###### DCPI 391/2005

### IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

**PERSONAL INJURIES ACTION NO. 391 OF 2005**

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##### BETWEEN

## SINGH JAGDEEP Plaintiff

### and

#### VSC ENGINEERING PRODUCTS

#### COMPANY LIMITED Defendant

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Coram: H.H. Judge Wong in Court

Dates of Hearing : 31st May 2005, 1st & 2nd June 2005

Date of Delivery of Judgment : 17th June 2005

Judgment

1. The Plaintiff claims against the Defendant for personal injuries arising out of his work with the Defendant.

Plaintiff’s Injury and Medical History

1. On 21 May 2001 at 11:30 a.m. while he was cutting an iron rod with an electric disc cutter machine, the disc broke and hit his left hand. In the evening after work his colleague accompanied him to the A & E Department of Princess Margaret Hospital. He was found to have abrasion wound over left dorsal part of hand. Fingers movement and sensation were normal. X-ray of left hand showed no fracture. Dressing was done on the wound. He had sick leave from 21 May 2001 to 6 June 2001.
2. He attended Princess Margaret Hospital on 15 July 2001 which according to the doctor who examined him with new injury. The finding on that occasion was mild swelling developed on dorsal part of left hand which was hit by heavy metal on 14 July 2001. Flexion of left ring finger and little finger decreased. X-ray showed fracture of proximal phalanx of left ring finger. He was referred to Occupational Unit for splintage. Followed up in AED was arranged. Sick leave was given from 15 July 2001 to 7 September 2001. His healing was good and was discharged from AED Follow-up Clinic on 4 September 2001.
3. Dr. Wong Kwok Shing in his report dated 24 July 2004 stated that he had looked at the X-rays taken on 21 May 2001 and 15 July 2001 and 7 July 2004 and found that the X-rays taken on 21 May 2001 and 15 July 2001 showed no definite fracture; instead the same lucent line penetrating the cortex of the proximal phalange appeared on both sets of X-ray films. The X-ray taken on 7 July 2004 showed the same lucent line representing a transcortical blood vessel at the left ring finger proximal phalanges with the same appearance as the X-ray taken in Princess Margaret Hospital and that such blood vessel in present symmetrically on the right ring finger as well. Dr Wong opined that there was just one accident and not two. Dr. Wong points out that the chances of having injured the same site and in an identical way quite remote.
4. The Plaintiff said that he did not have two accidents. He said that the doctor who treated him on 15 July 2001 might have mistaken due to miscommunication as his English and Cantonese are limited.
5. The injury on 21 May 2001 was just an abrasion wound of about ½ cm described as superficial in the clinical findings chart from Princess Margaret Hospital. Fingers movement and sensation were normal. The injury was sustained when the disc of the cutter machine broke and hit his left hand.
6. The cause of the first injury was that a disc broke. It was not a heavy object. The second injury however was different. Dr. Li Yu-kwan’s report stated that his left hand was hit by heavy metal on 14 July 2001 with wild swelling developed on the dorsal part of hand. Flexion of left ring finger and little finger decreased. It is unlikely that there was no swelling observed from the first injury (the Plaintiff was injured at 11:30 a.m. and was attended by doctor at 9:30 p.m.) and yet the mild swelling only developed on 15 July 2001. Further the doctor on 15 July 2001 could not have misheard nor could there be miscommunication when the doctor could note that he had fever the night before, nor could the doctor have written down the precise detail as to how the injury occurred. I am sure no doctor would write on the record something he had not been told.
7. On balance I find that there were two injuries.

