# DCPI 304/2016 [2018] HKDC 1520

# **IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**PERSONAL INJURIES ACTION NO. 304 OF 2016**

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BETWEEN

CHU KA WAI Plaintiff

and

HOP HING FURNITURE COMPANY LIMITED 1st Defendant

YIM TO SANG formerly trading as YING FAT

TRANSPORTATION CO. 2nd Defendant

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Before: His Honour Judge Kent Yee

Dates of Hearing: 27, 28 & 30 August 2018

Date of Judgment: 11 December 2018

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JUDGMENT

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*Introduction*

1. Mr Chu brought this action to claim damages for his injuries sustained purportedly in the course of his alleged employment with Hop Hing Furniture Company Limited (“**Hop Hing**”) or Ying Fat Transportation Co. (“**Ying Fat**”) apparently operated by Mr Yim To Sang (“**Mr TS Yim**”) on 25 March 2013.

2. The accident took place near a warehouse located at DD 128 Lot 189A Ping Ha Road, New Territories (“**the Warehouse**”). Mr Chu fell from a forklift truck parked on the road outside the Warehouse when he was dealing with some jackfruits on a jackfruit tree. It was grown within the open area of the Warehouse. His right elbow was fractured and its head was injured as well.

3. The major issues in this trial are (1) who was his employer; (2) under what circumstances Mr Chu found himself on the forklift truck and (3) assuming liability is established, the adequate quantum of damages.

4. Both Hop Hing and Ying Fat dispute liability. Hop Hing, represented by Ms Li, primarily maintains that Mr Chu was never its employee. It also disputes the account of the accident given by Mr Chu. Ying Fat, acting in person by Mr TS Yim, in its pleaded case contends that Mr Chu was its independent contractor and not its employee and in any event, Mr Chu was not acting in the course of his employment when the accident occurred.

*Background facts*

5. By way of background, I should first give a brief account of the following matters which are either not disputed or supported by incontrovertible documentary evidence.

6. Hop Hing, formerly known as Consolidated Furniture Company Limited, has been trading in furniture since 1986. It is a furniture wholesaler with its suppliers on the Mainland. Its office is located on Sheung Yuet Road, Kowloon and it has rented the Warehouse since 2009 for storage of its furniture products and the fulfilment of orders. The Warehouse is about 3,300 square metres in area. Close to the boundary walls of the Warehouse near its entrance, some fruit trees are grown and among such trees, at the time of the accident, there were jackfruit trees with a height of about 4 to 6 meters from the ground.

7. Hop Hing entered into a written agreement dated 1 April 2010 with Ying Fat (“**the Agreement**”). By the Agreement, Hop Hing engaged Ying Fat to carry out the distribution of its furniture goods and the logistics at the Warehouse from 1 April 2010 to 31 March 2015. At the Warehouse, Ying Fat would handle the furniture goods received from the suppliers of Hop Hing and distribute them among or deliver them to the customers of Hop Hing in Hong Kong.

8. The business of Ying Fat is actually operated by Mr Yim Ting Pong Aden (“**Aden**”). He is the younger brother of Mr TS Yim. Prior to the accident, Aden had known Mr Chu for more than a decade and they had worked together in the logistics business.

9. At the time of the accident, there were two forklift trucks at the Warehouse. One was provided by Hop Hing and the other one belonged to Ying Fat. They were tools for the purpose of lifting and transporting furniture goods within the Warehouse.

10. In Hong Kong, forklift truck operators must be trained and certified to operate forklift trucks in accordance with the Factories and Industrial Undertakings (Loadshifting Machinery) Regulations. At the time of the accident, Mr Chan and one late Mr Chung, the employees of Ying Fat, were the only persons certified to operate such forklift trucks.

*Parties’ respective cases on liability*

*Mr Chu’s case*

11. Mr Chu testified for himself and he called no other witnesses. He said that he had known Aden since 2002 when he started working as a delivery worker at his transportation company, which provided delivery service to Hop Hing. He worked for Aden’s company for about 4 to 5 years and he left when Aden’s company ceased working for Hop Hing. Then he purchased a lorry to take the place of Aden’s company to provide delivery service to Hop Hing. He only carried on such business of his own for a few months.

12. He then got subcontracted delivery work together with Aden’s company for another furniture company known as “Ah Sze”. In about 2010, Aden told him that he would go bankrupt but they continued to work for Ah Sze.

