###### DCPI 717/2007

### IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 717 OF 2007

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##### BETWEEN

## SHER WAHAB Plaintiff

### and

#### CHAN CHUN WING Defendant

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Coram: Her Honour Judge H.C. Wong in Court

Dates of Hearing : 1 and 2 December 2008

Date of Handing Down Judgment : 19 December 2008

JUDGMENT

1. In this action, the Plaintiff claims against the Defendant for damages suffered in an accident involving the Defendant’s lorry registration no. JR7820 and the Plaintiff while the Plaintiff was loading goods into his light goods van KY8640 on Kwai Sau Road near the junction with Kwai Wing Road in Kwai Chung on 31 December 2005 at about 11:34 a.m.
2. The Defendant denies he was negligent and disputes liability against the Plaintiff’s claim. He claimed that the accident was solely caused by the Plaintiff or contributed by the negligence of the Plaintiff.

The Plaintiff’s Claim

1. The Plaintiff was loading goods into his vehicle KY8640 parked on the right side of Kwai Sau Road near to the junction with Kwai Wing Road at around 11:30 a.m. on 31 December 2005. ¾ of the Plaintiff’s van KY8640 was parked on the pavement, the remaining ¼ of the van was on the road. The Plaintiff’s left hand was on the left front door on the passenger side of the van when the Defendant’s lorry approached along Kwai Sau Road. The right rear part of the Defendant’s lorry came into contact with the front passenger door of the Plaintiff’s van and the Plaintiff’s left hand as the Defendant’s lorry drove passed, injuring the Plaintiff’s left hand.

The Plaintiff’s case

1. The Plaintiff in his statement of claim and his evidence in Court alleged that he was collecting goods from a factory in Kwai Chung the morning of the accident. He was not able to find an empty car park space so he parked his five seater van on the right pedestrian pavement of Kwai Sau Road and began to load cartons of goods onto his vehicle. He had completed the loading at the rear of his vehicle as well as the middle section and begun to load a carton of goods on to the passenger seat next to the driver’s seat on the left side of the vehicle. His left hand was placed on the side of passenger door when the Defendant’s vehicle passed by and ripped off the Plaintiff’s left middle finger at the middle phalanx and the tip of the left ring finger.
2. The Plaintiff claimed he was not aware of the Defendant’s vehicle’s approach. He had placed his left hand on the passenger door to make sure it did not open into the path of the traffic on Kwai Sau Road.
3. The Plaintiff claimed the Defendant was negligent because he was driving too fast on Kwai Sau Road; failed to sound his horn or give any warning to the Plaintiff of his approach; had proceeded onward in spite of noticing the Defendant and the passenger door of the Defendant’s vehicle was partially opened; driving too close to the Plaintiff’s vehicle; and failing to avoid the accident.

The Defence Case

1. The Defendant, on the other hand, claimed that he had slowed down his vehicle as he approached Kwai Sau Road because he saw a 40 ft. lorry parked at a parking space on the left side of Kwai Sau Road and the driver was alighting from the driver’s seat onto the road. He also saw the Defendant’s vehicle parked partly on the pavement with ¼ of the vehicle protruding onto Kwai Sau Road and the Defendant standing by the middle door of his vehicle on the road. He claimed the passenger door of the Defendant’s vehicle was fully opened and decided to stop his lorry. When he saw the Defendant glancing in his direction and closing the passenger door with his left hand, he proceeded to drive his lorry down Kwai Sau Road at 3-5 kph. He claimed, by that time, the driver of the 40 ft lorry on the left side of the road had walked to the front of his own lorry leaving sufficient space for his vehicle to pass within 1 foot from the left side lorry and 4-5 ft. from the Defendant’s vehicle on the right. He claimed he saw the Defendant was still standing by the side of his vehicle on Kwai Sau Road pressing his left hand against the front passenger door, when he proceeded to drive by the Defendant’s vehicle at 3-5 kph. He claimed there was a space of 3-5 ft. between the Defendant’s vehicle and his lorry as he drove passed. Then he saw from his rear mirror the front passenger door of the Defendant’s vehicle suddenly opened hitting the side at the rear of his lorry. He stopped his lorry and got out when he found the front passenger door of the Defendant’s vehicle had collided with the rear of his lorry. He further discovered the Defendant’s left hand had been caught between the opened passenger door and the rear of his lorry resulting in the amputation of a part of the Plaintiff’s middle finger. The Defendant called the police.
2. The Defendant claimed that he had ascertained that the Plaintiff did see his lorry approaching and had proceeded to close the passenger door before he began to drive up slowly on Kwai Sau Road. The Defendant denied he was negligent and claimed he had taken care in his progress along Kwai Sau Road.

