#### DCPI 673/2013 &

#### DCPI 1883/2012

(Consolidated)

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO 673 OF 2013

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BETWEEN

CHAN HAU YU (陳厚裕) Plaintiff

and

LI WING KWAI (李榮桂) Defendant

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### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO 1883 OF 2012

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BETWEEN

LI WING KWAI (李榮桂) Plaintiff

and

CHAN HAU YU (陳厚裕) Defendant

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##### Before: Deputy District Judge Jackson Poon in court

Date of Hearing: 15, 18 and 19 August 2014

Date of Judgment: 5 September 2014

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## JUDGMENT

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*Introduction*

1. In DCPI 1883 of 2012, Madam Li Wing Kwai (“Li”) claims against Mr Chan Hau Yu (“Chan”) for damages for personal injuries caused by an assault by Chan. Chan denies liability. In DCPI 673 of 2013, Chan claims that he suffered personal injuries in the same incident due to the negligence of Li when Li opened a door bumping onto him. Li denies liability and counterclaims against Chan for the same reasons mentioned in DCPI 1883 of 2012. The two actions have been consolidated. It is obvious that Chan should have filed a defence and counterclaim in DCPI 1883 of 2012, instead of starting a new action in DCPI 673 of 2013.

*Gist of Li’s case*

1. Li and Chan operated different shops at Wing Fai Plaza, Nos. 29-35 Ting Kok Road, Tai Po (“the Plaza”). At about 1:30 pm on 26 February 2011, Li pushed open a door which accidentally hit the right shoulder of Chan. Chan did not fall down. Chan then bumped his right shoulder against Li, scolded her with foul language and assaulted her.

*Gist of Chan’s case*

1. After Chan was hit by the door, he fell down and the tendon of his left thumb was pulled open by the door as he was holding onto the door. He had not bumped the right shoulder of Li, and he had neither used foul language against Li nor assaulted her.

*Main issues*

1. The main issues to be decided are:-
2. whether Chan assaulted Li;
3. what is the quantum of damages for Li’s case;
4. whether Li was negligent in causing the door to hit Chan;
5. whether Chan suffered injuries to his left hand in the accident; and
6. what is the quantum of damages for Chan’s case.

*Liability*

*Li’s Evidence*

1. On 26 February 2011, at about 1:30 pm, Li intended to leave the Plaza. Li saw a man standing outside and behind the door on the right hand side of the entrance with his back facing the door. To avoid bumping him, Li pushed open the door on the left hand side. The door was opened at “normal speed”.
2. The man, later known to be Chan, suddenly turned left at “normal speed” and the door then hit Chan on his right shoulder. Chan then rushed to Li and used his right shoulder to bump against Li’s right shoulder. Li was in pain and was scolded by Chan with foul language.
3. Li was scared and wanted to flee but Chan chased after Li and intercepted her. Chan then hit Li’s head 3 times with his right fist; once on her left forehead, once on her left cheekbone, and once on her left lip. Li’s glasses fell onto the ground during the assault.
4. Li tried to call the police but Chan used his right hand to grab her left wrist. He scolded her again in foul language and forcibly shook and pulled Li’s left wrist for a number of times.
5. Chan’s wife, a female security guard of the Plaza and another female shop keeper of the Plaza appeared and tried to stop Chan. However, Chan continued to twist and shake Li’s left hand. They then successfully separated Chan and Li. Li eventually got hold of her mobile phone and called the police.
6. Li was sent to the A&E Department of the Alice Ho Miu Ling Nethersole Hospital (“NH”) for treatment. Physical examination showed redness over her left wrist and face.
7. As a result, Chan was charged by the Police with common assault and was convicted after trial at Fanling Magistracy on 5 July 2011. Chan was sentenced to 18 days’ imprisonment.

