DCPI No. 344/2008

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 344 OF 2008

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BETWEEN

MA SHUN HUNG (馬舜雄) Plaintiff

and

CHUN WAI HK HOLDINGS LIMITED

(駿威香港集團有限公司) 1st Defendant

TSE WING HANG (謝詠衡) 2nd Defendant

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Coram: HH Judge Lok in Court

Dates of trial: 18, 19 & 23 March 2009

Date of handing down of Judgment: 25 May 2009

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JUDGMENT

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1. This is a claim for damages for personal injuries and related property loss arising out of a traffic accident involving chain collisions.

*Background*

1. There is very little dispute about the facts of the present case. The Plaintiff and the 1st Defendant are respectively the registered owners of a private car with the registration number KP 313 (“the Plaintiff’s Vehicle”) and a light goods vehicle bearing the registration number HG 827 (“the 1st Defendant’s Vehicle”). On 27 June 2005 at about 2:50 pm, the Plaintiff and the 2nd Defendant, who was an employee of the 1st Defendant, were driving respectively the Plaintiff’s and the 1st Defendant’s Vehicles on the third lane in the westbound carriage of Lung Cheung Road (“the Road”). Shortly before the accident, there were 2 vehicles, namely a light goods vehicle (“the First Vehicle”) and a private car (“the Second Vehicle”) cutting from the second lane to the third lane of the Road. After the cutting of the lane, the First Vehicle suddenly stopped. The Second Vehicle could not stop in time and collided with the back of the First Vehicle. Upon seeing this, the driver of a private car travelling on the 3rd lane (“the Third Vehicle”) managed to stop behind the Second Vehicle without a collision. The 1st Defendant’s Vehicle, which was the fourth vehicle, was not able to stop in time and rammed into the back of the Third Vehicle. The Plaintiff’s Vehicle, which was the fifth vehicle in line, again could not stop in time and collided with the 1st Defendant’s Vehicle. As a result, the Plaintiff was injured in the accident.
2. After the accident, the 2nd Defendant was convicted, upon his own guilty plea, of the offence of careless driving for failing to maintain a proper distance between the 1st Defendant’s Vehicle and the Third Vehicle in the front. The Plaintiff was also prosecuted of the same offence but was acquitted after trial.
3. The Plaintiff claims that the collision between the Plaintiff’s and the 1st Defendant’s Vehicles was caused by the negligence of the 2nd Defendant for, *inter alia*: (i) failing to maintain a proper distance between the 1st Defendant’s Vehicle and the one in front; (ii) braking and stopping the 1st Defendant’s Vehicle unduly and abruptly without paying regard to the condition of the traffic in the Road; and (iii) failing to notify the following traffic of his sudden stop. The Plaintiff therefore commenced the present action to claim for damages for personal injuries and repair costs of the Plaintiff’s Vehicle. On the other hand, the 1st Defendant claims that such collision was caused by the negligence of the Plaintiff in failing to maintain a proper distance between the 2 vehicles and failing to stop the Plaintiff’s Vehicle in time to avoid the collision, and so it counterclaims against the Plaintiff for the repair costs only in respect of the damage in the back of the 1st Defendant’s Vehicle.

*Evidence at the trial*

1. Both the Plaintiff and the 2nd Defendant testify at the trial. According to the Plaintiff, he was driving the Plaintiff’s Vehicle at a speed not exceeding 60 km per hour shortly before the accident. By that time, he was travelling at a distance of about 5 to 6 vehicles’ space behind the 1st Defendant’s Vehicle. Upon seeing the braking light of the 1st Defendant’s Vehicle, he slowed down his own vehicle. As there was traffic from behind and he did not foresee that the 1st Defendant’s Vehicle would come to a sudden stop, he did not apply the brakes heavily at the initial stage. Shortly thereafter, the Plaintiff, finding that the 1st Defendant’s Vehicle in fact came to a sudden stop, immediately applied very hard on the brakes. However, he could not stop the Plaintiff’s Vehicle in time to avoid the collision.
2. On the other hand, the 2nd Defendant claims that he was driving the 1st Defendant’s Vehicle at a speed of about 70 km per hour shortly before the accident. By that time, he was about 2 to 3 vehicles’ space behind the Third Vehicle. From the rear mirror, he saw the First and the Second Vehicles in the second lane, and both vehicles were travelling very fast as if the 2 drivers were having a car race. Upon seeing this, he reduced the speed of the 1st Defendant’s Vehicle. The First and the Second Vehicles then cut from the second to the third lane. After the cutting of the lane, the First Vehicle suddenly stopped. The 2nd Defendant applied the brakes immediately, but he could not stop the 1st Defendant’s Vehicle in time to avoid the collision with the Third Vehicle in the front. Shortly thereafter, the Plaintiff’s Vehicle rammed into the back of the 1st Defendant’s Vehicle. According to the 2nd Defendant, the force of impact of the first collision in the front was much smaller than that of the second collision in the back. He also found that the damages caused to the vehicles by the first collision were less serious than those caused by the second collision.