13. In about November 2011, Mr Chu met with a traffic accident (“**the Traffic Accident**”) and had to take a rest until the summer of 2012. In the summer of 2012, Aden asked him to work for his company. He told Mr Chu that he was a bankrupt and he then worked for Hop Hing. Mr Chu agreed.

14. Mr Chu asked Aden directly who his employer was and Aden told him that it was Hop Hing. On that basis, he is certain that he was an employee of Hop Hing. He was paid HK$10,000 in cash every month by Aden as his salary. His daily duties included unloading the furniture goods from those lorries coming from the Mainland and handled them with the assistance of the forklift trucks operated by Mr Chan and Mr Chung.

15. There were two lady staff members working at the Warehouse. They dealt with the customers of Hop Hing and arranged delivery of its furniture goods. For male staff, Mr Chan, Mr Chung and Mr Lee were employed and carried out similar duties of Mr Chu. As mentioned, Mr Chan and Mr Chung had the additional duty of operating the forklift trucks.

16. Mr Chu knew another male staff called “Wing Keung”, who was a furniture repair worker. Mr Chu said on one occasion Wing Keung told him in person that he was employed by Hop Hing.

17. Mr Chu gave the following account of the accident. On 25 March 2013, Aden instructed him to deal with the jackfruits on the trees. Such jackfruits might fall onto the road outside the Warehouse and could be dangerous to other road users including pedestrians. Therefore, they had to be removed to prevent such accidents.

18. Mr Chu had carried out such a duty a few times before. On that particular occasion, Aden placed some pallets onto the fork of the forklift truck as a makeshift elevated platform and Mr Chu was asked to stand on such pallets to remove those fruits on the trees. The forklift truck was operated by Mr Lee and he would cause the fork to ascend so that Mr Chu could reach the fruits.

19. On that occasion, when the forklift truck was parked on the road underneath a jackfruit tree, Mr Chu stood on the pallets on the fork and Mr Lee started elevating the fork. Just when the fork was being elevated, Mr Chu fell onto the ground from about 3 meters and he lost his consciousness.

20. When he was standing on the pallets placed on the folk, the pallets were not firmly attached to the folk. There was no fence in place to prevent him from falling out from the forklift truck. He had no safety belt attaching to the forklift truck. He had no training whatsoever as to how to work on the folk of the forklift truck. He once complained to Aden about the dangerous nature of the task and remind him that there should be a safe work perform and a safety belt. He alleges that Aden told him that he could do nothing and asked him to take extra care and get on with his work.

21. Therefore, Mr Chu alleges that the accident was caused by the negligence, breach of contract of employment, breach of common duty of care as occupier of the Warehouse under the Occupiers Liability Ordinance, Cap. 314 (“**the OLO**”) and breach of employer’s statutory duties under sections 6A(1) & 6A(2) of the Factories and Industrial Undertakings Ordinance, Cap. 59 and section 6 of the Occupation Safety and Health Ordinance, Cap. 509 on the part of Hop Hing and/or Ying Fat.

22. At the trial, Mr Chu insists that he was an employee of Hop Hing only and Ying Fat was only a front put up by Aden to evade liability. He claims that he only discovered the existence of Ying Fat after the commencement of these proceedings.

*Hop Hing’s case*

23. Hop Hing called Mr Cheung as its sole witness. Mr Cheung is its general manager. Mr Cheung explained the operation of Hop Hing in clear terms.

24. Mr Cheung explained that Wing Keung was the only employee of Hop Hing working at the Warehouse on a regular basis. He was a furniture repair technician and he performed on-site minor repair works on those furniture products returned by the customers of Hop Hing to the Warehouse. For substantial repair works, they had to be carried out in the factories on the Mainland.

25. On the other hand, Hop Hing would send some auditing staff to the Warehouse on a yearly basis to conduct auditing work.

26. Hop Hing denies any legal relationship with Mr Chu, save that it accepts that it was the occupier of the Warehouse and Mr Chu was a lawful visitor within the meaning of the OLO.

27. Mr Cheung had no personal knowledge of the accident. It was only about a month after the accident that Aden mentioned to him about the accident without giving any detail. When Hop Hin received a letter from the former solicitors of Mr Chu dated 4 November 2015, Mr Cheung made enquiries with Aden. Aden told him that Mr Chu fell from a forklift truck when trying to pick jackfruits on a tree on his own motion in the absence of his knowledge.

