## DCPI 631/2012

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 631 OF 2012

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##### BETWEEN

MA YONG MEI Plaintiff

### and

CHENG MUK LAM Defendant --------------------

Coram: Deputy District Judge W K Wong in Court

Date of Hearing: 17, 18 and 20 November 2014

Date of Judgment: 4 December 2015

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JUDGMENT

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*Introduction*

1. This is a personal injury case. The plaintiff claims loss and damages arising out of the defendant’s negligence in respect of an accident occurred to the plaintiff on 12 April 2009 at the swimming pool of Sutera Harbour Resort, 1 Sutera Harbour Boulevard, Kota Kinabalu, 88100 Sabah, Malaysia (“Harbour Resort”).
2. The plaintiff is unrepresented during the trial.
3. On 20 November 2014, when I was prepared to hear both parties’ closing submissions, the plaintiff produced her medical certificate and asked for time to submit her closing submission at a later day. No objection was from the defendant. As the plaintiff would go to the USA for about 2 months, both parties agreed to submit and deal with their closing submissions by papers instead of an oral hearing. In view of the plaintiff’s long holidays in the USA, I accepted this arrangement and directed that they were at liberty to apply for an oral hearing if necessary.
4. Due to the plaintiff’s late submission, I further extended the time for the defendant to make reply, ie not later than 14 January 2015.
5. On 24 December, 2014, the defendant in his reply alleged that the plaintiff had introduced many new assertions and documents in her closing submission which the defendant had not previously been made aware of, and so did not consider and cross-examine these new materials at trial. The defendant objected to all the new materials/evidence and had crossed out in red the references to the new assertions and documents in the plaintiff’s closing submission. (Copy is attached in the defendant’s reply.)
6. It is unclear why the plaintiff had failed to disclose all these new materials before when she was legally represented. From the court record, the plaintiff had all along been legally represented until shortly before the trial dates.
7. The plaintiff was informed of the defendant’s objection by the defendant and she was aware that she was at liberty to ask for an oral hearing if needed.
8. Up to 14January, 2015, no such application had ever been made by either party. Therefore, I take all closing submissions of both parties to be fully done.
9. Having considered the defendant’s objection and the relevant circumstances in this case, I accept the defendant’s view that the plaintiff, though unrepresented at trial, does not entitle her to ignore the rules for a fair trial , particularly since both parties have closed their respective cases. I rule that all these new materials including documents attached to the plaintiff’s closing submission are not admitted as evidence in this case.

*Undisputed facts*

1. The plaintiff was born on 11 January 1965 and was about 44 years of age at the time of the accident.
2. The plaintiff and the defendant were members of a tennis club and they knew each other through the same tennis club. They had been playing tennis with other members of the tennis club for a few years before the alleged accident. The plaintiff and the defendant together with other members of the tennis club frequently travelled on holidays and had done so for a number of years.
3. On or about 12 April 2009, at about 11:00 am, the plaintiff and the defendant together with about 9 other members of the tennis club and their families (“the Group”) were playing water volleyball at the Harbour Resort which had a tropical swimming pool with facilities for pool volleyball. The plaintiff and the defendant were separated by a net as they were in different teams. The game was intended to be for fun and leisure among friends and other holidaymakers. There were no particular set rules and the number of players on each team was different. The atmosphere of the game was fun and relaxed. Two photos taken at the scene (trial bundle Section B p 119 and 120) submitted by the defendant show the circumstances on that day when the water volleyball was played .
4. The plaintiff got injured on her right eye while playing water volleyball. After returning to Hong Kong, the defendant took the plaintiff to see eye doctor.