*Issues relating to liability*

1. In my judgment, it is clear that both the Plaintiff and the 2nd Defendant were negligent at the time of the accident in failing to maintain proper distances between their respective vehicles and the one in the front and failing to stop the vehicles in time to avoid the collisions. A good summary of the duty of the drivers of the following traffic can be found in the judgment of the Full Court of the Supreme Court of South Australia in *Mugford v Ames* [2000] SASC 241, in which Martin J said the following:

*“42. ……… the duty of drivers of following vehicles to drive with such care as to enable them to avoid colliding with vehicles in front when such vehicles are required to stop. The Saskatchewan Court of Appeal in Kosinski v Snaith (1983) 1 DLR (4th) 170 correctly characterised the onus on the following driver as ‘heavy’. The Court provided a helpful and accurate summary of the content of the duty in the following passage (p 174):*

*‘There is a clear and well-defined standard of care imposed upon the driver of a vehicle which follows another. He must keep a reasonable distance behind the vehicle ahead; he must keep his vehicle under control at all times; he must keep an alert and proper look-out; and he must proceed at a speed which is reasonable relative to the speed of the other vehicle. He must anticipate that, for whatever reason, the vehicle ahead may stop. He need not anticipate the reason. He must proceed with that care which will enable him to avoid colliding with it.’*

1. *There are sound reasons for imposing such a duty of care upon following drivers. It is not uncommon for emergency situations to require a driver to stop suddenly and, importantly, modern traffic controls and conditions frequently require vehicles in a line of traffic to stop. Compliance with the duty of care by the following driver is critical to an orderly and safe flow of traffic.”*
2. I would not attach a lot of weight to the evidence of the Plaintiff and the 2nd Defendant about the distances between their respective vehicles and the one in front shortly before the collisions, as it was very difficult for such drivers to give reliable assessment about the distances when they were driving their vehicles at some speed by that time. However, if the Plaintiff and 2nd Defendant had maintained proper distances and had kept proper lookouts, they should have been able to react in an emergency when the vehicle in front came to a sudden stop. The fact that they had rammed into the back of the front vehicles clearly shows that they were negligent at the time of the accident.
3. To me, the main liability issues in this case are causation and contributory negligence, and I will deal with these issues in turn.

