#### DCPI 468 / 2004

IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 468 OF 2004

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| BETWEEN | LAU Choi Chung | Plaintiff |
|  | and |  |
|  | XIE Renlan, the Administratrix of the estate of CHAN Wai Kin, deceased | 1st Defendant |
|  | GIORDANO LIMITED | 2nd Defendant |

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##### Coram: Deputy Judge A. B. bin Wahab

##### Date of Hearing: 3 & 4 January 2007

Date of Handing Down Judgment: 29 January 2007

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JUDGMENT

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1. The Plaintiff claims damages for personal injuries arising out of a motor vehicle accident that happened on 26 December 2001. On 23 May 2006 interlocutory judgment was entered against the 1st Defendant. On 11 July 2006 judgment was entered against the 2nd Defendant.
2. The hearing before me concerns assessment of damages for the injuries. The hearing was held ex parte the 1st Defendant whilst the 2nd Defendant was represented by Counsel.
3. Ultimately, the items for assessment were 4:
4. Pain, suffering and loss of amenities;
5. Loss of earning capacity;
6. Future medical expenses and
7. Special damages (save for transportation expenses, the 2nd Defendant, in its Answer to the Revised Statement of Damages (Trial Bundle page 92 to 94), agreed to pay special damages in the sum of $3,725. The 1st Defendant, of course, has not indicated any agreement).
8. The assessments I make are:
9. Pain, suffering and loss of amenities - $120,000
10. Loss of earning capacity - nil
11. Future medical expenses - $95,000
12. Special damages - $6,365
13. From this total assessed sum of $221,365 must be deducted $33,557.88 being compensation already paid by the 2nd Defendant to the Plaintiff pursuant to the Employee’s Compensation Ordinance, Cap. 282. The award of damages I make is thus for the total sum of $187,807.12 which will carry interest at judgment rate from the date of handing down this judgment until payment.
14. Pre-judgment interest calculated up to the date of handing down this judgment will be as follows: 1) 2% per annum on $120,000 (damages for pain, suffering and loss of amenities) from date of service of Writ and 2) 1/2 judgment rate on $6,365 (special damages) from date of accident.
15. I now deal with the question of costs. The 1st Defendant has not seen fit to appear. In their Answer to the Revised Statement of Damages, the 2nd Defendant agreed to pay only the total sum of $102,725. I make an order nisi that the Plaintiff’s costs in this action (if not already provided for) be paid by the Defendants, to be taxed if not agreed. There will be certificate for Counsel. The Plaintiff is on Legal Aid. His own costs will be taxed in accordance with Legal Aid Regulations.
16. I explain my decision in the text that follows.

