasions from his colleagues. I do not accept his explanation that when he talked with Madam Lee he did not know that she was the lady his colleagues had referred to. Even if he did not know then, he should not have told the court that he had never met her before the Assault.
12. There is no controversy that the issue of compensation was raised in a telephone conversation after the Assault. Johnny Wong said Madam Lee mentioned in a telephone conversation on 2 October 2008 that she had previously assaulted other people without having made compensation whilst he never asked for compensation. She also urged him not to sue her. I do not believe Johnny Wong’s allegation, which was only made for the first time in cross-examination.
13. I believe that a telephone conversation took place on or about 8 October 2008 two days after the foregoing friendly conversation though I do not accept that Madam Lee called Johnny Wong for building management issues as stated in her witness statement. Madam Lee frankly admitted that she actually called to have a chat with him and not to discuss management issues under cross-examination. She felt comfortable to do so due to their previous friendly conversation.
14. I accept Madam Lee’s evidence that in the telephone conversation Johnny Wong asked for HK$60,000 to pay off his credit card debts. Under cross-examination, Johnny Wong did not deny that he had such debts. In fact, in a medical report dated 14 February 2009, it was recorded that Johnny Wong disclosed to Dr. Lee of CMC that he had financial problems and owed finance companies debts due to family expenses. He just denied having made this demand to Madam Lee and he explained that he did not know Madam Lee and so would not tell her about his debts. But he had previously told Madam Lee his personal matters such as his dissatisfaction with his job and even his telephone number on his evidence. I cannot accept his explanation.

1. I do not believe the allegation of the 1st Insult. I also note in the contemporaneous record of Dr Fung of CMC upon seeing Johnny Wong on the very day of the 1st Insult after work that he complained about his insomnia for three days with fear and anxiety. The 1st Insult, which allegedly prompted him to visit Dr Fung, was however not mentioned. This, coupled with the inexplicable discrepancies between the pleaded case and his oral evidence about the 1st Insult, I find the 1st Insult to be a sheer fabrication of Johnny Wong.
2. Madam Lee admits the 2nd Insult, which was, in my judgment, not an insult in substance. I do not find it inappropriate and certainly not tortious for Madam Lee to complain to the management of Royal Elite about Johnny Wong in the first place. I do not think any claim can be made and any damage is recoverable on account of the 2nd Insult even though Johnny Wong understandably felt bad about this.
3. In conclusion, I am satisfied that Johnny Wong sustained insignificant physical injuries but more long-term psychological and psychiatric problems as a result of the Assault and Madam Lee is liable to Johnny Wong.
4. Before I assess the quantum, I have to consider the issue of causation. I have to study both the factual and medical evidence to determine this issue so as to find out the cause of the loss and damage claimed. In the present case, in particular I have to find out what the psychiatric symptoms cannot be attributable to the Assault: *Bryant v London Fire and Civil Defence Authority* [1995] PIQR P27.
5. Mr Cheung urged me to take into account Dr Chen’s opinion that there was a distinct possibility that Johnny Wong suffered from pre-existing mental illness.
6. I cannot treat the distinct possibility opined by Dr Chen anything more than a possibility, however cogent the reasons given by Dr Chen. The fact remains that there is no medical evidence of Johnny Wong’s mental illness prior to the Assault and I cannot conclude that Johnny Wong had any such pre-existing mental illness.
7. I accept that given the personal circumstances narrated to Dr Chow and Dr Chen by Johnny Wong, he might be more vulnerable to succumb to stress caused by the Assault. However, it is trite that the defendant must take the plaintiff as he finds him and the thin skull rule does apply.
8. It is noteworthy that Johnny Wong complained that he saw his colleagues reviewing the video footage featuring the Assault in the control room. They found it hilarious. He also heard his colleagues making fun of him about the Assault. He thought he had become a laughing stock of his colleagues and the residents of the Development. He felt very humiliated and depressed.
9. I agree with Mr Cheung that any anxiety, stress and depression resulting from the alleged conduct of the colleagues of Johnny Wong was not attributable to the Assault and was too remote to hold Madam Lee liable for.
10. Nor were those resulting from his long-term unemployment. Both Dr Chow and Dr Chen opined that he could return to his pre-injury job. Indeed, he resumed his job until 29 January 2009 when he tendered his resignation. I note that in both his written submissions and his live evidence, he said he resigned in early 2010. However, according to the Notice and the salary payment records, he should have left Royal Elite in late February or early March 2009.
11. In his witness statement, Johnny Wong explained that he was under a lot of stress whilst at work because of his intense fear of Madam Lee. It was particularly so after the 1st and 2nd Insults. He was unable to focus on his work and so he decided to quit Royal Elite to avoid any loss caused to both himself and Royal Elite. The Notice, nevertheless, tells a different story; he in fact already resigned before the 1st and 2nd Insults.

