### DCPI 355/2003

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 355 OF 2003

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BETWEEN

CHAN KAM MAN Plaintiff and

YIU KAM SHUI Defendant

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## Coram : H.H. Judge Muttrie in Court

Date of Trial : 17 May 2004

Date of Judgment : 24 May 2004

#### JUDGMENT

1. The plaintiff claims damages from the defendant for personal injury arising from an accident on 16 November 2000 at Hin Keng Estate, Shatin. The plaintiff avers that he was walking past the ground floor of Hin Pui House when a broken tile, about 8 cm x 10 cm. fell on his head and caused injury to him. The plaintiff says that the defendant was working at Room 3117, Hin Pui house as a decorator, and breaking tiles on the wall for the purpose of dismantling the window frame. He avers liability for the escape of a dangerous thing and in the alternative negligence. He also relies on the fact that the defendant was charged with the offence of allowing things to fall from a height, contrary to the Summary Offences Ordinance, Cap 228, to which charge he pleaded guilty and was convicted. The plaintiff further relies on *res ipsa loquitur*.

2. The defendant in his Defence admits that he was working in Room 3117, Hin Pui House but denies that he was breaking tiles. He denies any failure to take proper precaution to prevent the fall of objects in the course of work and he denies negligence. As to the conviction he says that he only pleaded guilty to avoid the complications and uncertainties of a hearing, and to save time. He denies that *res ipsa loquitur* applies and further pleads contributory negligence. He says that the defendant was riding a bicycle where such action was prohibited; did not wear his glasses; failed properly to control his bicycle; rode too fast; failed to have any or any sufficient regard for his own safety, failed to keep a proper lookout, to steer his bicycle properly, to wear a proper safety helmet, etc.

3. Just what these averments have to do with the case is not clear. Even if the plaintiff was riding a bicycle, which he says he was not, the only possible way he could have saved himself from injury from a falling object would have been by wearing a helmet; and a cyclist does not wear a helmet to guard against objects falling on his head, but from injury in a road accident.

# Liability

4. The defendant, who had filed a notice to act in person dated 19 December 2003 but had taken no further part in the proceedings did in fact appear at the trial. He had not filed any witness statement or expert’s report. He admitted that something had fallen and that it was an accident. Since the defendant was in person and was not particularly clear as to whether or not he admitted liability, I had the plaintiff give evidence by adopting his witness statement, which was read over in translation.

5. The plaintiff’s evidence on liability was that he was walking past Hin Pui House when a falling piece of tile struck him on the forehead. He bled profusely and his right eye was swollen. He had blurred vision. A policeman came and an ambulance was called. He was taken to hospital where he was treated and discharged. The same evening the defendant came to his home and told the plaintiff that he had been working in a flat on the 31st floor; he was not careful and had allowed broken pieces of tile to fall.

6. The police investigated the matter. It appears from a police report, which was produced following a hearsay notice, that officers went to Room 3117 after the accident where they found the plaintiff prizing off the aluminium window frame. He admitted under caution that he had allowed a few tiles to fall and that he had been careless. He was, as indicated above, charged with the offence and convicted on his own plea.

7. The defendant did not give evidence. He said that he had “admitted that it was he”.

8. I am in no doubt that the plaintiff was, while walking past Hin Pui House, struck by a piece of tile which the defendant negligently allowed to fall from a height. There is no question of his having ridden a bicycle; and whether he was or not, there can be no question of contributory negligence. So I find the defendant 100% liable for the accident.

# Quantum

9. The plaintiff’s claim as set out in his Statement of Damages is as follows:

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| --- | --- |
| Medical expenses, including reports | $8,245.00 |
| Travelling expenses | $550.00 |
| Tonic and nourishing food | $350.00 |
| Items damaged in accident | $300.00 |
| Loss of earnings for 10 days at $12,000 p.m. | $3871.00 |
| Loss of earning capacity | $108,000.00 |
| Pain, suffering and loss of amenity | $250,000.00 |

10. The defendant did not, when he was represented, file any answer to the plaintiff’s Statement of Damages. From what he said before me it is clear that he does not object to paying for loss of earnings and special damages. The figures claimed are reasonable and there is evidence to support them. They will be awarded.

11. So far as the claims for pain, suffering and loss of amenity and loss of earning capacity are concerned he simply says that he will be unable to pay. It is necessary to look at the medical evidence in order to find the correct figure for these heads of claim.