Background

1. The Plaintiff is an unmarried man born in Hong Kong on 14 August 1979. He completed Form 5 education in 1997 and started working for the 2nd Defendant in September that same year.
2. At all material times the deceased Mr. Chan and the Plaintiff were employees of the 2nd Defendant. Mr. Chan was goods vehicle driver and the Plaintiff was warehouse assistant whose duties included that of vehicle attendant.
3. On the morning of 26 December 2001, Mr. Chan and the Plaintiff worked as a team to deliver goods for the 2nd Defendant. Mr. Chan drove the goods vehicle with the Plaintiff as front-seat passenger. On the Gascoigne Road Flyover, Kowloon, Mr. Chan drove into the rear of a preceding vehicle. Death was almost instant for Mr. Chan. The Plaintiff hit his head against the windscreen of the vehicle he was in breaking it. There was no loss of consciousness but the Plaintiff suffered multiple injuries mainly to his forehead.
4. The Plaintiff was immediately hospitalized at Queen Elizabeth Hospital. Apart from “multiple frontal lacerations” (to his forehead/ face), the Plaintiff suffered no other injuries. Under local anaesthesia, about 10 pieces of broken glass were retrieved from his frontal subcutaneous region the next day. He was discharged from hospital on 28 December with no neurological deficit. He was on sick leave from the day of accident up to and including 20 January 2002.
5. The Plaintiff attended specialist outpatient clinic of Queen Elizabeth Hospital on 4 and 24 January 2002. He complained of intermittent headache and dizziness. His complaints were considered compatible with post-concussion syndrome. On 12 and 16 January 2002 he also attended the General Practice Clinic of Yan Chai Hospital for his headaches.
6. For the 2 to 3 years after the accident, the Plaintiff had headaches now and then. The Plaintiff would take painkillers for his headaches. After January 2002 the Plaintiff had not consulted any doctor for this particular ailment. This was until 9 May 2003 when, by arrangement of solicitors for the Plaintiff and the then solicitors for the 2nd Defendant, he was examined by a neurologist Dr. Woo (report at Trial Bundle page 125 to 135. See also Order of Master Levy of 11 July 2006 at Trial Bundle page 78). I accept that the headaches were as a result of the traffic accident. By the time of this hearing, the Plaintiff would go without headaches for several months. The headaches, if happened, would cause a stabbing pain but last for only a short while. The Plaintiff has learned to live with such headaches.
7. The Plaintiff had been “3 times at Polyclinic”, “2 times at Yan Chai Hospital” and “5 times at Queen Elizabeth Hospital” for outpatient medical treatments (see Trial Bundle page 88. I felt entitled to and did proceed on the basis that these visits to the hospital included those on 4, 12, 16 and January 2002 mentioned in the immediate preceding paragraph).
8. The skin abrasions suffered by the Plaintiff on the forehead were found slightly infected on 10 January 2002. He consulted a private medical practitioner, Dr. Shik. The Plaintiff was given anti-septic cream and antibiotics.
9. The Plaintiff was left with scars (mainly to the forehead). He lost a bit of self-esteem. He felt that his girlfriend left him because of the scarring. He considered that he would not be able to secure work that required face-to-face contact with customers e.g. being a salesman or a waiter.
10. Based on the evidence of the Plaintiff, the medical reports from the “government hospitals” (Trial Bundle page 113 to 115. See also Order of Master K. W. Wong at page 65 of Trial Bundle), the medical report of Dr. Woo (Trial Bundle page 125 to 135), the medical report of Dr. Lee (Trial Bundle page 117 to 124) and the medical report of Dr. Nicholson (Trial Bundle page 135 to 143), I found matters in the above paragraphs 9 to 17 proved. I should explain that Dr. Lee is the plastic surgeon called to give evidence for the Plaintiff. Dr. Nicholson is the plastic surgeon called by the 2nd Defendant.

(The medical report of Dr. Shik (Trial Bundle page 116) was never produced in evidence. Dr. Lee’s medical report, however, made reference to the treatment by Dr. Shik.)

1. The accident caused the Plaintiff to be scarred. It is apposite to reproduce here the relevant part of Dr. Lee’s medical report (Trial Bundle page 120 to 121) which reads:

“1) Multiple vertical and linear scars on the forehead. They extend in front of the hairline towards the left eyebrow. They measure 65 x 2mm, 60 x 2 mm, 40 x 2 mm and 30 x 2 mm respectively. The longest one extends through the medial side of the left eyebrow towards the upper eyelid resulting in patchy loss of hair. The scars are slightly hypertrophic with irregular edges and mild irregular pigmentation. The scars are chronic i.e. soft, non-tender, non-itchy and supple. There is no scar contracture.

2) Multiple small irregular scars adjacent to the linear ones.

3) A bulging soft tissue/ dog ear 10 x 5 mm in the middle of the forehead. The scar becomes more prominent when he looks upwards using the forehead muscles.

4) Two pale scars over the left upper eyelid. The longer one is an extension from the forehead scar. The shorter one 10 x 1 mm, extends from the lower margin of the eyebrow towards the lid margin.

5) There is no scar contracture on the eyebrow or upper eyelid. The movement shape and contour of the eyebrow and eyelid is (sic) normal.”

1. Dr. Nicholson described the scars in somewhat different terms. I do not think anything material turns on the difference. The 2 good doctors were talking about the same thing.
2. I note the following:
3. Dr. Lee examined the scars shortly before he gave evidence before me. He found the scars basically the same as when he saw them in 2003 but some improvement was noted;
4. Both Dr. Lee and Dr. Nicholson were concerned with what, if anything, should be done to 5 sets of scars on the forehead. These have been marked and numbered in the photographs on page 141 of the Trial Bundle. The numbering used does not coincide with the numbering of the relevant paragraphs in Dr. Lee’s report;
5. Both doctors agree that any treatment will not make the scars disappear. There can only be improvement in appearance. Both doctors noted that the Plaintiff was concerned about the scars on his forehead;
6. The Plaintiff was not bothered by faint scarring to the left eye-lid and did not want anything done about it;
7. The Plaintiff did not have any scars prior to the accident;
8. The scars in the photographs produced at trial (e.g. those at Trial Bundle page 141) appear to be more obtrusive than my view of them during the hearing and
9. The Plaintiff suffered no functional disability.