28. Mr Chu did not seriously challenge the evidence of Mr Cheung by way of cross-examination. He merely asserted his allegation to Mr Cheung that Hop Hing was his employer, which was flatly denied by Mr Cheung.

*Ying Fat’s case*

29. Mr TS Yim testified together with Aden and Mr Lee for Ying Fat. He denies any knowledge of and involvement in the business operation of Ying Fat. He merely acted as the nominee of Aden to carry on his transportation business when he went bankrupt. He signed all the legal documents of Ying Fat in the capacity of its sole proprietor including the Agreement, the business registration certificate and the tax returns of Ying Fat.

30. Aden agrees that he is the man actually running the business of Ying Fat. He had long worked in the trade of transportation in connection with furniture business. Before setting up Ying Fat with the assistance of Mr TS Yim, he had a company called “Ming Fat”, which provided transportation service to Hop Hing until 2007. Then he ceased the business of Ming Fat and went bankrupt.

31. Aden came to know Mr Chu in or about 2000 when Mr Chu was employed by Ming Fat as a delivery worker. They were good friends until the accident. Upon the cessation of the business of Ming Fat, Aden sold one of his lorries to Mr Chu for his own transportation business. Aden continued to provide transportation service to Ah Sze under the name of Ying Fat and Mr Chu did the same under his own name.

32. In or about 2011, Ying Fat worked for Hop Hing again and stopped its service for Ah Sze. In or about May 2012, Mr Chu met him and told him that he had been badly injured in the Traffic Accident when travelling in a taxi. Mr Chu told him that he was making a legal claim for compensation. He worried that if he got back to his pre-injury work, his claim would be prejudiced. He asked Aden to employ him without any formal employment contract so that his employment would not be discovered. Coincidentally, there was a vacancy in Ying Fat and out of friendship, Aden agreed to employ Mr Chu with a monthly salary of HK$10,000. It is remarkable that though the pleaded case of Ying Fat is that Mr Chu was its independent contractor only, in his evidence and at the trial, Aden accepts that Mr Chu was the employee of Ying Fat and throughout his employment, Mr Chu worked under his supervision. Mr Chu was never required to work from height on forklift trucks and he did not have to operate the forklift trucks.

33. Aden went to the Warehouse almost every day. He prepared lunch for the staff including Mr Chu so that they could lunch in the office. There were some fruit trees yielding fruits such as jackfruits, mangos and longans within the enclosed area of the Warehouse. Every now and then, Aden and other employees of Ying Fat picked up those ripen fruits on the ground to eat.

34. On the day of the accident, in the morning, no furniture goods were delivered to the Warehouse yet. Aden was preparing lunch, Mr Chung rushed towards him and told him about the accident. He immediately called the ambulance. He did not have any personal knowledge of the occurrence of the accident.

35. Aden says that Mr Chu had never complained to him after the accident. Mr Chu stopped working for about 10 months in view of his injuries and during his absence from work, Aden continued to pay him his monthly salary.

36. When Mr Chu resumed duties in early 2015, his relationship with Aden deteriorated. Aden heard that Mr Chu was unhappy with his salary and felt discriminated. Mr Chu was eventually dismissed in mid 2015.

37. Mr Lee testified and showed a few photographs of the Warehouse and its vicinity to this court. He was employed by Ying Fat a few months earlier than Mr Chu. He performed similar duties of Mr Chu at the Warehouse. He was positive that Aden had never instructed him or any other colleagues to work outside the Warehouse. He was never instructed to trim the trees and remove its fruits outside the Warehouse.

38. At the time of the accident, there were two qualified forklift truck drivers, namely Mr Chung and Mr Chan. At around noon, Mr Chu approached him and asked him whether there would be furniture goods to be delivered to the Warehouse in the afternoon. Mr Lee then made enquiries with the ladies in the office and found out that there would be none. In other words, he and Mr Chu did not have to unload any goods in the afternoon. He told Mr Chu about this. Mr Chu suggested to tamper with the jackfruit tree.

39. It was the understanding of Mr Lee that Mr Chu wanted to trim the jackfruit tree by removing its branches. Once Mr Chu told him that without such branches, the jackfruits would grow better and become more delicious.

40. When Mr Chu made this suggestion, Aden was not around. Mr Chu made no mention about any instruction allegedly given by Aden at all. Since his employment with Ying Fat, Mr Lee had never been instructed to remove any fruits from those trees. Nor had he ever heard about any accident on the road caused by any falling fruits.