*Quantum*

*PSLA*

1. There is no dispute that Johnny Wong suffers from PTSD according to the Report. He was 29 years old at the time of the trial. I had a good observation of this young man in the course of the trial. Save the fact that he constantly kept his head down, I could detect no abnormalities or disabilities on his part. He managed to handle the trial and present his case with clarity both orally and in writing. He was forthcoming to tell this court a detailed account of the Assault without any discernible anxiety or stress. He was able to reason with Madam Lee in a composed manner. He posed to her intelligent questions without any fear when he cross-examined her. I could not see his fear, diffidence and despair even under this stressful situation in the courtroom. Of course, given his diagnosis of PTSD, he may on occasions shudder at the mere thought of Madam Lee but I could see him doing well in dealing with her in person during cross-examination too. I come to the conclusion that he is very far from being in a severely disabling condition. He is in my view not handicapped in the activities of daily living.
2. Johnny Wong told Dr Lam of Price of Wales Hospital on or about 22 December 2008 that, by way of personal history, he liked visiting brothels in both the Mainland and Hong Kong and enjoyed going out with his friends. He was then found to be calm, friendly, forthcoming with social smiles. He now complains that he has lost interests in gathering with friends and all kinds of outdoor group activities. He says that he is now socially withdrawn.
3. I note that throughout the trial, Johnny Wong had the company of a young man. I trust he that still enjoys friendship and support and I do not believe that he is completely aloof and detached.
4. Johnny Wong asks for HK$200,000 under this head. His explanation is that he has been unemployed for three years and he cannot sustain his living. I do not accept his explanation can support his claim, as explained above.
5. Mr Cheung referred me to *Lau Yuk Sum v Wong Yuk Chun,* unreported, DCPI 107/2004, 3.9.2004, *Poon Yat Chiu v AES Scaffold Engineering Limited*, unreported, DCPI 223/2005, 21.3.2007 and *Wong Fung Nui v Leung Yat Ho & Anor.*, unreported, DCPI 455/2006, 2.11.2007.
6. Mr Cheung submitted that on the above authorities, the starting point should be HK$100,000. However, he contended that a 50% discount should be given in the light of other contributing factors including the reactions of his colleagues and the residents of the Development and his pre-existing psychiatric illness.
7. I have already rejected the contention that Johnny Wong suffers pre-existing psychiatric illness. Looking at the matter in the round and taking into account the mild degree/nature of PTSD he suffers, I believe **HK$100,000** is an appropriate figure under this head.

*Pre-Trial loss of income*

1. The parties agree that 112 days plus 6 months’ sick leave was justified. The parties differ in the monthly income of Johnny Wong. Johnny Wong’s basic salary was HK$7,600 per month plus a monthly diligence bonus of HK$400. Johnny Wong said that he would be entitled to include the year-end bonus on a pro-rata basis.
2. I agree with Johnny Wong. I accept his claim under this head in full:

HK$8,400/30 x 112 x 1.05 + 8,400 x 6 x 1.05 = **HK$85,848**.

*Loss of earning capacity*

1. The parties agree that **HK$50,000** is an appropriate figure under this head and I accept their agreement.

*Special damages*

1. Johnny Wong claims a total of HK$58,640 as special damages including a sum of HK$5,000 being costs of tonic food and Chinese herbs. Madam Lee accepts all other components (including future medical expense in the sum of HK$48,000) but only agrees to pay HK$1,000 for such costs of tonic food and Chinese herbs in the absence of any receipts.
2. Johnny Wong explained that he had consumed some bird nest purchased by his family and the expense of HK$5,000 had actually been incurred though there was no receipt. Be that as it may, I cannot see how such tonic food could help in the recovery from his psychological/psychiatric illness. I would only allow HK$2,000 as tonic food and Chinese herbs expense, taking into account the long sick leave period he has taken. Therefore, I would allow **HK$55,640**.

*Aggravated damages*

1. Johnny Wong claims HK$100,000 under this head. He contended in his Amended Revised Statement of Damages that Madam Lee assaulted him in the presence of his colleagues and other bystanders out of spite. This allegation was not borne out by evidence. He agreed that Madam Lee assaulted him only because she was drunk. He further agreed that the Assault was neither intentional nor vindictive.
2. Johnny Wong further contended that his feelings, dignity and pride were injured by the malicious conduct of Madam Lee. I am not convinced that this is the case.
3. On the evidence, I am not persuaded that a case of aggravated damages has been made out and thus I disallow this claim.
4. I should add that Johnny Wong does not claim any future loss of earnings in his pleaded case.

*Conclusion on quantum*

1. In summary, my assessment of quantum is as follows:
2. PSLA HK$100,000
3. Pre-trial loss of earnings (inclusive of MPF) HK$85,848
4. Loss of earning capacity HK$50,000
5. Special damages HK$55,640

Total **HK$291,488**

1. It is common ground that Johnny Wong has received **HK$30,971.81** as employees*’* compensation and the Compensation in the sum of **HK$10,000**. These two sums have to be deducted from the foregoing global sum.
2. The award for PSLA would carry interest at the rate of 2% per annum from the date of writ to the date of judgment and thereafter at the judgment rate. Special damages carry interest at half judgment rate from the date of the Assault to the date of judgment and thereafter at the judgment rate.
3. Costs should follow the event and I make an order *nisi* that Madam Lee do pay Johnny Wong his costs of the action, such costs to be taxed if not agreed.
4. Lastly, as I explained to Johnny Wong at the end of the trial, interpretation assistance can be arranged if so required by him upon collection of this judgment.

(Kent Yee)

Deputy District Judge

The Plaintiff appeared in person

Mr Albert Cheung, instructed by Messrs Lim & Lok for the Defendant