Pain, suffering and loss of amenities

1. The Plaintiff did not voice any complaint in his evidence about the infection to his forehead. I conclude that he was really none the worse for it. Defence Counsel suggested that the infection was of the Plaintiff’s own doing in that the Plaintiff failed to look after his wounds properly. I see no basis for Counsel so submitting. In fact, I am not clear what Defence Counsel had in mind. In any event, the infection was slight and apparently did not cause the Plaintiff any real problem. I think Defence Counsel was pursuing a point hardly worth anyone’s while.
2. The Plaintiff mentioned that the accident caused him to fear riding in vehicles as an attendant. Despite such professed fear, he worked on at the 2nd Defendant for some 2.5 years doing exactly what he had been doing pre-accident. For reasons unconnected with the accident, the Plaintiff resigned from the 2nd Defendant and changed to work at Club 21 (Hong Kong) Ltd. (“Club 21”) for a few months. His work there again involved being vehicle attendant. Defence Counsel cross-examined the Plaintiff on this alleged fear e.g. that the Plaintiff had not mentioned such fear to doctors who treated him. In the course of final submission, Defence Counsel objected to the Plaintiff relying on such alleged fear on the basis that it had never been pleaded. Defence Counsel even intimated that if the Court was inclined to take into account this fear, he might seek an adjournment to further consider the 2nd Defendant’s position and perhaps seek additional medical advice/ evidence on the matter. In the light of the Plaintiff’s evidence just recited, I would have thought that no award or only a nominal award would be made for this fear element. It seemed hardly something worth exploring further. Fortunately, good sense won the day. Counsel for the Plaintiff was willing to say that this fear element was not material. I am not prepared to take into account this professed fear of the Plaintiff.
3. I hope I do not appear callous when I say that the pain, suffering and loss of amenities in this case cannot by any stretch of language be described as serious. There is a dearth of previous cases on quantum directly relevant to the present case. Counsels referred to the following:
4. Chan Fung Yee v Lee Chi Ming (2000) 2 HKLRD 690 – a 35- year-old woman caddie was struck by a golf ball. The blow lacerated the inside of her upper lip with 2 superficial lacerations on the outer aspect. The inner laceration was sutured. There was lumpiness but this would disappear with time. There were faint scars on her upper lip extending above the lip line. As a result of the accident, she lost confidence working as a caddie. She changed jobs. She was in settled employment at the time of trial. $85,000 was considered the proper award.
5. Leung Ka Yee v L & Y Beauty, DCPI 196 of 2003 – The Plaintiff was in her late 20s. She went for beauty treatment for acne pigment spots on her back. She ended up with a scalded back. She was treated with hydrocortisone and hydroquinine cream. She could not sleep properly and it took 2 months for her pain and discomfort to subside. She was left with “four columns of rectangular hyperpigmented scars on her back covering most of the upper and lower back.” She felt embarrassed by the scars and would avoid clothing exposing her back. The scars had become faint by the time the Plaintiff appeared in Court about a year later. $75,000 was awarded for pain, suffering and loss of amenities.
6. Chan Kam Man v Yiu Kam Shui, DCPI 355 of 2003 – The Plaintiff, a cook by occupation, was walking in the streets when a broken tile fell from height and hit him on the forehead. He bled profusely and his right eye was swollen. His vision became blurred. He was treated in hospital and discharged the same day. He was off work for 10 days. The Plaintiff had a 2 cm laceration over the right eyebrow and bruising over the right upper eyelid. A conjunctival injection was noted in the right eye. The Plaintiff complained of “right eye blurred and dim vision, frequent tearing, especially in a hot environment, tension around the right eye with headache.” The Plaintiff was left with a 10% right-eye visual impairment and a scar over the right eyebrow. An award of $100,000 was made.
7. Chan Tsz Sing v Lo Ching Pong and others, CACV 176 of 2004 - The Plaintiff was aged 23 at the time of the accident. He suffered multiple abrasions and lacerations on the forehead and eyebrow. Glass particles embedded in the forehead due to the accident were surgically removed. Surgical toilet and suturing under local anaesthesia were carried out. The Plaintiff discharged himself from hospital the same day and was granted 5 days’ sick leave. The only residual injuries were cosmetic. There were multiple abrasion scars on the forehead that were irregular but there was no hypertrophy or contracture. There was a 5 x 25 mm scar immediately under the right eyebrow that was obvious, with irregular surface and margin, elevated and more pigmented than the adjacent skin. “Other scars in the left eyebag region and on the nose…appear to have pre-dated the accident.” The Court of Appeal was of the view that there was no case law (on quantum) that offered any assistance. The Court concluded that it was “…very much a matter of instinctive feel, and after some reflection, … would award $70,000…”