RESIDUAL DISABILITY

1. The Plaintiff was given sick leave only up to 6 June 2001. The sick leave certificate of the 21 May 2001 described the injury as “left hand abrasion”. The sick leave certificate of 1 June 2001 recommended sick leave was from 1 June 2001 to 6 June 2001. It seems that the injury has healed because the Plaintiff did not go back to Princess Margaret Hospital. Instead on 26 June 2001 he went to Dr. Law a general practitioner in Wanchai who has no follow up history.
2. The reason he gave as to why he did not go back to Princess Margaret Hospital is that he found the doctor there could not ease his pain. If that be the case I see no reason why he had to go back again to Princess Margaret Hospital on 15 July 2001 for the same injury. The most probable inference is that he suffered a more serious injury the day before.
3. Dr. Wong’s Report (Plaintiff’s own doctor) stated “There was no serious pathology/such as fracture, tender cut or nerve cut documented in A & E Princess Margaret Hospital. The present examination shows no objective sign of irreversible structural damage. Update X-ray is normal”. Dr. Wong went on to say that the Plaintiff’s subjective complaints were not consistent with the injury documented. His left hand pain and disability should not have remained after 3 years since the accident. There was no muscle wasting to substantiate chronic pain and weakness. Further his effort during grip strength testing was inconsistent.
4. Dr. Au also found that the Plaintiff had exaggerated his pain and failed to demonstrate his true post injury condition was significant. The assessment as to impairment of both doctors was only based on his exaggerated complaints or due to his new injury. I find that for an abrasion of ½ cm the Plaintiff has completely healed by 6 June 2001 and that there was no impairment or loss of earning capacity.

DAMAGES

1. Based on my finding aforesaid I assessed damages of the Plaintiff as follows:-
   1. PSLA

The pain and suffering in this case is minimal. It was only a ½ cm abrasion with sick leave from 21 May 2001 to 6 June 2001 a total of 16 days.

In *Lee Tsz Kin v Chimax Paper Coverters Ltd.* HCPI No. 504 of 2003 the Plaintiff sprained his right thumb. He was left with tenderness over the base of the thumb. An exploratory operation found he had mild scarring around the nerve of the thumb. Video surveillance showed him using the thumb normally and was found to have grossly exaggerated the condition of the thumb. $50,000 was awarded.

The pain and suffering in this case is far less than the above case in that there was no operation nor was there any scarring of nerve. The award should be in the lower end of the less serious or minor injuries category.

I assess PSLA in the present case to be $30,000.00.

* 1. Pre-trial loss of earnings

The Plaintiff was 26 years of age at the time of the accident. He was employed by the Defendant as temporary skilled worker until 1 November 2000 when he was transferred to became daily skilled operator with increased salary. From the excel table of the Defendant from December 2000 to 31 May 2001 his average earning was $9,634.83 per month. In view of the fact that I find the Plaintiff had another accident on 14 July 2001 his loss of earnings could be $9,634.83 x 1 2/3 months = $16,058.05.

* 1. Loss of MPF

He should be entitled to 5% of his wages. The loss of MPF is therefore $16,058.05 x 5% = $802.90.

* 1. Special damages

The Plaintiff claims $300 on private medical treatment, $680 on privately purchased medications. He had 12 follow up appointment at $44 each and traveling expenses at $20 per round trip.

The special damages is therefore:

Private medical treatment $300

Medication $680

Follow up appointments $528

Travelling expenses $240

Total $1,748

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Loss of earning capacity

1. As stated earlier Dr. Wong commented that the Plaintiff’s complaints were not consistent with the injury documented and that his examination did not reveal structural lesion. Further his left hand pain and disability should not have remained as he complained after 3 years. Dr. Wong also stated that the Plaintiff’s injury was a contusion injury with abrasion wound with no bony lesion documented. There is no objective sign of irreversible structural damage.
2. Dr. Au opined that the Plaintiff sustained soft tissue injury of mild severity which needed about two weeks to recover and that injury of such severity normally heals satisfactorily leaving little residue.
3. In view of the opinion of both doctors I do not find the Plaintiff has suffered any loss of earning capacity.

Future loss of earning

1. For reasons stated above I do not find there is any future loss of earning.
2. In the premises I assess the Plaintiff’s damages as follows:-

PSLA $30,000.00

Pre-trial loss of earning 16,058.05

Loss of MPF 802.90

Special damages 1,748.00

Loss of earning capacity 0.00

Loss of future earning 0.00

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Total $48,608.95

1. Since the Plaintiff has already obtained $63,306.67 from Employees Compensation Application this has to be taken into consideration. The Plaintiff is therefore not entitled to any damage arising out of the present action.
2. Order nisi: Costs to the Defendant. Certificate for Counsel. Plaintiff’s own costs to be taxed in accordance with Legal Aid Regulations.

Wesley Wong

District Judge

Representation :

Mr. John Wright instructed by Messrs. Massie & Clement Assigned by D.L.A. for the Plaintiff.

Miss Winnie Chan instructed by Messrs. Christine M. Koo & Ip for the Defendant.