*Chan’s evidence*

*Chan’s witness statement for this trial*

1. On 26 February 2011 at around 1 pm, Chan stood outside the main door on the ground floor of the Plaza. Chan was facing the street with “the door on the right hand side” behind his back. Chan then turned left and wanted to enter the Plaza. Li forcibly and deliberately pushed a door towards Chan’s right shoulder.
2. The door was translucent with tinted colour, it highly reflected light so that Chan could not see anything inside the Plaza including Li. After Chan’s shoulder was hit by the door, Chan was knocked to the ground and “his left hand hit the floor”.
3. Although the pain caused Chan’s whole body to shake, Chan stood up and entered the Plaza immediately in order to ask Li whether she hit him with intent. Chan did not scold Li with foul language.
4. Li screamed and claimed that Chan hit her. She went to her shop to get her mobile phone. After calling the police, Li returned to the place of incident and used her phone to take photographs of Chan. As Chan worried that Li would show his photographs to the public, he grabbed her mobile phone. However, he did not twist her wrist and he did not realize that he had touched her hands. In the course of grabbing her phone, her eye-glasses fell onto the floor.
5. Chan’s wife then appeared and tried to separate Chan and Li. After Chan had successfully taken Li’s mobile phone, Chan returned it to her.
6. After Chan left the police station, he returned home. Not until he took a shower did he notice that his hands were swollen. After that, he went to the hospital and he also reported to the police that his injuries were caused by Li’s assault. Nevertheless, the police refused to take further statement from Chan.
7. The hospital medical report says that Chan suffered from injury on the metacarpalphalangeal joint and ligament of his left hand.

*Evidence of Chan in court*

1. When Chan stood outside the Plaza, the “door on the left hand side” was behind his back. Chan went outside the Plaza because he wanted to get a ticket for queuing up for tea. He stood outside the Plaza for about 1 minute. As there were too many people queuing up, he gave up getting a ticket and planned to return to the Plaza. Chan turned around and moved towards the Plaza.
2. When Chan was about to pull open the door of the Plaza, Li forcibly pushed the door towards him. Chan’s head was slightly hit but his shoulder was slammed heavily. He placed his left hand on the side of the door for support with the right hand holding onto the door handle. He slowly fell on the ground with his bottom hitting the ground.
3. Chan’s left thumb was pulled open by the door resulting in injury of the left thumb. “Both of his hands did not hit the ground”. Li did not apologize. Chan screamed to Li, “Are you going to bump me to death?”. After that, Li went back for about 20 feet and got her mobile phone from her shop.
4. Li tried to take photograph of Chan. Chan then grabbed the mobile phone from her and later returned it to Li. Chan did not hit Li. Furthermore, Chan had neither grabbed her hand nor twisted her wrist.

*Discussion*

1. Chan was convicted of common assault at the Magistracy for assaulting Li during the incident. I bear in mind the ruling of Hon Cheung J (as he then was)in *Lau Ka Po v Man Cheuk Ming*(unreported, HCPI 584/1996) at page 4:-

“The effect of a conviction of careless driving shifts the burden of proof to the 1st defendant to show that he was not negligent. It appears that this point has been ignored in many of the road traffic cases where despite the criminal conviction of the driver, the issue of liability was contested right up to the moment of trial. Much time and legal costs could be saved if the handling lawyers could face the real issue, agree on liability at the early stage of the proceedings and concentrate their efforts on quantum. I will repeat what Lord Denning said in *Stupple v Royal Insurance Co Ltd* [1971] 1 QB 50, on s 11 of the Civil Evidence Act (the equivalent of s 62 of the Evidence Ordinance):-

‘The Act does not merely shift the evidential burden, as it is called. It shifts the legal burden of proof… Take a running down case where a plaintiff claims damages for negligent driving by the defendant. If the defendant has not been convicted, the legal burden is on the plaintiff throughout. But if the defendant has been convicted of careless driving, the legal burden is shifted. It is on the defendant himself. At the end of the day, if the judge is left in doubt the defendant fails because the defendant has not discharged the legal burden which is upon him. The burden is, no doubt, the civil burden. He must show, on the balance of probabilities, that he was not negligent… But he must show it nevertheless. Otherwise he loses by the very force of the conviction.’