*(i) Causation*

1. Undoubtedly, the Plaintiff’s negligence was the cause of the collision between the Plaintiff’s and the 1st Defendant’s Vehicles. Had the Plaintiff maintained a proper distance between the 2 vehicles and kept a proper lookout on the traffic, the Plaintiff should have been able to stop the Plaintiff’s Vehicle in time even in the case of an emergency, and so in my judgment, there is no question that the Plaintiff is liable for the damages arising from the collision between the Plaintiff’s and the 1st Defendant’s Vehicles.
2. The same may not apply to the negligence of the 2nd Defendant. He failed to maintain a proper distance between the 1st Defendant’s Vehicle and the one in the front, and as a result he rammed into the back of the Third Vehicle. The issue then arises is that whether such negligence was also one of the causes of the collision between the Plaintiff’s and the 1st Defendant’s Vehicles. If not, the Defendants would not be liable for any damages arising from such collision.
3. The questions to be asked in determining the issue of causation are therefore: But for the 2nd Defendant’s negligence of not keeping proper distance in the front, would the chain of collisions be broken? In other words, say if the 2nd Defendant was indeed able to avoid a collision with the vehicle in the front and stopped just behind the Third Vehicle, would the Plaintiff’s Vehicle still have rammed into the back of the 1st Defendant’s Vehicle?
4. It is very difficult for the court to answer these questions without the assistance of expert evidence. However, one thing that cannot be disputed is that as the 2nd Defendant had failed to maintain a proper distance with the vehicle in the front, he had to stop the 1st Defendant’s Vehicle abruptly to avoid the collision, and this, in turn, caused danger to the following traffic. This, according to the following 2 decided cases, would be sufficient for the court to find that the 2nd Defendant’s negligence was also one of the causes of the collision between the Plaintiff’s and the 1st Defendant’s Vehicles.
5. The first case is a local decision by Deputy High Court Judge Saunders, as then was, in *Wong Kwok Wa v Hung Tin Sun & Ors.*, unreported, HCPI No. 1153 of 2004 (decision on 28 October 2005). In that case, the plaintiff was driving his motorcycle on the offside lane of a two-lane carriageway. Ahead of him was a tanker vehicle driven by the 1st defendant, and further ahead on the same lane was a medium goods vehicle. On the near side lane, driving in the same direction and ahead of all 3 vehicles in the offside lane was a container truck driven by the 3rd defendant. At the time of the accident, the vehicle in front of the container truck braked suddenly. As the 3rd defendant was following too close by that time, he swerved the container truck to the right into the offside lane. In so doing, he collided with the front nearside of the medium goods vehicle. The 1st defendant, in the tanker truck, following too close behind the medium goods vehicle, was unable to stop in time and collided with the rear of the medium goods vehicle. The plaintiff, following too close behind the tanker truck, swerved to avoid it and collided with the concrete median barrier, and as a result he suffered significant injuries.
6. The position of the 2nd Defendant herein was quite similar to that of the 1st defendant in *Wong Kwok Wa*. Deputy Judge Saunders had no difficulty in finding that the 1st defendant’s negligence was a contributing cause of the plaintiff’s accident. The learned judge therefore proceeded to apportion the responsibility for the accident between the 1st and the 3rd defendants as 60% and 40% respectively. The learned judge also found that the plaintiff was guilty of contributory negligence and reduced the quantum of his damages by 30%.
7. The second case is *Mugford v Ames, ibid.,* mentioned in paragraph 7 above, which contains a more detailed discussion on the issue of causation in the case of chain collisions.
8. The facts are not too different from those in the present case. There were a line of vehicles travelling on the right lane of a two-lane carriageway and approaching a road junction. At the road junction, there might be traffic turning to the right causing a line of delayed vehicles. The respondent, which was the last in the chain driving a motorcycle, saw that the traffic in front of him was gradually banking up and was decelerating. He also decelerated, but he thought that, as it usually did, the impediment would pass and the traffic having slowed would simply roll on and continue. As the distance between his motorcycle and the vehicle immediately to the front was reducing, the respondent moved the motorcycle to the left of the right-hand lane. The respondent then became aware that the traffic in the front was slowing more than he expected. By that time, the respondent’s motorcycle was only 1 to 2 cars’ length from the back of the appellant’s vehicle in the front. Upon seeing this, the respondent decided to pass the appellant’s vehicle on the left side rather than placing himself at the risk from the rear. Just at that particular moment, a Holden motor vehicle travelling in the front braked heavily. A Honda sedan then collided with the rear of the Holden. The Mazda sedan driven by the appellant then collided with the rear of the Honda following which the final impact occurred between the respondent’s motorcycle and the Mazda.
9. At the trial, the appellant claimed that he was 1 to 2 cars’ length behind the rear of the Honda shortly before the accident. He reacted to the emergency braking of the Honda by applying his brakes very hard, but his vehicle still collided with the rear of the Honda. Immediately after such collision, the respondent’s motorcycle rammed into the back of his vehicle. In the appeal, the appellant argued that he was not negligent to any degree *vis-à-vis* the respondent because the respondent collided with the rear of his vehicle, an argument which was rejected by the Full Court of the Supreme Court of South Australia.
10. Regarding the issues of the duty of care owed by the appellant to the driver of the following vehicle and causation, Martin J said the following in the judgment:

*“38. The duty of a driver in the position of the appellant in a line of traffic requires the driver to drive in such a manner that, if the circumstances of the flow of traffic so require, the vehicle can be brought to a stop without danger to other vehicles. It is foreseeable that if braking is left to the last moment such that emergency braking must be undertaken, with or without impact with the vehicle in front, following drivers will be put at risk of injury through collision with the rear of the stopping vehicle. It is not uncommon for following drivers to be less than properly attentive and to drive in such a manner that they are unable to avoid impact with the vehicle in front if emergency braking occurs.*