41. Mr Lee acceded to the suggestion of Mr Chu. It was not the ordinary duties of their employment. He did not inform Aden of their action beforehand. Though he was not qualified to drive the forklift truck, he agreed to do so. There was a pallet placed on the fork of the forklift truck and Mr Chu squatted on it. When the forklift truck was driven near the jackfruit tree on the road, Mr Lee stopped the forklift truck and started elevating the fork. All of a sudden, he heard a big noise and he found Mr Chu lying on the ground. He did not see how he fell from the forklift truck.

*Analysis*

42. Neither the employment of Mr Chu nor the accident was evidenced by any contemporaneous documents*.* This court has to examine the oral evidence of the parties with care. Whilst inherent probabilities are the major consideration, this court also takes into account the demeanour of the witnesses and the manner in which their evidence was developed.

43. Mr Chu was not a reliable witness in my view. He was not familiar with the contents of his witness statements and he readily explained his inability to answer questions under cross-examination by way of his purported forgetfulness.

44. In contrast, all the defence witnesses struck me as truthful and honest witnesses. Mr Cheung’s evidence was logical and reasonable. It was not subject to any serious challenge. Mr TS Yim sounded sincere and in disregard of any possible personal liabilities, he made the best effort to tell the court what he actually believed to be true. Mr Lee sounded genuine and straightforward and did not shy away from his own responsibility in the accident.

45. Lastly, Aden appeared to this court to be a forthcoming and credible witness. He testified with confidence. He frankly accepts that he should have kept Mr Chu properly insured as with all other employees of Ying Fat. His evidence was not effectively challenged under cross-examination undertaken by Mr Chu himself.

46. For the following reasons, I conclude that Ying Fat was the sole employer of Mr Chu at the time of the accident.

47. Firstly, the Agreement, the authenticity of which was not challenged, showed the legal relationship between Hop Hing and Ying Fat. Ying Fat was an independent contractor of Hop Hing. I also accept the evidence of Mr Cheung in its entirety. Apart from Wing Keung, all other workers were employed by Ying Fat at the Warehouse.

48. Further and more importantly, I accept the evidence of Aden in this regard. I prefer his evidence to those of Mr Chu whenever they are in conflict. I believe his explanation about his agreement to employ Mr Chu without any formal written agreement. I reject Mr Chu’s allegation about the purported confirmation given by Aden that Hop Hing was Mr Chu’s employer. The legal documents relating to the personal injuries action commenced by Mr Chu for the Traffic Accident showed that Mr Chu did conceal his employment at the Warehouse. Such documents include his Statement of Damages and his witness statement signed by him. I did not accept his explanation for his failure to mention about it in those proceedings. It was clearly a relevant matter and he was legally represented.

49. Moreover, I accept the evidence of Aden that Mr Chu requested him not to report the accident to the Labour Department. This was not challenged by Mr Chu at all. My belief that Mr Chu had the intention to conceal his employment with Ying Fat (and not Hop Hing) is confirmed.

50. Mr Lee’s evidence is also supportive of the allegation that Mr Chu was the employee of Ying Fat. There is no reason why all other delivery workers at the Warehouse were employed by Ying Fat whereas Mr Chu alone was employed by Hop Hing.

51. Indeed, Mr Chu accepts that he discussed his employment with Aden only and not any one of Hop Hing. I see no reason why Aden would wish to protect Hop Hing in these proceedings at the expense of his brother, who helped him out and acted as his nominee in the business of Ying Fat.

52. Mr Chu alleges that he had not heard anything about Ying Fat before this action. I accept Ms Li’s submission that this allegation is unbelievable. The photos taken by the Labour Department showed that the trade name of Ying Fat appeared conspicuously at the Warehouse. It even appeared on the metal fence where the forklift truck was stopped for him to reach the tree.

53. Now I turn to the details of the accident. On this issue, I fully accept the evidence of Mr Lee and Aden. They sounded far more logical and reasonable. I conclude that Mr Chu was a frolic of his own and what he did was not within his employment with Ying Fat.

54. It is remarkable that Mr Chu did not cooperate with the Labour Department in its investigation into the accident despite its written request. As a result, the Labour Department could not come up with any investigation report. The explanation given by Mr Chu is incredible. He claims that he only recovered his consciousness half a year later and so he could not report the accident to the Labour Department. This is clearly not the case.