Counsel for the Plaintiff referred to the judgment of the District Judge against whom the appeal was made. Counsel said that the learned District Judge observed that the Plaintiff had only a faint light pink patch on the forehead. I understood Counsel to say that if $70,000 was awarded the Plaintiff in Chan Tsz Sing whose residual scarring was only a pink light patch on the forehead, then surely the award for his Client would be around the $200,000 advocated.

I have described the injuries of the Plaintiff as recorded in the Court of Appeal’s judgment. It was on that basis that the appellate court made their award. I will only look at Chan Tsz Sing, including injuries for which the award was made, in the light of the Court of Appeal’s judgment.

1. Yeung Shan Yee, Sandy v Singway (BVI) Co. Ltd and Hopewell Property Management Co. Ltd., DCPI 1030 of 2005 – The Plaintiff’s claim was dismissed. The Court, however, went on to determine quantum. It was the Plaintiff’s case that she fell at the entrance of Hopewell Centre. She was then aged 44. The Plaintiff suffered lacerations over the forehead and nasal area as well as bruises over the nasal bridge. The nasal bone was fractured. She was hospitalized for 4 days and granted sick leave for 21 days. According to the Plaintiff, when she left hospital the scars to her forehead and nasal bridge were very red, uneven, swollen and bruised. She had to cover her head with a cap often. She thought the scars very ugly. She hid herself at home for about ½ year. As a result of the incident, the Plaintiff was left with problem of nasal obstruction and clear rhinorrhoea. There was a 5 cm inconspicuous traverse scar over her forehead. The nasal bridge was slightly depressed on the left side and the septum was deviated to the left. The inferior nasal turbinates were hypertrophic and enlarged. An award of $200,000 was considered reasonable.
2. I do not think anyone will suggest that the cases just cited bind me. Each case has to be decided on its own facts. Reference to decided cases, however, can provide comparables. Courts should strive to achieve some consistency in awards made.
3. I consider the injuries and their effect in this case more serious than that in Chan Fung Yee (supra) and Chan Tsz Sing (supra) I will simply say that I would have awarded more to the Plaintiff in Leung Ka Yee (supra). The Plaintiff in Yeung Shan Yee, Sandy (supra) suffered more than the present Plaintiff. If that award gives any indication, it is that the award I make cannot be near $200,000. I consider the present case to be in about the same league as Chan Kam Man (supra).
4. I give some weight to the relative young age of the Plaintiff and the fact that he has never borne scars before. I consider an award of $120,000 to be within the bounds of reasonableness.