1. *In my opinion, whether the circumstances were as found by the learned trial Judge or as I have found earlier in these reasons, the appellant was in breach of the duty of care that he owed to the respondent. He failed to leave sufficient room between his vehicle and the Honda to his front. He failed to pay proper attention to the emerging circumstances and to apply his brakes in sufficient time to both provide reasonable warning that he was stopping and to avoid the impact with the Honda. As a consequence he applied emergency braking and caused a sudden stop of his vehicle by colliding with the vehicle in front. In doing so, he created a dangerous situation for the respondent in breach of his duty of care to the respondent. To apply the words of Mason CJ in March v Stramare (p 519), the late and sudden braking by the appellant coupled with the impact with the Honda vehicle created a situation of danger carrying with it the risk that a careless driver would act in the way that the appellant acted.*
2. *The appellant’s breach of his duty of care to the respondent was a cause of the accident and of the damage sustained by the respondent. As Deane J pointed out in March v Stramare (p 521), the case is one in which there was fault on both sides and in which, in the context of apportionment legislation, the accident must be seen as the result of not only the negligence of the respondent in his driving of the motor cycle, but also of the negligence of the appellant in driving in breach of duty of the care which he owed to a class of persons of which the respondent was a member.”*

The Full Court therefore found that the collision between the appellant’s and the respondent’s vehicles were caused by the negligence of both drivers.

1. As I see it, the same reasoning also applies in the present case. As the 2nd Defendant had failed to maintain a proper distance between the 1st Defendant’s Vehicle and the Third Vehicle, he had to stop the 1st Defendant’s Vehicle abruptly with a view to avoid the collision. Such late and sudden braking by the 2nd Defendant coupled with the impact with the Third Vehicle, therefore, created a situation of danger carrying with it the risk that a careless driver like the Plaintiff was following him too close and was not able to stop in time in the case of an emergency. As such, the 2nd Defendant’s negligence was also a contributing cause of the collision between the Plaintiff’s and the 1st Defendant’s Vehicles, and the Defendants should therefore be liable for the damages arising from such collision.

*(ii) Contributory negligence*

1. Having resolved the causation issue, I then have to apportion the blameworthiness of the parties for the purpose of ascertaining the degree of contributory negligence in the present case. In this regard, I find the following *dicta* of Martin J in *Mugford v Ames* useful:

*“41. ……… The Court is required to reduce the damages payable to the respondent to such extent as the Court thinks fit and equitable having regard to the respondent’s share in the responsibility for the damage. The task of the Court was explained by the Full Court in Hooker v Grinham (unreported Judgment No. S6424 delivered 5 November 1997). Doyle CJ, with whom Lander and Bleby JJ agreed said:*

*‘Apportioning liability involves a comparison of two things in particular. First, culpability, which is the degree of departure from the standard of care of the reasonable driver. Secondly, the relative importance of the acts of the parties in causing the damage but it is ‘ … the whole conduct of each negligent party in relation to the circumstances of the accident which must be subjected to comparative examination’, see Bankstown Foundry Pty Ltd v Braistina (1986) 160 CLR 301 at 311.’*

*42. It is in the context of apportionment that it is appropriate to have regard to the duty of drivers of following vehicles to drive with such care as to enable them to avoid colliding with vehicles in front when such vehicles are required to stop. The Saskatchewan Court of Appeal in Kosinski v Snaith (1983) 1 DLR (4th) 170 correctly characterised the onus on the following driver as ‘heavy’. The Court provided a helpful and accurate summary of the content of the duty in the following passage (p 174):*

*‘There is a clear and well-defined standard of care imposed upon the driver of a vehicle which follows another. He must keep a reasonable distance behind the vehicle ahead; he must keep his vehicle under control at all times; he must keep an alert and proper look-out; and he must proceed at a speed which is reasonable relative to the speed of the other vehicle. He must anticipate that, for whatever reason, the vehicle ahead may stop. He need not anticipate the reason. He must proceed with that care which will enable him to avoid colliding with it.’*

*43. There are sound reasons for imposing such a duty of care upon following drivers. It is not uncommon for emergency situations to require a driver to stop suddenly and, importantly, modern traffic controls and conditions frequently require vehicles in a line of traffic to stop. Compliance with the duty of care by the following driver is critical to an orderly and safe flow of traffic.*