*Plaintiff’s case*

1. At all material times of playing water volleyball, the plaintiff was standing at a distance of about 1 foot from the net and trying to perform a block with both of her hands up without jumping. At about 11:00 am, the defendant inadvertently extended his hand over the net and spike the volleyball over the net into the plaintiff’s court, the defendant hit the plaintiff’s right eye by hand (“the accident”). The plaintiff lost consciousness for about 2 to 3 seconds and the defendant’s wife helped the plaintiff leave the said swimming pool. As a result of the accident, the plaintiff sustained serious injuries to her right eye and psychological / psychiatric impairment ensued. The accident was witnessed by the plaintiff’s witness, Mr. Lam Kwok Kei(林國基). Mr. Lam saw the net swinging after the defendant’s spiking or hitting.
2. Wan Shan Hung( 尹山紅 ) is also a member of the tennis club and has known both the plaintiff and the defendant since 2009. She did not go with them to the Harbour Resort. Two days after the accident, she met the defendant at the tennis club. The defendant admitted to her that he had hit the plaintiff’s eye carelessly by hand.
3. The accident and the plaintiff’s pain, suffering and personal injuries were caused by the negligence on the part of the defendant.
4. As a result of the accident in question, the plaintiff has been suffering from injuries to her right eye and psychological / psychiatric impairment ensured. Permanent disability is now left with her. After the accident, the plaintiff had received various medical treatments at Sabah Medical Centre Sdn Bhd, Hong Kong Eye Hospital, Dr Michael Y T Hung’s clinic, Dr Leo P W Chiu’s clinic, Hong Kong Eye Consultants, 深圳市中醫院, Dr Ng Fung Shing’s clinic and Tak Yan Dispensary Co Ltd. The various medical treatments she had received included but not limited to X-ray, MRI examination, acupuncture and medicine. Nonetheless, her injuries to her right eye and psychological / psychiatric injuries have been unrelieved.
5. According to the joint ophthalmic expert report prepared by Dr Tsui Chung Wan and Dr Ng Wing Ho Kenneth dated 3 December 2013, the plaintiff now still suffers from decreased elevation of the right eye in addition and also 2.5% impairment of the whole person as a result of the accident.
6. The plaintiff has since the accident suffered from:-

(i) pain and discomfort in her right eye;

(ii) double image;

(iii) dizziness and nausea;

(iv) limitation of right eye in elevation and depression eye movements;

(v) limited field of vision;

(vi) sleeping problem;

(vii) anxiety disorder;

(viii) concentration difficulty;

(ix) negative emotions;

(x) depression; and

(xi) impaired memory.

1. Prior to the accident, the plaintiff had perfectly healthy eyes with normal vision. For the 6 months immediately after the accident, the plaintiff had to cover up her right eye and conduct daily activities in only one eye in order to avoid diplopia and dizziness.
2. Whilst the plaintiff can now still participate in usual sporting activities, she is forced to avoid sports that are more intense due to her eye injury. As such, the plaintiff can no longer participate in surfing and skiing which she enjoyed prior to the accident. Further, the plaintiff can no longer join sports competitions as she is now afraid of playing sports with strangers.
3. Prior to the accident, the plaintiff also enjoyed travelling around, visiting tourist spots and meeting new people. As a result of her eye injuries, however, the plaintiff can no longer enjoy her trips as she would suffer from diplopia without warning.
4. Because of the eye injury, the plaintiff has difficulties in cooking, dining, driving, watching TV, reading books, etc. Her daily life is deeply affected.
5. The plaintiff’s earning capacity has been as a result thereof and will continue to be impaired and affected by the said injuries and therefore suffers and will continue to suffer a handicap in the labour market. She could not find a job until she set up her company in October 2010.
6. In summary, the plaintiff claims for:-
7. Pain, suffering and loss of amenities HK$450,000.00
8. Loss of earnings HK$196,800.00
9. Loss of earning capacity/handicap

in the market HK$200,000.00

1. Medical expenses HK$ 23,015.95
2. Travelling expenses HK$ 10,000.00
3. Tonic food HK$ 5,000.00
4. Loss of pension/mandatory provident

Fund HK$ 9,840.00

1. Interest To be assessed

Total: HK$894,655.95

plus interest

*Defendant’s case*

1. The defendant did not call any witness other than himself to give evidence.
2. In gist, the defendant alleged that:-
   1. The water depth at the area of the pool for playing water volleyball was shallow enough for standing and both the plaintiff and the defendant were standing in the pool while they were playing water volleyball.
   2. The incident happened in the middle of the water volleyball game, when the plaintiff and the defendant together with the other members of the Group and other holidaymakers who had been playing the game for sometime. Both sides had been striking and blocking the ball for a while.
   3. At the time of the incident, the plaintiff was standing quite close to the net with both her hands raised up. The defendant was standing opposite her, which was on the other side of the net.
   4. Just before the incident, the ball came near the defendant and he jumped and reached up to hit the ball. Subsequently, the plaintiff got injury on her right eye. The defendant denied that his hand had extended over the net and inadvertently hit the plaintiff’s right eye.
   5. Jumping to reach the ball and attempting to hit it over the net is part and parcel of the game of volleyball and is a natural and instinctive reaction to the ball coming close to the defendant. The plaintiff had experienced such actions many times during the game in question.
   6. The defendant was playing the game in a friendly and relaxed manner and did not know and could not have reasonably known that his actions might cause injury to the plaintiff, if it did.
   7. The participants of the water volleyball game were high-spirited and having fun and the defendant had no intention to cause any harm or injury to anyone.
3. Regarding to the damages issues, the defendant avers that the plaintiff’s injury is extremely minor. He, if found liable to pay damages, agrees to pay the following damages but subject to the plaintiff’s strict proof:

