# DCPI 424/2003

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 424 OF 2003

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MUJIATI Plaintiff

and

CHONG WAI KWAN Defendant

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Coram : H.H. Judge Wong in Court

Date of Hearing : 23rd & 24th September 2004

Date of Handing Down Judgment : 21st October 2004

**JUDGMENT**

1. The Plaintiff was the domestic helper of the Defendant. She claims against the Defendant for injuries arising out of two incidents of bites by dogs kept by the Defendant. The 1st incident happened on 31/10/01 when the Plaintiff in the course of employment brought the dogs out for a walk, on returning from the walk one of her dogs heard other dogs barking and became nervous, then one of the dogs she managed attacked her from behind and she sustained injuries to her forearms and right flank. The 2nd incident happened on 7/8/02 in the course of employment she was told to keep the dogs inside the bedroom when one of the dogs suddenly bit her causing injuries to her forearms and buttock.

Scienter Rule

2. The keeper of domestic animals may be liable for damages if the owner has knowledge of the animal’s propensity to cause injuries to human beings. No liability exists where the damage was done wholly due to the fault of the person suffering it or had voluntarily assumed the risk.

3. According to the Plaintiff she saw one of the dogs the Akita kept by the Defendant bit an Indonesian maid inside the Defendant’s premises when she came to borrow ginger. She was told by the Defendant that the dog only bite strangers. On another occasion the other dog the Golden Retriever bit a construction worker who was working behind the Defendant’s property. Further on another occasion that dog bit a student when was walking nearby. That incident was reported to police and it was detained at the New Territories Animal Management Centre.

4. Although the Defendant claimed that she had no knowledge of those incidents, on balance I find that she had knowledge of such incidents and that she knew of the vicious propensity of those dogs.

Duty of Care

5. The keeper of an animal is under a duty of care not to put or permit the animal to be placed in such a position where he could reasonably foresee that the animal might cause damage. For domestic dogs it is reasonable to foresee that they would bite human beings.

The Defendant’s premises

6. She occupies a 700 sq. ft. ground floor premises with 3 bedrooms, a kitchen, a toilet and a sitting area dining room. The Plaintiff said that there was no cage for the dogs but the Defendant said that there was a cage inside the sitting room where it was big enough to keep 2 dogs. It is a small flat, I find on balance that there would not be sufficient space in the sitting room to put a cage of that size inside the sitting room.

The 1st incident

7. On 31/10/01 after the Plaintiff walked the dogs she cleaned the four dogs in the yard. They became nervous when they heard other dogs bark nearby and ran out. She chased after the 4 dogs then suddenly the dog Akita attacked her from behind, she turned around and was bitten in her forearms. After the incident the Defendant asked her sister to bring her to see a Doctor in Shatin.

8. The Defendant’s version is that the Plaintiff told her the injuries were caused not by her dogs but by a stranger’s dog.

9. I find on balance that the Plaintiff was bitten by Akita as I find the Plaintiff to be a more reliable witness.

The 2nd incident

10. It happened on 7/8/02 when a girl friend of the Defendant’s son (Tong Hiu Kwan) brought a friend to the premises. The Defendant’s son was not there. As Tong’s friend was afraid of dogs she was instructed to keep the 4 dogs in a bedroom. She first put the Pekingese dog and the Akita in the room. Then she tried to put the Golden Retriever and chow dog inside the room but the dogs ran into the living room. She tried to pacify the dogs by giving them dog biscuit but the Akita jumped onto her, bit and scratched her forearms and other parts of her body including the buttock. She was admitted to the Department of Orthopaedics and Traumatology. Thereafter she did not return to work.

11. Tong Hiu Kwan on the other hand said that it was she who was afraid of the dogs. Everytime she went to the Defendant’s premises the Defendant’s family would lock all the dogs in the cage or inside the bedroom. On the day in question no one was inside except the Plaintiff. She told the Plaintiff to keep the dogs in the bedroom. She saw that the Plaintiff was not able to put the chow dog into the bedroom and the dog was uncooperative, the Plaintiff pushed and kicked it, the dog then jumped onto her, bit and scratched her.

12. I do not accept Tong’s evidence because in her statement she said that she sometimes saw the Plaintiff treated the dogs badly. If what she said was true that every time the Defendant’s family would lock the dogs inside the cage or in the bedroom when she visited she would not be able to see that the Plaintiff had treated the dogs badly. Further the Defendant did not mention the Plaintiff had treated the dogs badly. She had been a frequent visitor to the flat and according to the Plaintiff she sometimes would stay overnight and gave the Plaintiff instructions. If that be the case the dogs could not be kept inside the room. So on balance it is more probable that it was Tong’s friend who was afraid of the dogs and the Plaintiff’s version is more probable.

The Defendant’s evidence

13. The Defendant said that her contract with the Plaintiff contained, inter alia, the following terms:-

1. plaintiff should only perform domestic duties at the Property,
2. domestic duties included taking care of dogs.

14. She said that the dogs were not of mischievous or abnormal nature. The Plaintiff had to bring the dogs out for a walk. She had provided “numerous amounts of leashes, muzzles and masks”. She had asked the Plaintiff to wear muzzles, masks and put no leashes within or outside the property. She also provided a cage and asked the Plaintiff to keep the dogs in the cage whenever and wherever necessary and practicable. The Plaintiff had not followed her instructions and had failed to wear muzzles and masks for the dogs within or outside the property.