In my opinion, therefore, the weight to be given to a previous conviction is essentially for the judge at the civil trial. Just as he has to evaluate the oral evidence of a witness, so he should evaluate the probative force of a conviction. If the defendant should succeed in throwing doubt on the conviction, the plaintiff can rely, in answer, on the conviction itself; and he can supplement it, if he thinks it desirable, by producing (under the hearsay sections) the evidence given by the prosecution witnesses in the criminal trial, or, if he wishes, he can call them again. At the end of the civil case, the judge must ask himself whether the defendant has succeeded in overthrowing the conviction. If not, the conviction stands and proves the case.”

1. Counsel for Chan invited me not to put too much weight on Chan’s conviction as he was not legally represented in the Magistracy. I bear the above in mind and also assess all the evidence independently.
2. After considering all the evidence of the witnesses, their demeanours when giving evidence and all documentary evidence, I find that Chan was an unreliable witness and his evidence about the incident was untrue.
3. Chan said in court that after the door had hit his head slightly and the door had bumped his right shoulder, he fell down. He used his left hand to hold on the edge of the glass door and his right hand to hold onto the door handle. The tendon of his left thumb was pulled open by the glass door. However, Chan had not mentioned about the tendon of the left thumb being pulled open by the glass door in the following occasions:-
4. when asked by the police officer who arrived at the scene (see police notebook);
5. when attending the A&E Department;
6. when defending himself at Fanling Magistracy;
7. when preparing the statement of claim; and
8. when making his witness statement in this case.
9. The above together with all the evidence and Chan’s conviction make Chan’s evidence about the tendon of the left thumb being pulled open incredible. I do not accept that the tendon of his left thumb was pulled open during the incident.
10. Counsel for Chan submitted that Li’s evidence was incredible because Li said that Chan pulled her left wrist back and forth 7 to 8 times for 2 minutes but each pulling only lasted for longer than a second. Furthermore, Li said Chan shook her wrist 7 to 8 times. Each shaking could not have lasted longer than a second, so the timing did not tally. Therefore, Li’s evidence was incredible.
11. They were minor discrepancies and the timings were just rough estimations by Li. I find that they did not affect the credibility of Li.
12. Counsel for Chan has pointed out various discrepancies in Li’s evidence, pleading and witness statements, such as whether Chan used his “left” or “right” hand to grab Li’s left hand. Li explained that those discrepancies were just mistakes made by her. She then finalized her evidence as that mentioned in her supplemental witness statement. After careful consideration, I find Li’s evidence true and credible.
13. I find that Li was leaving the Plaza when Chan was standing outside the Plaza about more than 4 feet from the door on the right hand side of him. His back was facing Li. To avoid hitting Chan, Li opened the door on her left hand side, Chan suddenly turned around and moved towards the left. Chan’s right shoulder then hit the door. Chan immediately scolded Li and assaulted Li as described in Li’s evidence. Chan did not fall down after his right shoulder had bumped the door. The tendon of Chan’s left thumb had not been pulled open by the door.

*Any negligence on the part of Li?*

1. Chan was standing more than 4 feet outside the door on Li’s right side. Li opened the door on the left hand side to avoid hitting Chan. Li has already exercised reasonable duty of care towards Chan. It was Chan who suddenly turned around and moved towards the left, so that towards the opening door. I find no negligence on the part of Li.
2. The duty of care owed by Li to other users of the Plaza (including Chan) is not an absolute one. The standard is only that of a “reasonable and prudent man”. Paragraph 8-136 of *Clerk & Lindsell on Torts, 20th Edition*, says:-

‘A defendant will be regarded as in breach of a duty of care if his conduct falls below the standard required by the law. The standard normally set is that of a reasonable and prudent man. In the often cited words of Baron Alderson:-

“Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do; or doing something which a prudent and reasonable man would not do”’

1. The evidence shows that apart from the abovementioned 2 doors, there was also one more door on the far left and one more door on the far right. There were altogether 4 doors in front of Li. I find that it is unreasonable to expect that Li should have used the door on the far left or the one on the far right. If Chan had not suddenly turned around to the left and moved towards the door, the accident would not have happened.
2. Chan’s evidence is that he had not suffered any injury on his right shoulder. He only suffered injury on his left thumb. I find that Chan had not fallen down during the accident. His left thumb was not pulled open by the door. Chan has failed to prove that the injury on his left thumb was related to the accident. Therefore, even if I find any negligence on the part of Li when opening the door, Chan’s claim must fail.
3. I find that Li has proved liability against Chan and I dismiss Chan’s claim against Li.

*Quantum for Chan’s case*

1. I have ruled that Chan has failed to prove liability. For the sake of completeness, I hereby assess the quantum for damages for the injury on Chan’s left thumb as well.
2. To my surprise, there was only very flimsy evidence in Chan’s witness statement and in the trial bundles about the damages suffered by Chan.
3. Dr Lau Hoi Kuen was the single joint expert who examined Chan on 29 November 2013. His medical report dated 8 December 2013 said, inter alia:-

“(a) According to the medical reports from the A&ED AHNH, he attended the A&ED at about 1 am on 27/2/11 for crushing injury to left thumb. Examination revealed tenderness, redness and bruise marks over left hand. X-ray of left thumb showed no fracture. He was discharged home. He attended the A&ED again at about 5 pm on 27/2/11 for left thumb contusion when being assaulted on 26/2/2011. Examination revealed swelling and tenderness of left thumb. The range of movement was decreased. He was referred to the DOT of AHNH.

(b) According to Mr Chan, he resumed work at about 2 months after the injury.

(c) Absence of smooth muscle wasting of the hand.

(d) The diagnosis should be ‘contusion’ or ‘sprain’ of the left thumb. I consider the diagnosis of ligament injury made by the orthopaedic colleagues of AHNH to be appropriate.

(e) He was offered the option of splintage for resting of the thumb but he refused. He had persistent pain when followed up on 7/3/11. No follow-up at the Orthopaedic Clinic was arranged after this day.

1. According to Mr Chan, he preferred to treat himself with herbal medical and local herbal oil application. Recently he takes medicine about 1-2 times each week and has herbal oil application to his left thumb 2-3 times each night.
2. As a practitioner of western medicine, I do not have the knowledge to comment on the treatment of his left thumb injury by Traditional Chinese Medicine (TCM).
3. I am of the opinion that no further treatment, medical or surgical wise, is indicated.
4. My impression is that the condition of him left thumb at present should be better than what he described. Stress tests to the MCPJ (in the CL) revealed no residual anxiety or pain now.
5. The present condition of his left hand should allow him to continue working as a TCM practitioner. Any decrease in his efficiency at work as a result of the left thumb injury should be minimal.
6. The 2 month period of sick leave he had before he resumed work is considered as acceptable.”
7. Chan refused “splintage” treatment as he preferred to treat himself with herbal medicine. Dr Lau, being a western medicine practitioner, could not comment whether it was appropriate for Chan to do so. Therefore, I make no finding against Chan in this aspect.
8. There is no sick leave certificate and Chan has neither mentioned any sick leave period in his witness statement nor in court. I shall only allow a sick leave period of 1 month.

*PSLA*

1. In the case of *Lee Tsz Kin v Climax Paper Converters Ltd*, HCPI 504 of 2003, the plaintiff suffered from sprained right thumb with residual pain, and mild wasting of the muscles of the themar eminence. Exploratory operation revealed mild scarring around the nerve of the thumb. The court found that the claimant had greatly exaggerated his thumb condition. $50,000 was awarded for PSLA.
2. As the injury in this case is comparable to that in the case of *Lee Tsz Kin*, I assess the PSLA for Chan’s case to be $50,000.