PSLA HK$50,000

Loss of earning HK$24,000

Loss of earnig capacity Nil

Medical expenses HK$5,000

Travelling expenses HK$3,000

Tonic food HK$1,500

Loss of pension/MPF HK$1,200

Interest Nil

Total: HK$84,700

1. The defendant also claims for damages to be reduced because of the plaintiff’s contributory negligence and tax issues.

*Facts finding*

1. The main facts in dispute in this case is whether the defendant had extended his hand over the net and hit the plaintiff’s right eye with hand while he was jumping to spike the volleyball.
2. From the photos produced by the defendant which are not in dispute, I am satisfied that the plaintiff was always standing quite close to the net (about one foot away). The depth of pool was 1.4 meters. The net was relatively tall and the the top of the plaintiff’s head was significantly below the top of the net. The photos also show the water extended to about the defendant’s chest level and it was unlikely that the defendant could have jumped very high. The net was not fastened very tightly on either side. I accept the defendant’s estimation that the net was about 7 feet high. During the game, players who were close to the net might jump and spike or block the volleyball.
3. The plaintiff alleged that at the material time of the accident occurred, she was standing at a distance of about 1 foot from the net and trying to perform a block with both of her hands up without jumping. If that was the case, considering the defendant’s height and the water resistance force, if the defendant did jump to spike or hit the ball which was on his side of the net, he would not have needed to extend his arm across to the other side. Even if his hand had crossed over , it is unlikely the defendant’s hand would have struck the plaintiff’s eye if at the material time she was not jumping and just standing there. Besides, it would be very difficult for the defendant to extend his hand over the net and hit the plaintiff’s eye without pressing down the net low. If the defendant really hit the plaintiff’s eye by extending his hand over the net, the defendant must inevitably lost his balance after spiking the ball, which must be seen by everyone in the pool.
4. Right after the accident, the plaintiff was taken to the treatment room in the hotel. According to the record of guest incident report dated 12.4.2009, the plaintiff told the hotel guard that her right eye was hit by the ball. The plaintiff during the cross–examination tried to explain that away by saying her ability to use English is not good and she had expressed herself wrongly. This is unacceptable because the words “ball” and “hand” are both commonly used terms and someone having a secondary education level could not possibly mix them up. I do not accept her explanation.
5. Both witnesses of the plaintiff do not help the plaintiff’s case much.
6. Mr Lam while giving evidence in court admitted that he could not see how the accident occurred clearly as he did not pay full attention to the plaintiff. Mr Lam later also saw the shaking of the net and therefore drew the inference that when the defendant was spiking the ball, the defendant’s hand went beyond over the net and hit the eye of the plaintiff. The inference drawn by Mr Lam is at odds with the circumstantial evidence at the time. It is common knowledge that when the depth of water reaches one’s chest, jumping up from the water will meet with the water’s resistance. It is difficult to jump up even about 0.5 metre from the water. In other words, even though the defendant is someone who exercises regularly, in the circumstances, at most he would have touched the top of the net when he jumped up to spike the ball. It is impossible that his hand would have gone beyond over the net and hit the eye of the plaintiff who was standing about one foot from the net and without jumping up. The reason is very simple. The eye of the plaintiff was about one metre from the top of the net (see photos). The plaintiff’s evidence is that at the moment of the accident, she did not jump up but only raised her arms to intercept the ball. In the circumstances, the defendant’s hand could not possibly have come into contact with the eye of the plaintiff. If there were contact, then the better part of the defendant’s body must have pressed on the net, causing him to lose his balance. And Mr Lam would certainly have seen the defendant’s body pressed on the net. All Mr Lam saw was the shaking of the net. Such shaking could be caused by the contact between the net and the ball or the defendant’s hand after he spiked the ball. Furthermore, Mr Lam admitted that he had talked about the case with the plaintiff before writing his witness statement. I have reason to believe that Mr Lam’s evidence is partial and cannot be believed entirely.
7. The plaintiff’s witness, Madam Fong, was not present at the scene at the time when the accident occurred. She said firmly that after the defendant returned to Hong Kong, the defendant admitted to her in person that the hand of the defendant had injured the eye of the plaintiff. The defendant denied that and said he was only expressing regret for having injured the plaintiff. The defendant’s version is credible because as analysed above, in the circumstances of what happened at the time, the defendant’s hand could not possibly have come into contact with the eye of the plaintiff.
8. All in all, I find the plaintiff’s case is illogical and against common sense. I reject her version.
9. Having considered all evidence before me, I accept the defendant’s version and find that at the material time when the plaintiff got hurt, her right eye was hit by the water volleyball spiked by the defendant.

