#### DCPI 300/2008

IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 300 OF 2008

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| BETWEEN | LEUNG SIU WAN | Plaintiff |
|  | and |  |
|  | GOLD HERO (ASIA) LIMITED | Defendant |

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##### Coram: Deputy District Judge Bernard Mak in Court

Date of Trial: 19th March 2009

Date of Handing Down Judgment: 29th April 2009

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###### JUDGMENT

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1. The Plaintiff claims against the Defendant for damages for personal injuries sustained during work on 15 March 2005.
2. Interlocutory judgment was entered against the Defendant by the Plaintiff on 27 November 2008.  The liability of the Defendant is no longer an issue.  The present hearing is for assessment of damages only.

The accident, injuries and treatment

1. On 15 March 2005, during the course of his employment with the Defendant, the Plaintiff (a forklift operator) extended his left hand into a suction pipe that was connected to a metal collector of a plastic granulator.  As a result, his left middle suffered compound fracture resulting in distal interphalangeal joint ankylosis, pain, scarring and weakness.
2. As a result of the injuries, the Plaintiff underwent operative treatments, as well as physiotherapy and occupational therapy.  He was granted sick leave from the date of the accident to 7th September, a total of 5 months and 22 days.
3. Presently, the Plaintiff complains of i) pain, weakness and stiffness to the left middle finger; ii) reduced grip power of the left hand; iii) loss of sleep due to pain; and iv) inability to carry heavy items in his left hand.
4. At the time of the accident, the Plaintiff was aged 33.  At the time of this hearing, the Plaintiff is aged 37.  He is right-hand dominant.

Agreed Damages

1. There is no dispute for damages for loss of pre-trial earnings at $103,603 and special damages at $10,615.

Disputed Damages

1. Damages required for assessment are:
   1. Pain, suffering and loss of amenities (“PSLA”)
   2. “Loss of future earnings/ loss of earning capacity”

PSLA

1. Solicitor for the Plaintiff submitted that PSLA should be $200,000 while counsel for the Defendant submitted that given the nature of the injury, PSLA should be $90,000.
2. Solicitor for the Plaintiff submitted two cases in support of the PSLA claim, namely Ho Shu Yau v. Lo Siu Ling formerly trading as Chi Wo Civil Engineering Company and Anor *HCPI 1336/2000, unrep., 31 January 2002* and Yiu Pau Pau v. Co-ray Design & Construction Limited *DCPI 864/2006*, *unrep., 3 May 2007*.
3. Counsel for the Defendant submitted six cases for comparisons of PSLA award:
   1. Yiu Pau Yau v. Co-Ray Design & Construction Limited *ob. cit.*
   2. Chan Ming Yat v. Youh Eng Lai Michael trading as Prime Industrial Company (Hong Kong), *DCPI 201/2003, 5 June 2004*
   3. Wong Yun San v. Cheung Yue Yiu trading as Radio Engineering Co., *DCPI 1909/2007, 21 July 2008*
   4. Ho Shu Yau v. Lo Siu Ling and Others, *HCPI 1336/2000, 31 January 2002*
   5. Lee Tsz Kin Ken v. Climax Paper Converters Limited, *HCPI 504/2003, 24 June 2004*
   6. Chan Hung Hang v. Fat Kee Repairing & Engineering Co. Limited and Another, *DCPI 2328/ 2007, 3 September 2008*
4. I find that the Plaintiff’s injuries are not as serious in Yiu Pau Yau where there was a complete cut of the flexor digitorum profundus tendon and ulna slip of the flexor digitorum superficials.  Further, the present case is also not as serious as Chan Ming Yat, where it involved the dislocation and ruptured ligament of the finger joint, nor is it as serious as Ho Shu Yau, where 0.7cm of the plaintiff’s left ring finger was amputated. I also find that Wong Yun San is also a more serious case than the present case as the plaintiff in that case suffered injuries to two fingers whereas the Plaintiff only injured his middle finger.
5. Counsel for the Defendant submitted that the present case is similar to, but to some extent less serious than the case of Chan Hung Hang.  I agree with counsel’s submissions.  Although in Chan Hung Hang, the plaintiff did not undergo any operative treatments, was only hospitalized for two days and was given around four months of sick leave, and in the present case the Plaintiff underwent three operations, received inpatient treatment for 21 days and was given over five months of sick leave, the plaintiff in Chan Hung Hang injured his dominant hand while the Plaintiff injured his non-dominant hand.  Further, in Chan Hung Hang, the Medical Assessment Board assessed the plaintiff’s loss of earning capacity permanently caused by the injury as 4%.  In the present case, the assessment was at 5%.
6. I find that Lee Tsz Kin Ken is a less serious case as the plaintiff in that case only suffered a sprain without any fractures.
7. Having considered the authorities and submissions (including the inconvenience of not being able to drive vehicles and having to face difficulties in his daily life), I find that Plaintiff suffered PSLA comparable to that in Chan Hung Hing.  As such, I am satisfied that an appropriate award under this head of damages should be HK$100,000.00.