*Pre-trial loss of earnings*

1. Chan has produced a tax return for 2010/11 with the annual taxable profit of $176,798. I accept that his monthly income was $176,798 ÷ 12 = $14,733 at the time of the Accident.
2. As I have ruled that a sick leave period of 1 month would be allowed, the award under this head would be $14,733.

*Post-trial loss of earnings*

1. Dr Lau said Chan could resume his pre-accident work. I shall not award any damages under this head.

*Loss of earning capacity*

1. For the same reason, I shall not award any damages under this head.

*Future medical expenses*

1. Dr Lau said no further medical treatment was necessary. I shall not award any damages under this head.

*Special damages*

1. Counsel for Chan conceded that the $1,460 was for obtaining the medical report. Therefore it should be counted as disbursement, not medical expenses. There is no further claim under this head. Therefore, I shall not make any award under this head.
2. Head of Damages Account (HK$)
3. PSLA 50,000
4. Pre-trial Loss of Earning 14,733
5. Post-trial Loss of Earning 0
6. Loss of Earning Capacity 0
7. Future Medical Expenses 0
8. Special Damages 0

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Total: 64,733

1. In addition to the above $64,733, there would be the usual entitlement of interest on PSLA from the date of the writ to the date of judgment at 2% per annum, and interest on pre-trial loss of earnings from the date of the accident to the date of judgment at half judgment rate.

*Quantum for Li’s case*

1. Dr Lau Hoi Kuen (“Dr Lau”), the single joint medical expert, said, inter alia, that Li suffered the following injuries:-

“(a) First in the afternoon of 26/2/11 for multiple injury after being assaulted. Physical examination showed redness over left wrist and face. X-ray of left wrist showed no abnormality.

(b) According to the medical report from YOT TCM Polyclinic, Madam Li first attended the clinic on 22/2/2011 for bilateral elbow pain. When she attended the clinic again on 8/3/2011, she complained of increased left elbow pain after the limb was pulled by someone on 26/2/2011. She had treatment including acupuncture and plaster application.

(c) According to the Medical Report for insurance claim completed by Dr Lam (undated), Ms Li was injured on 26/2/11 after she had a brawl and was physically assaulted. The diagnosiswas soft tissue contusion injury to her left elbow/wrist, dorsal aspect of left hand as well as her right shoulder.

(d) According to the medical report from YOT TCM Polyclinic, Madam Li attended the clinic again on 8/3/2011, she complained of increased left elbow pain after the limb pulled by someone on 26/2/2011.

(e) The cause of the persistent pain of her right shoulder was impingement syndrome and tendinosis or partial tear of the supraspinatus tendon.