*Liability*

1. The law is very clear. The standard of care in sporting context is different than a non-sporting context.
2. In *Blake v Galloway* [2004] 1 WLR 2844, Dyson LJ said , at para 8-11:

“ that participants in sport games generally owe each other a duty of care and that the standard of care depends on all the circumstances of the case, and that the threshold for liability is high (see para 11)”

“there will be no liability for errors of judgement, oversights or lapses of which any participant might be guilty in the context of a fast-moving contest. Something more serious is required”

1. Diplocks LJ (as he then was) had said in *Woolridge v Summer & another* [1963] 2 QB 43:

“ a person attending a game or competition takes the risk of any damage caused to him by any act of a participant done in the course of and for the purposes of the game or competition notwithstanding that such acts may involve an error of judgement or lapse of skill, unless the participant’s conduct is such as to evince a reckless disregard of the spectator’s safety”

1. The above principle was also applied in Hong Kong in *Chan Kin Bun v Wong Sze Ming & another* (HCPI1549/2014), Deputy Judge Saunderss (as he then was) followed the same English cases and dismissed the plaintiff’s claim who was hurt during a mock sword flight using T-square rulers.
2. Under normal circumstances, the participants who willingly engaged in a vigorous sport must have impliedly consented to assuming certain risk of injury [see *Charlesworth & Percy on Negligence*, 10th ed., paras. 3-76a to 3-77, p.209].
3. The standard of care owed by a professional player in a contest might be high. In *Condon v Basi* [1985] 2 ALL ER 453, Sir John Donaldson M.R. said ,“Thus there will of course be a higher degree of care required of a player in a First Division football match than of a player in a local league football match.”
4. I notice that the scenario in this case is partly different to the above quoted cases. Firstly the defendant was not the organizer of the game and he was one of the players only. Secondly, there was a net to separate these two teams players. However, by willingly taking part in the game, the plaintiff impliedly consented to any contact which could reasonably be expected to occur in the course of it (*Woolridge v Summer & Another* [1963] 2 QB 43, *Mullin v Richards & Another* [1998] 1 All ER 920).
5. As to what are reasonable precautions, Mason J (as he then was) in *Wyong Shire County Council v Shirt and others* (1980) 29 ALR 217 saidat page 221:

"In deciding whether there has been a breach of the duty of care the tribunal of fact must first ask itself whether a reasonable man in the defendant's position would have foreseen that his conduct involved a risk of injury to the plaintiff or to a class of persons including the plaintiff. If the answer be in the affirmative, it is then for the tribunal of fact to determine what a reasonable man would do by way of response to the risk. The perception of the reasonable man's response calls for a consideration of the magnitude of the risk and the degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the defendant may have. It is only when these matters are balanced out that the tribunal of fact can confidently assert what is the standard of response to be ascribed to the reasonable man placed in the defendant's position. The considerations to which I have referred indicate that a risk of injury which is remote in the sense that it is extremely unlikely to occur may nevertheless constitute a foreseeable risk. A risk which is not far-fetched or fanciful is real and therefore foreseeable. But, as we have seen, the existence of a foreseeable risk of injury does not in itself dispose of the question of breach of duty. The magnitude of the risk and its degree of probability remain to be considered with other relevant factors."