Loss of earning capacity

1. The Plaintiff was able to secure work at V-logic Limited (“V-logic”) almost immediately after he left Club 21. He started working at V-logic from January 2005 as Warehouse Associate. He was promoted to Senior Warehouse Associate in August 2005 and to the present rank of Warehouse Team Leader in May 2006 (Trial Bundle page 189, 231 and 233). It is clear that the Plaintiff’s leaving the 2nd Defendant or Club 21 had nothing to do with his injuries from the traffic accident. It is also clear that the Plaintiff had no trouble changing jobs.
2. I do not think there is any dispute over the applicable law for this head of claim. “The consideration of this head of damages should be made in two stages. 1. Is there a “substantial” or “real” risk that a plaintiff will lose his present job at some time before the estimated end of his working life? 2. If there is (but not otherwise), the court must assess and quantify the present value of the risk of the financial damage which the plaintiff will suffer if that risk materializes, having regard to the degree of the risk, the time when it may materialize, and the factors, both favourable and unfavourable, which in a particular case will, or may, affect the plaintiff’s chances of getting a job at all, or an equally well paid job.” (Moeliker v A Reyrolle and Co. Ltd. (1977) 1 AllER 9, 16 (CA))
3. In considering the first stage, the Court will take into account such matters as the nature and prospects of the employer’s business, the plaintiff’s age and qualifications, the length of his service and his disabilities. In considering the second stage, the Court will take into account such matters as the plaintiff’s age, his skills, his disabilities, whether he is capable of one or more than one type of work and whether he is tied to working in one particular area. The Court will have to make the usual discounts for the immediate receipt of a lump sum award and for the general chances of life (Moeliker, supra).
4. There is simply no evidence from the Plaintiff or anyone to indicate a “substantial” or “real” risk (or, indeed, any risk) that he will lose his job at V-logic. In fact, as I understood the Plaintiff, his concern was really that he felt he would not be able to change to jobs that required face-to-face interaction with customers, *if he wanted the change* (see also paragraph 17 above). In the light of such evidence, I could not help but wonder whether the claim under this head was misconceived in the very first place. In any event, there is no evidence to indicate justification for the Plaintiff’s concern. I personally do not see why the scars should so impede the Plaintiff.
5. Counsel for the Plaintiff submitted, inter alia, that the letterhead of V-logic should be looked at (Trial Bundle page 220). He said that the stated office consisted of only 3 rooms at Modern Terminal at Kwai Chung. Counsel asked me to infer that V-logic was a small company, hence there was risk of the Plaintiff losing his present job and being thrown onto the job market. Out of courtesy to Counsel, I will simply say that I do not share his views.
6. I do not see any basis for a claim under this head.