12. After the accident the plaintiff attended the Accident and Emergency Department. Prince of Wales Hospital. He was found to have a 2 cm laceration over the right eyebrow, without foreign body or active bleedings. There was no significant finding on examination of the eye. He went back on 18 November 2000 when his pupils were found to have equal reaction to light; he had visual acuity of 20/70 in the right eye and 20/50 in the left; stitches over the right eyebrow and bruising over the right upper eyelid; and a conjunctival injection was noted in the right eye.

13. The plaintiff was seen by his expert, Dr Tsui Chung Wan, an ophthalmologist, on 30 August 2001. he was then complaining of right eye blurred and dim vision, frequent tearing, especially in a hot environment, tension around the right eye with headache. He said that he had had normal vision in both eyes before the accident.

14. Dr. Tsui found visual acuity of 20/30 in the right eye as against 20/20 in the left. In the right eye colour vision was slightly impaired; there was a slight afferent papillary defect; mild opacity in the crystal lens and the fundus showed a mildly pale optic disc. Dr Tsui diagnosed righ optic atrophy. He said that the most likely cause was traumatic optic neuropathy caused by the accident. This resulted in a 10% right eye visual impairment, equivalent to a 5% impairment of the whole visual system. He said that though the plaintiff had had an operation for pituitary tumour in 1988 this was unlikely to be the cause of the atrophy. He further said that the visual impairment was stable and no further deterioration was expect. There was no known effective treatment. He also estimated a 2% cosmetic disability for the eyebrow scar. The plaintiff suffered from other optical defects but these were not related to the accident and could be corrected with spectacles.

15. The plaintiff’s solicitor put forward various cases on quantum but unfortunately they were of little assistance because they all related to more serious injury, usually involving the complete loss of vision in one eye, or significant visual impairment following direct trauma, e.g. penetration, to the eyeball. The figures, corrected by *Butterworth’s* to 1998 are commonly between $400,000.00 and $500,000.00 for the loss of an eye or for almost complete loss of vision and this seems to be so for later awards. Here we have only a 10% loss of vision in the one eye. There was obvious trauma, and I accept that the plaintiff would have been scared of being blinded, but he was treated and discharged the same day and he was off work for 10 days. There is a permanent loss and some continuing discomfort as well as scarring over the eyebrow. I cannot say that this is a serious injury and it seems to me that the proper figure for pain, suffering and loss of amenity can be no more than $100,000.00.

16. So far as the loss of earning capacity is concerned, the plaintiff is a cook. He says that he is now unemployed, thought the defendant says that the plaintiff is operating a sweet soup shop. He has some blurring of vision in the right eye and it is sensitive to smoke or heat when he lifts the lid of a pot or wok when cooking, so that tears flow. The plaintiff’s claim is based on 9 months’ loss of earnings at $12,000.00 per month.

17. In **Moeliker v Reyrolle & Co. Ltd.** [1997] 1 WLR 132 it was said that this head of damage should be considered in two stages. First, the court must ask if there is a substantial or real risk that the plaintiff will lose his present job at some time before the estimated end of his working life. If there is, the court must quantify the present value of the risk of financial damage which he will suffer, having regard to the degree of risk, the time when it may materialise, and the factors, favourable and unfavourable, which will or may affect his chances of getting a job at all, or an equally well-paid job.

18. The plaintiff has lost his pre-accident job but the reason for that is not connected with the accident. The question is, how much risk is there of financial damage from his being unable to find another job or any sort, or one which will be as well paid. I have to say that I cannot see that there is any real risk here. Though Dr Tsui estimates a loss of earning capacity of 7% there is no suggestion that the plaintiff cannot work as a cook or do that work as well as before. It is difficult to see how his eye sensitivity or blurred vision would be something that a potential employer would take into consideration in deciding whether or not to employ him. I do not see that any award can be made under this head.

19. There will accordingly be judgment in favour of the plaintiff for $113,316.00. Interest is awarded at 2% on the figure of $100,000.00 for pain, suffering and loss or amenity from the date of the Writ and on the special damages at half the judgment rate from the date of the accident. The plaintiff is awarded the costs of the action to be taxed if not agreed and his own costs are to be taxed in accordance with the Legal Aid Regulations.

( G.P. Muttrie )

District Judge

Ms. P. Lam of M/S W. I. Cheung & Co. for the Plaintiff.

Defendant in person.