1. It is normal and foreseeable while playing water volleyball in the pool, a player who is close to the net jumps and reaches up to hit the ball to the opponents’ court . In fact, jumping to reach the ball and attempting to hit the ball over the net is part and parcel of the game of water volleyball and is natural and instinctive reaction to the ball coming close to the defendant. The plaintiff should have experienced such actions many times during the game in question. All these actions were foreseeable by the plaintiff.

1. Having further considered the game was intended to be for fun and leisure among friends and other holidaymakers and no particular rules were set for the game, I find that the defendant was not acting recklessly when he spiked the ball and the ball inadvertently hit the plaintiff’s right eye. In such circumstances, according to the above legal principle, I find that taking to the highest, it is an error of judgement or lapse of skill on the defendant’s part, hence, the defendant is not liable to the plaintiff’s injury of her right eye.

*Quantum*

1. Having found against the plaintiff on liability, her claim stands to be dismissed and it is strictly unnecessary to deal with the issue of contributory negligence and the quantum of the claim. However, in case I am wrong on the issue of liability, I briefly set out below my views on contributory negligence and the various heads of damages claimed.
2. If I had accepted the plaintiff’s case, I would not have found that there was any contributory negligence on her part.
3. The plaintiff was born in 1965 and at the time the accident occurred she was 44 years old.

*PSLA*

1. The plaintiff claims that because of her eye injury, she could no longer participate in surfing and skiing and join sports competitions as she is now afraid of playing sports with strangers. Furthermore, prior to the accident, she always travelled around, visiting tourist spots and meeting new people, but now she gives up her trips as she would suffer from diplopia without warning. Her daily life is deeply affexted by blurred image.

1. The plaintiff asks for the award under this head is HK$450,000.00.
2. The defendant objects to the plaintiff’s claim as he alleged that the injury suffered by the plaintiff is extremely minor and any damages payable under this head would not be more than HK$50,000.00.
3. The defendant mainly relies on the joint ophthalmic expert report of 3 December 2013(“the joint expert report”). Both experts agree that the plaintiff has exaggerated her alleged visual impact. They also opine that the allegation that the plaintiff has to raise books and newspapers when reading is inconsistent with her injury as she should experience more double vision when looking upward. Besides, both experts also agree that the plaintiff should be able to carry out her activities of daily living with no restriction.
4. Both experts in paragraph 7 of the joint expert report clearly states that the plaintiff could have exaggerated her symptoms of diplopia. Both experts admit that according to the joint assessment conducted on 21 August 2013, the plaintiff was found to suffer from decreased elevation of the right eye in adduction . The clinical findings and progress of the plaintiff are consistent with the clinical diagnosis. Both experts estimate that the plaintiff has suffered around 10% loss of ocular motility as a result of the accident.
5. I accept the findings of the joint medical report.
6. In any events, the plaintiff admitted that she could now still participate in usual sporting activities. The plaintiff was fond of sports , but she was not an amateur athlete . In view of her diplopia problem, I believe it will affect her performance in joining sports competitions and participate in surfing and skiing.
7. In the absence of a head injury evidence, I do not accept that the plaintiff had lost consciousness.
8. In *Leung Moon Sing v Yu Hon Kuen* [2006] HKLRD (Yrbk) 374, the plaintiff suffered eye injury (spray paint exploded into eyes, eyes padded after saline irritation, epithelial effect healed with no scar, impairment of tear secretion resulting in dry eyes), Deputy Judge Wong awarded a sum of HK$65,000 to the plaintiff under PSLA.
9. In *Chan Yim v Shing Cheong Construction Ltd* [2007] HKLRD (Yrbk) 411 , the plaintiff got bruises over medial corner of right upper eyelid, mild diplopia, mild right hypertropia. Deputy District Judge Longley awarded the plaintiff a sum of HK$230,000 under PSLA
10. Having taken the above cases into consideration, I consider that an appropriate award for PSLA would have been HK$150,000.

*Loss of earning*

1. The plaintiff claims that prior to the accident, she secured a job with a company to work as a clerk and the monthly salary was about HK$12,000. As a result of the accident, the plaintiff was unable to work and had to turn down the aforesaid job offer. The plaintiff had been unable to return to work until 26October 2010 when she set up a limited company in Hong Kong.
2. The plaintiff’s loss of earnings from 12April to 25October 2010 would be HK$196,800. ( HK$12,000 x 16.4 month)
3. The burden of proof is on the plaintiff, but under this head, the plaintiff did not produce any proof neither written documents nor witness statements from the offeror to prove that at the material time a job was offered to her. According to the joint expert report, sick leave of two months given to the plaintiff is reasonable. In other words, the plaintiff is entitled to have two months’ loss of earnings. However, the plaintiff fails to prove that during the sick leave period she had earning capacity. The plaintiff claims that she is a freelance worker in advertising field, but the letters from Inland Revenue Department dated 12 September 2013 clearly stated that there is no record of the plaintiff’s income from 2007 to 2013. In such circumstances, I do not believe that the plaintiff had secured any employment at the time of the accident and has suffered any loss of earnings during the sick leave period. No award would have been granted under this head.