55. Mr Chan also claims that Hop Hing asked him not to do so. He failed to identify who actually made this request on behalf of Hop Hing. I cannot believe if he had genuinely believed that Hop Hing was his employer and he hurt himself so badly in carrying out such a dangerous task on its behalf, he would have agreed to such an unreasonable request to his detriment. Consequently, he lost his entitlement to any statutory employees’ compensation. It would even be more incredible that he would have agreed to return to the Warehouse to work again after his recovery.

56. The danger in performing the alleged task on the fork of the forklift trucks was obvious to Mr Chu on his admission. The danger was redoubled by the fact that the forklift truck was driven by Mr Lee, and not any qualified drivers. Mr Chu allegedly had raised his concern with Aden. I cannot accept his allegation.

57. There is no allegation that any alleged accident involving falling fruits from any of the trees prior to the accident. Nor is there any allegation of any time constraint to carry out the alleged instruction given by Aden. There is no reason why Mr Chu did not attempt to reach the fruit tree by safer means. I also fail to understand why Mr Chu would have agreed that Mr Lee and not Mr Chung or Mr Chan was in charge of the forklift truck. There is no reason why he would have agreed to undertake such a dangerous task.

58. In the premises, I have no hesitation in rejecting the version of events advanced by Mr Chu. He together with Mr Lee went underneath the tree in the forklift truck for his personal purpose, which had nothing to do with his employment with Ying Fat. Ying Fat cannot be held liable for his reckless conduct. His case against Ying Fat must fail.

59. For completeness, I would make it clear that the OLO has no application here. Even if I accept that Mr Chu injured himself in the course of his employment, Mr Chu made no allegation about the physical condition of the Warehouse. As an occupier, only an occupancy duty and not an activity duty is owed to his visitors. Hence, no liability can attach to either Hop Hing and Ying Fat as the occupiers of the Warehouse even on the evidence of Mr Chu.

*Quantum*

60. Now I turn to the issue of quantum. It may become relevant in the event that I am held to be wrong on the liability issue.

61. Mr Chu was admitted to Tuen Mun Hospital immediately after the accident. Medical examination by the Department of Accident and Emergency showed that he had suffered loss of consciousness and seizure for one minute. X-ray of his right elbow revealed right olecranon fracture. Computed tomography of his brain showed acute right epidural haemorrhage with compression and effacement of ipsilateral lateral and third ventricles, and midline shift to the left. He also suffered right temporal bone fracture.

62. He received treatment from the Department of Neurosurgery and the Department of Orthopaedics & Traumatology. He further received treatment from the Physiotherapy Department and completed 22 sessions of out-patient physiotherapy in Tuen Mun Hospital. Lastly, Mr Chu also received occupational therapy treatment.

63. Mr Chu was granted a total of 86 days of sick leave. The last day of sick leave fell on 24 September 2013.

64. His current complaints include residual pain, stiffness and weakness over his right elbow and dizziness aggravated by big movement especially extension and weather changes. He has occasional headaches and difficulty in concentration on and performance of certain mental tasks. He alleges memory impairment, insomnia and irritability.

65. Mr Chu was 33 years old at date of the accident and was 38 years old at the trial. He earned HK$10,000 before the accident and after the accident he earned the same amount until May 2015 with Ying Fat. From June 2015 onwards, he worked for another company as a forklift operator with a monthly income of HK$14,000.

66. In his Further Revised Statement of Damages, Mr Chu claims the following heads of damages:

HK$

PSLA 550,000

Pre-trial loss of earnings 5,500

Loss of earning capacity 200,000

Loss of ability as to gratuitous services to family 50,000

Future medical expenses 54,220

Special damages 20,000 Total (excluding interest): **879,720**

*PSLA*

67. Mr Chu claims to be unable to pursue his pre-accident hobbies including boxing, basketball and snooker due to his residual pain.

68. Ms Li refers this court to the following authorities: *Wong Kai Fun v Sun On Logistics Ltd*, unreported, HCPI 196/2015, 26.05.2017, *Kami Lohar Bahadur v Ng Yuk Tong*, unreported, HCPI 466/2009, 6.12.2010, *Limbu Netra Kumar v Yau Lee Construction Co. Ltd*, unreported, HCPI 234/2002, 25.4.2007 and *Siu Kin Keung Anthony v H & M Hennes & Mauritz Ltd*, unreported, HCPI 81/2011, 31.10.2012.