Future medical expenses

1. I repeat matters stated in paragraphs 19 to 21 above.
2. As far as scar number 3 (the dog ear) is concerned, both Dr. Lee and Dr. Nicholson will be carrying out the same treatment.
3. Dr. Lee was of the view that laser resurfacing could be carried out to improve the appearance of scars number 1 and 2. Dr. Nicholson does not do laser resurfacing/surgery himself. When he felt such was required, he would recommend other clinics to the patient. In any event, Dr. Nicholson doubted “whether laser resurfacing can significantly improve the appearance of the scarred area” (Trial Bundle page 139). Towards the end of his evidence-in-chief, Dr. Nicholson said that the result would be dubious and the scars would always be evident. However, he agreed in cross-examination that laser resurfacing would marginally make the scars less significant.
4. The only material difference between the 2 good doctors in dealing with scars number 4 and 5 is the method of closing them after surgery. Dr. Lee would use the z-plasty method. Dr. Nicholson would adopt the linear method. Whilst holding the view that the z-plasty method carried more risks (e.g. pigmentation or hypertrophy), Dr. Nicholson accepted that it was really a matter of judgment as to which method to use.
5. I do not understand Dr. Nicholson to mean that Dr. Lee was unreasonable in suggesting laser resurfacing or use of the z-plasty method. As I understood Dr. Nicholson, it is really a judgment call. I tend to think that there are always risks in any sort of surgical or laser operation. I consider that the risks mentioned by both good doctors are not beyond the bounds of reasonableness so that the Court will say they should not be taken or, at least, that the Defendants should not have to pay the Plaintiff for taking those risks. The Plaintiff is a young man previously without scars. I think it reasonable for him to try to improve, by whatever margin, his appearance.
6. Dr. Nicholson considered the fees charged by Dr. Lee a bit expensive. Dr. Lee asserted that those were his usual charges. I will simply say that there is no evidence to suggest the fees charged (or proposed to be charged) by Dr. Lee are unreasonable.
7. Defence Counsel suggested that the Plaintiff should seek cosmetic surgery from government hospitals and not from private medical practitioners. I do not see any basis for Counsel so suggesting. I see nothing unreasonable for the Plaintiff to choose treatment from the non-government sector. He can, for example, enjoy at least the convenience of an early appointment. I think he can also pick and choose the doctor he feels most comfortable with. The District Judge in Chan Tsz Sing (supra) held the view that laser dermabrasion of the plaintiff’s scar could be achieved in a government hospital for $100 and not by private medical practitioners at much higher fees. The Court of Appeal responded by holding that “…the cost of laser dermabrasion at a private clinic constitutes a legitimate claim, and…should not have been thus brushed aside…”
8. It seems that the Plaintiff did not consider or seek cosmetic surgery till 2003 when seen by Dr. Lee. I think there is justification for Defence Counsel to submit that the Plaintiff is not serious about such treatment, that any award for such treatment will merely fill the coffers of the Plaintiff, giving him a windfall.
9. It is probably true to say that the Plaintiff in the year or 2 after the accident did not have his mind set on cosmetic surgery. However, as earlier mentioned, both Dr. Lee and Dr. Nicholson (who examined the plaintiff in 2005) noticed the Plaintiff’s concerns over his scars. Having heard from the Plaintiff, I am satisfied that the present situation is that provided he has the financial means to do so, the Plaintiff will undergo cosmetic surgery as suggested by Dr. Lee.
10. For laser resurfacing (scars number 1 and 2), Dr. Lee indicated the cost to be $40,000 to $50,000. I will allow $45,000. Dr. Lee stated the cost of $50,000 for treatment of the remaining 3 scars. I will allow such sum. As I understood Dr. Lee, those amounts to a large extent already cater for post-operative treatment and management.
11. There is, however, mention by Dr. Lee of a further $10,000 for “post-operative treatment and management”. There is also mention that “further minor surgery may be required if necessary” (Trial Bundle page 122 paragraph 7(c)).
12. Counsel for the Plaintiff interpreted this “post-operative treatment and management” and “further minor surgery” to be 2 distinct items. For reasons unknown, a value of $20,000 was put by Counsel on the latter.
13. Dr. Lee mentioned $10,000 for “post-operative treatment and management” as well as “further minor surgery” in the same short paragraph of his report. As I understood Dr. Lee’s oral evidence, this $10,000 is just in case there are additional complications or the Plaintiff is still not happy with results achieved and wants further operations. I thought when Dr. Lee mentioned “further minor surgery” he was merely elaborating on what he included in “post-operative treatment and management”. I thought that was why Dr. Lee never put a monetary figure on “further minor surgery”. In any event, Dr, Lee said the $10,000 is not a must. I consider this claim for $10,000 to be founded on too contingent a basis. I disallow this claim.
14. Even if I am wrong in regarding “further minor surgery” as part of “post-operative treatment and management”, there is no evidence before me to show what that surgery may involve or the cost thereof. Whether such surgery “may be required if necessary” is a matter of pure speculation. In any event, I would have disallowed such a claim.
15. Dr. Lee’s evidence was that the 5 scars would not be treated at one go. It would be reasonable for the Plaintiff to be off work for a total of some 2 months in order to receive the treatment and to convalesce. There is thus a claim for $10,000 (about 1 month of the Plaintiff’s current salary). There is no evidence as to when the treatment will take place. More importantly, there is no evidence whether the Plaintiff will suffer financial loss (or the amount thereof) if he absented himself from work because of the treatment. I make no award here.