Loss of future earnings/ loss of earning capacity

1. Although the Plaintiff injured the middle finger of his non-dominant hand, he gave evidence that as a forklift driver, his left hand was as important as his right hand.  Particularly, his left hand is needed to control the levers that control the upward and downward motion, as well as the forward and backward motion of the forklift.  He explained that at the top of the two levers, there are two ball-shaped knobs less than 2cm apart.  In order to insert the forklift under the goods, he needs to control the two knobs at the same time using only his left hand, as his right hand has to be used to control the steering wheel.  The Plaintiff testified that after the accident, his fingers on his left hand are less agile and thus he has not been able to return to his pre-accident job as he is afraid that his inability to properly and precisely control the levers would create accidents at the work place.
2. The Plaintiff gave evidence that he did request to resume his pre-accident job but was refused by his supervisor.  He was then assigned to work in the warehouse to count the inventory.
3. In the Plaintiff’s revised Statement of Damages, a lumpsum of $150,000 was claimed under for “loss of future earnings and/or loss of earning capacity”.  In Chan Pui Ki v. Leung On and Another [1996] 2 HKLRD 401, it was held that the conventional method of assessing the appropriate lump sum to compensate for loss of future earnings has been to use the multiplier/multiplicand approach.  The rationale behind such a method is that *“it is based upon the applied wisdom of the courts over many years… in selecting a particular multiplier, the court would be able to make comparisons with multipliers used in similar cases.”* Since the lump sum claimed by the Plaintiff under loss of future earning was not calculated using the multiplier/ multiplicand approach, nor was it otherwise justified, I will disallow any claim under such head.
4. Furthermore, even had there been a proper calculation in relation to the claim of loss of future earnings, I find that it is unjustified.  Although the Plaintiff was unable to resume his pre-accident job, he was able to resume working at another post and was able to earn the same amount as his pre-accident job.  Solicitor for the Plaintiff argued that had the Plaintiff been able to resume his pre-accident job, he could have expected a 5% annual rise.  However, there was no evidence to support such a proposition especially in light of the current economy.  As such, it has not been proved that there would be future loss of earnings.
5. Regarding the claim for loss of earning capacity, solicitor for the Plaintiff accepted that the monthly income of the Plaintiff at the date of assessment, namely $7800, should be adopted for such purpose, and that the award should be within the range of 6 to 12 months.  In light of the circumstances, I award an amount equivalent to 8 months of the Plaintiff’s current income under this head, namely $62,400.

Conclusion

1. For the above reasons, I assess the Plaintiff’s damages as follows:

PSLA        $100,000.00

Loss of pre-trial earnings    $103,606.00

Loss of earning capacity     $62,400.00

Special damages      $10,615.00

                                             $276,621.00

      Less: EC compensation received   $41,754.72

TOTAL:        $234,866.28

1. Interest is awarded at 2% per annum on PSLA from the date of the writ to the date of judgment and thereafter at judgment rate until payment.  Interest on pre-trial damages is awarded at half judgment rate from the date of the accident to the date of judgment and thereafter at judgment rate until payment.
2. I make a costs order *nisi*that the Defendant should pay the Plaintiff’s costs of this action, to be taxed if not agreed.  Unless an application is made to vary the costs order *nisi*, the order shall become absolute 14 days after today’s date.

# (Bernard Mak)

Deputy District Judge

Representation:

Ms Choy Mun Kie of Messrs B. Mak & Co., for the Plaintiff.

Mr. Jacky Lai inst’d by Messrs Chiu, Szeto & Cheng for the Defendant.