1. Since Ms Li has no past history of symptoms of impingement syndrome prior to the captioned incident and there was definite history of trauma to her right shoulder, the captioned accident should be regarded as the precipitating cause for the pain from the degenerated rotator cuff tendon in her right shoulder. On the other hand, it is impossible for me to say, if not for the accident, she could remain asymptomatic for how long from the date of the accident. It certainly can become symptomatic at any time due to stress to the shoulder from activities of daily living, housework or shopping.
2. Orthopedics wise, Ms Li is fit to resume work as a piano teacher. She will continue to suffer a mild degree of decreased efficiency at work due to the residual pain in her left elbow and right shoulder. Fortunately her pre-injury job does not require heavy manual lifting.
3. She is not limited in her activities of daily living.
4. The appropriate period of sick leave for her injuries should be about 9-10 months.”
5. In *Chong Ngan Seng v China Harbour Engineering Co Ltd* (unrep DCPI 2078 of 2009), plaintiff was travelling on board a double decker bus. In the course of the journey, a light goods vehicle cut into the lane of the bus. To avoid a collision, the Bus braked sharply and plaintiff lost her balance and was thrown into the front part of the Bus and sustained injuries to her head, shoulder and wrists. Upon examination at the A&E Department, there were bruises over her left forehead and tenderness over both hands and both writs. The diagnosis at that time was multiple contusions. After the accident, she had left shoulder pain and stiffness. X-ray taken of her left shoulder revealed decreased subacromial space, with osteoarthritic changes of inferior border of acromion and this was diagnosed to be compatible with impingement syndrome. Plaintiff received 25 physiotherapy treatment sessions, and she was given intermittent sick leaves for 6 months and 7 days. Both parties’ medical experts opined that the injuries suffered by plaintiff should be minor ones. They considered that the osteoarthritic changes as revealed by the X-ray are pre-existing and not caused by the accident. Yet, the accident caused the asymptomatic degeneration to turn into symptomatic shoulder pain after the injury. PSLA of $200,000 was awarded.
6. In *Wong Chok Wai v Sun Chung Luen Chinese Products Company Limited* (unrep, DCPI 1839 of 2006), plaintiff was a dried-food salesman. One of his duties was to chop preserved ham with a chopper. Plaintiff claimed that because of the chopping work, his shoulder and neck became painful. The trial judge found that plaintiff’s repeated overhead action of more than 90 degrees, according to plaintiff’s medical expert, could cause impingement syndrome. The trial judge was also satisfied that plaintiff was suffering from impingement syndrome at the time of his employment with defendant. The court also found that plaintiff was at stage 1 or 2 of impingement syndrome, which arises typically at the age of 25-40, but could occur at any time. PSLA of $250,000 was awarded.
7. On the question of discount, Li’s pre-existing shoulder condition should fall within the second scenario among the three scenarios discussed in the Court of Appeal’s judgment in *Chan Kam Hoi v Dragages et Travaux Publics* [1998] 2 HKLRD 958, at p 963:-

“when considering the effect of a pre-existing condition on an award of damages there are three possible scenarios. The first is where the plaintiff was almost certain to have gone through life unaffected by the condition. The second is where there is a strong possibility that some other event, or natural progression of the condition, would have brought about the plaintiff’s present state. The third is where this would certainly have occurred at some stage in any event. In the first, the defendant would be liable for all damage caused. In the second, it would be necessary to assess the degree of possibility in deciding what reduction is appropriate, as in assessing the effect of the vicissitudes of life. In the third, clearly an allowance has to be made, the extent of which depends on the evidence as to when the precipitating event would have occurred.”

1. According to Dr Lau, although he said Li’s shoulder condition could become symptomatic at any time, he did not give any estimates when this was going to happen. Further, Dr Lau had not expressed any medical opinion on the degree of severity of Li’s pre-existing shoulder condition.
2. In *Chu Chung Wah v Ng Tung Pak & Anor* (unrep, HCPI 547 of 2003, 15 December 2004), Master Jeffries at paras 17 and 21 of his judgment said:-

“17.Nevertheless, whilst the principles of Chan Kam Hoi are accepted, there is an important distinction of fact, since in this case it is neither suggested that the pre-existing condition was severe, nor was there clear evidence that it would have led the plaintiff to give up work in any event at some future time. That is relevant to how much discount to give. The only evidence on this point was a comment by Dr Chan, in response to defendants’ solicitors’ questions, that the pre-existing condition ‘could have flared up in the next 1 or 2 years’. I regard this as something of a throw away line, which says nothing about the real prospects, or what effect this might have had on the plaintiff’s working life. Nevertheless, the plaintiff accepts a reduced multiplier, and did not controvert Dr Chan’s comment. It seems to me there is some risk that the pre-existing condition may have had some uncertain future impact on the plaintiff’s working life. This falls far short of the prognosis in Chan Kam Hoi.

21. Having considered the facts and the authorities, I would have accepted an assessment of PSLA in this case at HK$200,000, but some reduction should be made for the admitted pre-existing condition. The matter is not capable of precise definition, or calculation, but a reduction of 20% or HK$40,000 seems appropriate. I therefore award HK$160,000 for pain suffering and loss of amenities.”