15. She remembered that in October 2001 the Plaintiff brought the dogs out for a walk. The Plaintiff returned and she saw the Plaintiff had suffered injuries to her forearms. The Plaintiff told her the injuries were caused by the bite of a stranger’s dog.

16. As to the incident on 7/8/02 she was not there in the premises she was told by Tong as to what happened.

17. After that incident she was sued by the Plaintiff for giving her only 1 day’s leave every month and that she paid the Plaintiff only $2,000 per month instead of the amount stated in the contract. The action was settled. According to her because she had to pay for the holidays that the Plaintiff was entitled to and to pay her the month’s salary together with an extra month’s salary.

18. I do not accept the Defendant’s evidence. She was in breach of the contract term as the Plaintiff should only perform domestic duties including taking care of dogs at the property. She paid the Plaintiff the salary which was far less than stipulated in the domestic helper’s contact.

19. As I have said earlier I do not find that she had kept a cage inside her flat. Further it would be cruelty to the dogs to put on leashes and wear muzzles and masks within the property all the time.

20. In her statement regarding the 1st incident she said she saw the Plaintiff injured when the Plaintiff returned but in giving oral evidence she said she was at work and the Plaintiff called her.

Liability

21. As stated earlier I have found that the Defendant was aware of the vicious propensity of her dogs, that she owed a duty of care to the Plaintiff and that she had breached her contract term, I find the Defendant liable to the Plaintiff for the injuries caused to the Plaintiff.

Damages

22. The Plaintiff was the domestic helper and was 21 years of age at the time of the 2nd incident. She earned $3,670 per month at that time.

Injuries

1st incident

23. The Plaintiff suffered multiple abrasions wounds ranging from 2 – 5 cm in both forearms and the right flank. She received a toxoid injection for prevention of tetanus and a course of painkiller and antibiotics.

2nd incident

24. She sustained injuries to her bilateral forearms and buttock. Right forearm had a 2 – 3 cm open laceration on the flexor side of the mid forearm with exposed subcutaneous fat and muscle over the open wound. Multiple dog bite injury wounds over the extensor and flexor side of the left forearm. Dog bite wounds in the buttock region.

Disabilities

25. (1) 20 mm x 4 mm transverse laceration scar at the ventral surface of the left forearm. The scare is flat and slightly pigmented.

1. 8 puncture wounds of dot-like scars over the ventral and dorsal surface of left forearm all of which are pigmented.
2. 9 puncture wounds over the dorsal of ventral surface of the right forearm, all are dot size and pigmented except one at the dorsal surface of the lower 1/5 which is larger measuring 15 x 20 cm, the surface is shiny.
3. 3 scars of 10 mm x 5 mm, 10 mm x 60 mm, 10 mm x 10 mm at the superior portion of left buttock, two lateral and one medial. The medial scar is deeply pigmented, the lateral scars are slightly pigmented with a tropic surface.
4. 2 round scars with diameter 5 mm x 10 mm at the superior portion of right buttock from lateral to medial, both are pigmented and flat.
5. Feeling embarrassed and uncomfortable of wearing short sleeve shirts.
6. The scars are itchy and they must in cold weather.

26. The scars will be permanent and remain unsightly for life though some pigmentations may improve in about 2 – 3 years.

PSLA

27. In Leung Ka Yee v. L & Y Beauty Centre Ltd. DCPI 193/2003 the Plaintiff suffered from second degree burn after receiving intense pulse light treatment. She had 4 columns of rectangular hyper-pigmented scars covering most of the upper and lower back. PSLA was assessed at $75,000.

28. In Susi Yants & another v. Chu Shiu Chuen HCPI 1176/200 the 2nd Defendant as a result of dog bite had scars on her shoulder, knee, thigh and upper thigh. She also suffered from phobia of dogs. She was awarded $130,000.

29. In the present case, the injury of the Plaintiff is not as serious as the above cases. Further there is no evidence she suffered from phobia of dogs. I assess damages under this head at $70,000.00.

Loss of pre-trial earnings

30. Although the Plaintiff claimed that she could not work because of her claim in the Labour Tribunal and the present action. However the Plaintiff had found another job before the cases was heard. I am of the view that she is able to resume work after the case in the Labour Tribunal was settled, i.e. on 7/11/02. Her loss of pretrial earnings is therefore from 7/8/2002 to 7/11/2002 i.e. 3 months which is $(3,670 x 3) = $11,010.00.

Special damages

31. A sum of $544 has been agreed.

Future Medical Expenses

32. Again a sum of $34,650 has been agreed.

Interests

33. (a) General damages : $70,000 x 2% x 2 = $2,800

(b) Special damages: (544 +11,010) x 4% x 110/12 = $847.30

Total

34. (a) PSLA $70,000

(b) Pre-trial loss of earnings $11,010

(c) Special damages $544

(d) Future medical expenses $34,650

(e) Interests $ 3,647.30

$119,851.30

35. As the Plaintiff has received $6,702.80 under the Employee’s Compensation, the quantum should therefore be $119,851.3 - $6,702.80 = $113,148.5.

36. By reasons aforesaid I give judgment for the Plaintiff in the sum of $113,148.5. Order nisi: Costs to the Plaintiff. Certificate for Counsel. The Plaintiff’s own costs to be taxed in accordance with Legal Aid Regulations.

( Wesley Wong )

## District Judge

Mr. James Cheng instructed by Messrs. Au Yeung, Cheng, Ho & Tin Assigned by D.L.A. for Plaintiff.

Miss Pauline P.L. Leung instructed by Messrs. Au, Thong & Tsang for the Defendant.