69. I have considered these authorities and they are helpful. Taking into account the severity of Mr Chu’s injuries and the inflation factor, I would assess the PSLA damages at HK$500,000.

*Loss of Earning capacity*

70. I have considered the joint neurological report compiled by Dr Fong, neurological expert for Mr Chu and Dr Yu, neurological expert for Hop Hing. In the joint report, the experts agree that Mr Chu suffers from mild residual post-concussional syndrome which is permanent in nature.

71. In the joint report, the whole person impairment is assessed at 3% and the loss of earning capacity is assessed at 3% too. Mr Chu is able to resume his pre-accident employment but is not advised to work at height.

72. I am also assisted by a joint orthopaedic report compiled by Dr Fu, orthopaedic expert for Mr Chu and Dr Ho, orthopaedic expert for Hop Hing. The experts agree that Mr Chu suffers from residual pain, stiffness and weakness of his right elbow. They differ from each other in their assessments of Mr Chu’s impairment as a whole person and loss of earning capacity. Dr Fu’s assessment is 3% for both whereas Dr Ho’s assessment is 1% for both. I opine that Dr Ho’s assessment is on the low side given the severity of the injuries sustained and the residual problems affecting Mr Chu. I prefer Dr Fu’s assessments.

73. Mr Chu is able to return to his pre-accident work. He does not explain how his current medical condition adversely affects his work capacity. I would assess his damages under this head at HK$50,000 only.

*Loss of ability to provide gratuitous services to family*

74. This claim is made apparently in accordance with section 20C(4) of the Law amendments and Reform (Consolidation) Ordinance, Cap. 23.

75. Mr Chu alleges that before the accident he was responsible for all the repair and handyman jobs at home. He also shared some household work with his family. However, after the accident, given his medical condition, he has difficulty in performing such works for his family. Therefore, he claims a sum of HK$50,000.

76. Mr Chu simply did not adduce credible evidence to support these allegations. This court has no idea what such works are and why he could not carry out such works now. Mr Li submits that as a gratuitous payment, an amount of H$3,000 is appropriate. In these circumstances, I agree with her.

*Future medical expenses*

77. The only medical expense that all the medical experts agree that Mr Chu would incur in the future is for the purpose of dealing with his permanent headaches and dizziness. Mr Chu probably needs 4 visits to the clinic annually and each visit would cost him HK$400.

78. Ms Li helpfully submits that the applicable multiplier should be 27.56 according to Table 1 of Personal Injury Tables Hong Kong 2016. I accept her and that the claim under this head should be HK$44,096 ($400 x 4 x 27.56).

*Special damages*

79. Mr Chu claims HK$3,000 for his medical expenses, HK$2000 for his travelling expenses and HK$15,000 for his expenditure on his tonic food and nourishing soups.

80. Ms Li takes issues with the last item only. She is correct in her submission that there is no evidence to support the allegation that such an expense was actually incurred and that such tonic food and nourishing soups were of assistance in his recovery. I agree that in these circumstances a modest amount of HK$5,000 is appropriate under this head.

81. Thus, the special damages recoverable should be HK$10,000.

82. Before I leave this issue, I should add that the clear and unchallenged evidence is that Mr Chu has not suffered any pre-trial loss of earning. He cannot possibly recover any damages under this head.

83. In summary, my assessment is as follows:

HK$

PSLA 500,000

Pre-trial loss of earnings 0

Loss of earning capacity 50,000

Loss of ability as to gratuitous services to family 3,000

Future medical expenses 44,096

Special damages 10,000

Total (excluding interest): **607,096**

*Conclusion and Order*

84. For the reasons given above, Mr Chu’s claim against both Hop Hing and Ying Fat is unmeritorious and falls to be dismissed.

85. Costs should follow the event. I make a costs order *nisi* that Mr Chu should pay the costs of this action to both Hop Hing and Ying Fat, to be taxed if not agreed. I also allow certificate for counsel in the case of Hop Hing. This order *nisi* shall become absolute in the absence of any application by summons for variation within 14 days.

86. As indicated to Mr Chu at the trial, this court can arrange an interpreter to explain the contents of this Judgment to him in the Chinese language if he so requires.

87. It remains for me to thank Ms Li for her assistance rendered to this court.

(Kent Yee)

District Judge

The plaintiff appearing in person

Ms Miranda Li, instructed by SY Wong & Co. for the 1st defendant

The 2nd defendant appearing in person