1. I find that the PSLA before discount for Li should be $200,000. A 25 % discount should be given for the pre-existing condition. I therefore award $150,000 under this head.

*Aggravated Damages*

1. In *Mir v Mir* [2012] 1 HKLRD 671, Houghton SC DHCJ at paras 88-90 said:-

“Aggravated Damages

88. The plaintiff submits that the relevant principle is to be seen in the following quote from Mak Oi Ling, Karen:-

“In *Rookes v Barnard Lord Devlin* said that aggravated awards were appropriate where the manner in which the wrong was committed was such as to injure the plaintiff’s proper feelings of pride and dignity or gave rise to humiliation, duress, insult or pain… In other words the type of conduct which had previously been regarded as capable of sustaining a punitive award. It would therefore seem that there are two elements relevant to the availability of an aggravated award, first, exceptional or contumelious conduct or motive on the part of the defendant in committing the wrong and second, intangible loss suffered as a result by the plaintiff, that is injury to personality.”

89. Mr Tsui submits that I should follow the award made in that case, namely $50,000 if any award is to be made under this head. Mr Tsoi for the defendant submits that the humiliation suffered by the defendant was greater than that suffered by any of the victims in the comparable cases to which he has referred because the assault took place in her own house and came to the knowledge of her family members.

90. I accept that the manner and circumstances of this assault and the intangible injury to the defendant’s pride and dignity entitle the defendant to an award of damages under this head. In my judgment the plaintiff is correct to submit that a guide can be found in Mak Oi Ling, Karen.  The circumstances of the present case justify an award of $40,000 under this head.”

1. Even though the Plaza was not crowded at that time and the assault lasted only for a short while, I find that Chan’s deliberate assault on Li in the public caused injury to Li’s pride and dignity. I award $40,000 under this head.

*Special damages*

1. I allow all the claims for special damages except those for the physiotherapy sessions at Victor & Partners Physiotherapy Centre as they were for “back injury” which was unrelated to the incident. Therefore, I allow $10,130 under this head. The details are as follows:-
2. Medical expenses

* NH HK$300
* Dr Anthony WL Lam HK$2,710
* Dr Chan Man To Joseph HK$1,840
* Physiotherapy sessions at

Good Health Medical Centre HK$600

* Registered Chinese Medicine

Practitioner Mr Chan Chi Fi HK$3,820

1. Travelling expenses HK$860

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Total: HK$10,130

1. Li was not claiming other damages such as loss of earnings etc.
2. Summary on quantum for Li’s case:-

Head of Damages Amounts (HK$)

PSLA 150,000

Aggravated Damages 40,000

Special Damages 10,130

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Total: 200,130

*Interest for Li’s case*

1. I order that there be interest on PSLA for Li running from the date of the writ to the date of this judgment at 2% per annum. I also order that there be interest on special damages from the date of the accident to the date of this judgment at half judgment rate.

*Costs for Li’s*

1. I make an order *nisi* that Chan shall pay Li costs for both cases in DCPI 1883 of 2012 and DCPI 673 of 2013, with counsel certificate, to be taxed if not agreed.

*Judgment for DCPI 1883/2012 and DCPI 673/2013*

1. Therefore, in DCPI 1883 of 2012, I award damages, interest and costs to Li against Chan as mentioned above.
2. In DCPI 673/2013, I dismiss the claim of Chan. I award costs to Li against Chan as mentioned above.

( Jackson Poon )

Deputy District Judge

Mr Simon Ho, instructed by David YY Fung & Co, for Li Wing Kwai (the plaintiff in DCPI 1883/2012 and the defendant in DCPI 673/2013)

Miss Candy Tang, instructed by Chak & Associates, for Chan Hau Yu (the plaintiff in DCPI 673/2013 and the defendant in DCPI 1883/2012)