*Loss of earning capacity/ handicap in the market*

1. The plaintiff alleges that both experts estimate she suffers 5% loss of earning capacity. She further claims that by reason of the permanent disability suffered by her, a sum of HK$200,000 should be awarded to her under this head.
2. The plaintiff does not give a full account how this figure arrives at .
3. Having carefully studied the joint expert report, I note that both experts clearly say that the 5% loss of earning capacity is purely for the parties’ reference. In their conclusion , the plaintiff was found to have depressed ocular motility of the right eye and now still suffers from decreased elevation of the right eye in adduction. The plaintiff suffered 2.5% impairment of the whole person as a result of the said accident. Regarding to the loss of earning capacity, the experts’ view is that the plaintiff has been suffering from diplopia only on extreme upgaze, and she should be able to work as a clerk since reading and writing involve mainly downgaze, her diplopia in extreme upgaze should impose little restriction or limitation on her working capacity as a clerk.
4. The plaintiff claims that she had worked in the field of advertising and had also worked at the sales department of Sing Tao Daily before the accident occurred. In 2010, she started her own trading business. Other than Mr Lam’s evidence that the plaintiff had been his colleague when he was with Sing Tao Daily, the plaintiff fails to produce any proof regarding to her occupation and income. It is a bare allegation only.
5. The burden of proving damages is on the plaintiff ( see *Chan Siu Youn v Ng Kam Man & others* HCPI533/1999). The plaintiff is not entitled to put figures before the Court and seek them without proper evidence (see *Yim Fat Fong v Wong Kim Hung & another* HCPI1173/1996).
6. The plaintiff admitted she did not try to return work after the reasonable period of sick leave.
7. Having considered all the evidence before me, I am not satisfied that the plaintiff has suffered any loss of earning capacity.

*Medical expenses*

1. I find the medical expenses sated in the plaintiff’s revised statement of damages are necessary and reasonable. The plaintiff would have been awarded HK$23,015.95 for medical expenses.

*Travelling expenses*

1. The plaintiff claims for a sum of about HK$10,000 without any documentary proof, I notice that the plaintiff went to Shenzhen, China 11 times for medical treatment, and the rest of consultation places were all in Hong Kong.
2. Having considered that there may be difficulties for the plaintiff to produce documentary proof for taking public transport by using Octopus card, in any events, the necessity of travelling expenses is not in doubt. However, I do not believe that the plaintiff did spend a sum of HK$10,000 as travelling expenses. I consider that an award of HK$5,000 would have been appropriate.

*Tonic Food*

1. No documentary proof has been produced by the plaintiff as to the necessity and reasonableness of buying tonic food. I decline to grant any sum to the plaintiff under this head.

*Loss of pension/mandatory provident fund*

1. The plaintiff totally fails to prove that she has been a member of any pension scheme and / or mandatory provident fund. I find that she has suffered no loss under this head. Her claim under this head must fail.

*Summary on quantum*

1. The total award, excluding interest, would have been HK$178,015.95 as tabulated below:

PSLA HK$150,000.00

Medical expenses HK$ 23,015.95

Travelling expenses HK$ 5,000.00

**Total: HK$178,015.95**

*Interest*

1. The interest should be awarded on the PSLA award at 2% p.a. from the date of writ to the date of judgment and that interest on all pre-trial loss of earnings should be awarded at half of the judgment rate from the date of accident to the date of judgment.

*Conclusion*

1. As I have determined the issue of liability against the plaintiff, the action is dismissed.
2. I make an order *nisi* that the plaintiff pay the defendant’s costs of the action, to be taxed if not agreed, with certificate for counsel.

( W K Wong )

Deputy District Judge

The plaintiff appeared in person

Mr Ashok Sakhrani instructed by Kennedys, for the defendant