1. *The circumstances giving rise to the sudden cessation of forward movement by the appellant’s Mazda were not unusual or unexpected (cf Broadhead v Maybury (1988) 7 MVR 555 and Dodig v Sanders (1989) 10 MVR 29). The respondent appreciated that a situation of danger was developing and had ample opportunity to avoid the impact. In view of the high standard of care properly imposed upon the following drivers, in my opinion a comparison of culpability and the relative importance of the acts of the parties demonstrates that the respondent bears a greater responsibility for the collision and his damage than the appellant. In the circumstances that I have found existed, in my opinion it is just and equitable to reduce damages payable to the respondent by 70 per cent.’*
2. It is clear that the degree of contributory negligence depends very much on the facts of each individual case. However, as the facts in *Mugford v Ames* are very similar to those in the present one, I would apportion the blameworthiness of the parties in the same manner. Although the degree of contributory negligence found in the case of *Wong Kwok Wa* was much less, I agree with the observation made by Martin J that the Plaintiff, being the driver of the vehicle following the 1st Defendant’s Vehicle, should bear a greater responsibility for the collision than the 2nd Defendant, and so I reduce the quantum of the Plaintiff’s claim by the same 70%. The same apportionment of blameworthiness should apply in the case of the counterclaim but in mirror proportions. I therefore reduce the quantum of the 1st Defendant’s counterclaim by 30%.

*Quantum of the claim and the counterclaim*

1. The parties agree on the quantum of the following special damages of the Plaintiff’s claim:

(i) repair costs of the Plaintiff’s Vehicle : $80,430

(ii) medical expenses : $ 3,400

(iii) travelling expenses : $ 1,000

(iv) tonic food expenses : $ 2,500

The parties are also able to agree on the quantum of the counterclaim in the sum of $49,654 which relates to the repair costs of the 1st Defendant’s Vehicle.

1. The only disputed items are the Plaintiff’s claims for pain, suffering and loss of amenities (“PSLA”), pre-trial loss of earnings and loss of earning capacity.

*(i) PSLA*

1. As the Plaintiff’s pain was not serious shortly after the accident, he did not seek any immediate medical treatment by that time. Later, the pain worsened and on the same day, he attended the Accident and Emergency Department of Queen Elizabeth Hospital for treatment. He was treated and discharged on the same day with a recommendation of 3 days of sick leave. The Plaintiff resumed working after the expiration of such sick leave period.
2. Both the Plaintiff’s and the Defendants’ medical experts agree that the Plaintiff has suffered soft tissue injury in his lower back as a result of the accident with damage to the muscles and the ligaments. The Plaintiff complains of having residual intermittent pain in his lower back occurring about once every 1 to 2 weeks. The pain intensifies in the case that the Plaintiff stands or walks for a longer period of time or carries heavy object. There are mild degenerative changes in the Plaintiff’s lumbo-sacral spine which are not caused by the accident.
3. The Plaintiff received 6 chiropractic treatments after the accident. He was also referred for physiotherapy treatment in Kowloon Hospital. As the level of pain decreased and believing that his condition would improve by having exercises at home, the Plaintiff defaulted in attending further physiotherapy treatment after 10 September 2005. According to the medical experts of both parties, attending physiotherapy treatment would have brought about an earlier and better relief of his back pain. However, there is nothing in the joint medical report to suggest that physiotherapy treatment would have been able to reduce the existing permanent disability suffered by the Plaintiff.
4. After listening to the evidence of the Plaintiff, I find him to be an honest witness and I also accept the genuineness of his complaint about the lower back pain. Despite such findings, it is clear that the injury suffered by the Plaintiff is relatively minor and it falls far below the category of “serious injury” according to *Lee Ting Lam* scale.
5. Mr. Lo, counsel for the Plaintiff, refers me to the cases of *Lee Yuk Lan v Royaltelle International Ltd. t/a The Royal Garden,* unreported, HCPI 187 of 1995 (decision of Beeson J on 5 August 1999), *Lam Wa Lai v Startlong Development Ltd. t/a Lai Ying Hair Salon*, unreported, DCPI 624 of 2003 (decision of HH Judge M. Ng on 14 April 2005) and *Chan Chung Keung v Greenroll Ltd. t/a Conrad Hong Kong* (decision of Deputy High Court Judge Carlson on 20 December 2005), in which the courts awarded damages in the range from $150,000 to $180,000 for PLSA for plaintiffs who suffered lower back pain and restricted movements of spines or lower limbs. On the other hand, Mr. Li, counsel for the Defendant, relies on the cases of *Cheung Yu Tin Alvin v Ho Hon Ka*, unreported, DCPI 853 of 2004 (decision of Deputy Judge W. Lam on 9 June 2005), *Sulakhan Singh v Federal Securities Ltd. & anor.*, unreported, DCPI 231 of 2007 (decision of HH Judge H.C. Wong on 6 June 2008), *Chan Shui Fong v The Executive Committee of the Alice Ho Miu Ling Nethersole Hospital & anor.*, unreported, DCPI 874 of 2007 (decision of HH Judge M. Chan on 31 January 2008), in which the courts awarded damages in the range from $25,000 to $70,000 for PSLA for plaintiffs who suffered minor lower back pain and soft tissue injuries as a result of the accidents.
6. As I see it, the quantum for PSLA in the case of lower back pain varies according to the facts of each individual case. The court will certainly take into account the degree of pain, the frequency of the occurrence of the pain and the effect of the pain on the daily activities of the individual victim in assessing the quantum of such loss. In the present case, it is clear that the Plaintiff only suffers the pain occasionally and there is no reduction in the movement of the spine and the lower limbs. On the other hand, the Plaintiff cannot lift heavy objects which would in turn affect his daily activities including the enjoyment of sporting activities. Balancing all these factors, I award $100,000 as damages for PSLA in the present case.