Special Damages

1. The 3 receipts for visits to Polyclinic are found at Trial Bundle page 169. Receipts and medical certificates for visits to Yan Chai Hospital are found at Trial Bundle page 170, 171, 175 and 176. I can only see the medical certificate in relation to visiting Queen Elizabeth Hospital for 4 January 2002 at Trial Bundle page 173. The receipt for hospitalization at Queen Elizabeth Hospital is at Trial Bundle page 168. I must, however, point out that these documents in the Trial Bundle were never made part of the evidence before me. I can, of course, only base my decision on evidence.
2. Fortunately for the Plaintiff, the medical fees for these many visits to hospital or polyclinic were agreed by the 2nd Defendant in their Answer to Revised Statement of Damages (see Trial Bundle page 94). Be that as it may, one must not forget that this hearing is proceeding ex parte the 1st Defendant. The 1st Defendant has not agreed to any item or amount of claim.
3. In any event, I accept the Plaintiff’s evidence on these items of special damages (which I can conveniently describe en bloc as pre-trial hospitalization and medical fees). I consider the sums claimed reasonable and allow the same i.e. $475.
4. I accept as reasonable the Plaintiff’s claim for medical fees paid to Dr. Shik, tonic food, damaged clothing and waistbag. I allow the sums claimed i.e. $3,250.
5. It is not easy to work out the transportation expenses incurred by the Plaintiff himself in attending outpatient treatment at Queen Elizabeth Hospital. On the one hand, the Plaintiff said there were 5 out-patient treatment sessions. On the other hand, the transportation expenses incurred were alleged to be for “6 times by taxi” (return trips i.e. from home in Tsuen Wan to hospital and back. See Revised Statement of Damages, Trial Bundle page 88, adopted by the Plaintiff when giving evidence in Court). I will only allow expenses for 5 return trips. I accept the amount of $240 for each return trip as reasonable. The total amount I allow is $1,200. I also accept as reasonable the claim for travelling expenses to and from the Polyclinic in the sum claimed i.e. $240. I make an award for that sum accordingly.
6. The Plaintiff was hospitalized at Queen Elizabeth Hospital on 26 December and discharged on 28 of the same month. Counsel queried why his parents would visit him in hospital 5 times over that period. The Plaintiff was not able to provide details. I think one cannot really fault him on this. We are after all dealing with events in 2001 and the Plaintiff had just then experienced something very unpleasant. Be that as it may, I consider that parents visiting for part of the day, going home to rest and visiting again later that same day to be within the bounds of probabilities and reasonableness. I allow this item of claim in the sum of $1,200.
7. For Special Damages, I thus award the total sum of $6,365.
8. There was originally a claim for Loss of Earnings in the sum of $8,038. This was on the basis that the Plaintiff did not receive any salary for the 25 days he was on sick leave. (Revised Statement of Damages, Trial Bundle page 85 and 86.) It was clear from the Plaintiff’s evidence under cross-examination that he had received full pay for that period. I do not understand how those representing the Plaintiff were (seemingly) ignorant of this. It was a hopeless and embarrassing claim. After final submissions, solicitors for the Plaintiff (on advice by Counsel) wrote in to say that the claim for Loss of Earnings would not be pursued. The letter went on to say:

“2. The sum of HK$33,557.88 being the Employee’s Compensation already paid to the Plaintiff …consists of two elements, i.e. HK$6,307.87 represents 4/5 of the Plaintiff’s loss of earnings during his sick leave period and HK$27,250.01 represents the compensation for permanent incapacity as assessed pursuant to the Employees’ Compensation Ordinance, Cap. 282.

3. As the Plaintiff pursues no claim on loss of earnings arising from sick leave, only HK$27,250.01 should be given credit.

4. In other words, if this Honourable Court decides that the quantum of the Plaintiff’s claim is, say HK$100,000.00, then the net claim would be HK$100,000.00 – HK$27,250.01 = HK$72,749.99.”

1. It is clear that the Plaintiff received compensation under the Employee’s Compensation Ordinance (“the Ordinance”). As I understand the statutory scheme under the Ordinance, the award of $6,307.87 was for temporary incapacity (see Section 10(1) and (2)) and the balance of the award was for permanent partial incapacity (Section 9).
2. The proviso to Section 26(1) of the Ordinance stipulates that where injury is caused to an employee by negligence of which the employer is held liable then “…any damages awarded against an employer in an action at common law …in respect of any …negligence…shall be reduced by the value…of any compensation which has been paid…under the provisions of this Ordinance in respect of the injury sustained by the employee.” The law is that the 2nd Defendant has to be given credit for the full amount of $33,557.88.
3. The incontrovertible evidence before me is that the Plaintiff received his pay in full despite being on sick leave. Assuming what solicitors say about the nature of the $6,307.87 to be correct, the present request is really in such terms: “Yes, I have received from the 2nd Defendant pay in full for the period in question. Yes, I have received from the 2nd Defendant an extra $6,307.87 as pay for the same period. But, no, no credit should be given the 2nd Defendant for this $6,307.87.” Surely, this cannot be right.

# (Abu B. bin Wahab)

Deputy District Judge

Representation:

Mr. Dennis Law instructed by Messrs. Simon Siu, Wong, Lam and Chan and assigned by Legal Aid Department for Plaintiff.

1st Defendant absent and unrepresented.

2nd Defendant represented by Mr. Patrick Szeto instructed by

Messrs. Szwina Pang, Edward Li & Co.