*(ii) Pre-trial loss of earnings*

1. The Plaintiff is a director and shareholder of a company known as Grandly Enterprise Limited engaging in the business of trading of garments. He was also employed by the same company as a sales manager. His average monthly income before the accident was about $50,000. Out of such amount of income, a sum of $10,000 was actually commission paid by his business associate for his work in carrying the samples from Hong Kong to the factory in the Mainland. By reason of the injury suffered as a result of the accident, he could not carry the heavy samples to the factory in the Mainland, and so his business associate employed another person to perform such work. Consequentially, the Plaintiff lost the monthly commission of $10,000 after the accident.
2. As such commissions were paid in the Mainland, there is no documentary evidence to substantiate the Plaintiff’s allegation about such loss. Despite that, the Plaintiff’s evidence has remained unshaken after cross-examination, and so I accept his evidence as the truth. I also find that, had the Plaintiff not been injured in the accident, he should have been able to earn such extra commissions by carrying the samples to the factory in the Mainland, and the pain in his lower back had deprived his opportunity of earning such income. As a period of about 4 years has elapsed after the accident, I assess the Plaintiff’s pre-trial loss of earnings as $480,000 ($10,000 x 48 months).
3. The Plaintiff abandons any claim for future loss of earnings.

*(iii) Loss of earning capacity*

1. It is the Plaintiff’s case that his disability has put him at a disadvantage in the labour market, and he claims a sum of $100,000 as loss of earning capacity.
2. The nature of the Plaintiff’s work as a sales manager requires him to carry heavy samples to the factory in the Mainland. As he is unable to do so by reason of his pain, it is clear that his future income will be reduced accordingly, and this would put him in a disadvantage position in the labour market. In my judgment, the Plaintiff’s claim in the amount of $100,000, which is roughly equivalent to 10 months’ loss of commission, is reasonable, and I therefore allow the Plaintiff’s claim in full.
3. The quantum of the Plaintiff’s claim can be summarised as follows:

(i) PSLA : $100,000

(ii) Pre-trial loss of earnings : $480,000

(iii) Loss of earning capacity : $100,000

(iv) Medical, travelling and tonic food expenses: $6,900

(iv) repair costs of the Plaintiff’s Vehicle : $80,430

$767,330

Less 70% for contributory negligence : $230,199

On the other hand, the quantum of the 1st Defendant’s counterclaim is $34,758 ($49,654 x 70%).

1. Based on the aforesaid, I grant judgment in favour of the Plaintiff against both Defendants in the amount of $230,199 and judgment on the counterclaim in favour of the 1st Defendant against the Plaintiff in the sum of $34,758. I also make an order *nisi* in the following terms:

(i) there be interest on PSLA at the rate of 2% per annum from the date of the Writ to the date hereof and thereafter at judgment rate;

(ii) there be interest on the other items of the Plaintiff’s claim and the 1st Defendant’s counterclaim, excluding the loss of earning capacity, at 4% per annum, which is half the existing judgment rate, from the date of the accident to the date hereof and thereafter at judgment rate;

(iii) the Defendants do pay to the Plaintiff the costs of the Plaintiff’s claim;

(iv) the Plaintiff do pay to the 1st Defendant the costs of the counterclaim; and

(v) there be certificate for counsel for both the claim and the counterclaim.

The order *nisi* shall be made absolute 14 days after the handing down of this judgment.

1. Finally, I would like to express my gratitude to both counsel for all the assistance that they have rendered to this court.

(David Lok)

District Judge

Mr. Anthony Lo, instructed by Messrs. Leung, Chan & Pang, for the Plaintiff

Mr. Felix Li, instructed by Messrs. Kenneth C. C. Man & Co., for the Defendants