The Issue

1. The issue in this case is whether the accident causing injuries to the Plaintiff was caused by the Defendant’s negligence.

Findings

1. There are two sets of photographs produced of the scene. The first set was taken immediately after the accident, the second set was taken by the police after they arrived at the scene. Both sets of photographs showed the positions of the Plaintiff and the Defendant’s vehicles after the accident and the lay out of Kwai Sau Road at the time. In addition, there is a sketch attached to the Defendant’s police statement signed by him and police officer PC 51054 Cheung Chi Shing on 20 February 2006. Cheung was also the officer who took the Plaintiff’s police statement on 15 February 2006. He was the same police officer who arranged an English and Urdu interpreter to translate the Plaintiff’s police statement from Chinese into English and to Urdu on 20 March 2006. He had also arranged a Pushto interpreter for the Plaintiff when he attended the police station with his solicitor to record a supplemental statement on 19 April 2006.
2. The Plaintiff in paragraph 4 of his witness statement to Court dated 20 December 2007 admitted that other than Pushto he also spoke Urdu, a little English and a little Cantonese. In paragraph 5 of this statement, he admitted to have been educated up to primary 4 level in Pakistan. He had left school at aged 10 or 12. He came to Hong Kong in 1968, when he was 21.
3. The Plaintiff had been working as a security guard since he came to Hong Kong. He was employed as a night security guard by the Nathan Hotel for 32 years before he retired in 2004. Before his retirement as a security guard he started working part time during the day as a driver making deliveries of goods to shipping companies. He continued with his day-time work after his retirement from Nathan Hotel. That was what he was doing on the day the accident happened. He made his deliveries using his 5 seater van KY8640.
4. In the Plaintiff’s supplemental police statement of 19 April 2006 made in the presence of his solicitor, he admitted he was loading a carton of goods onto the passenger seat after packing the rear and middle section of his 5 seater van when the accident happened. At page 105 of the bundle, he said in paragraph 5(v)-(viii):

“we placed the box on the seat, but we wished to rotate the box, otherwise the door would not close. I was holding the box with my right hand and my right knee was underneath part of the box as it was protruding slightly out over the seat. I put my knee there to prevent it from falling out of the van via the door.

(vi) my left hand was on the side of the door making sure it did not open into the path of other traffic which might be using the road.

(vii) Mr. Iqbal crossed over to the driver’s side of the van and he opened the driver’s door. Having opened the door, he leaned across and tried to maneuver the box into place.

(viii) The other driver was pulling the box and I was pushing the box with my knee and at the same time I was holding the door.

From no where a truck came from behind and it clipped the side of van and took away my middle finger on my left hand and injured two others.”

1. In his earlier police statement, the Plaintiff recorded that he had been living in Hong Kong since the age of 18-19 years and he could speak fluent Cantonese and can communicate in Cantonese without any problems (page 97(2) of the bundle).
2. In paragraph 4 of the same police statement recorded 1½ months after the accident, he said:-

“afterwards I saw a medium goods vehicle (later known to be JR7820) travelling behind me at about 10-20 meters along Kwai Sau Road heading towards Kwai Wing Road direction. I saw a car coming and I saw that the left passenger door was open. I then use my left hand to pull the left passenger door towards a close position but I did not shut it, and let JR7820 to pass along the left of my vehicle. At the time, I used my left hand to hold the left front part of my vehicle to prevent the door from springing open. ……. I clearly knew that JR7820 was travelling pass my back along Kwai Sau Road heading towards Kwai Wing Road direction. However I wanted to push the goods inside my vehicle compartment to an inner position, i.e. towards right. I then used my right hand to push and my left hand was holding the left front door as a pivot. However, because the left front door was not shut, when I used my left hand to hold the door, the left door opened outwards and hit the right part of JR7820 which was travelling behind me, my left fingers were inside the door of vehicle and therefore my left middle finger was immediately amputated.”

1. At page 97(3) his answer to Question 5 was:-

Q5. Why had you not walked away but stood at the left side of your vehicle when you saw JR 7820 travelling along the left side of your vehicle?

A.5 When I saw it travelling pass, there was a space of about 3 to 4 ft. and I felt safe, I therefore had not walked away.

1. There is a discrepancy between the Plaintiff’s 15 February 2006 police statement and his 19 April 2006 supplemental statement. He blamed it on his lack of understanding of Cantonese. On the 19 April 2006, he was escorted by his solicitor and an interpreter.
2. The Plaintiff’s original police statement accorded with the Defendant’s version of the incident in his 20 February 2006 police statement. Both said the front passenger door opened suddenly hitting the side of the Defendant’s lorry. It is to be noted that PC 51054 had taken the Plaintiff’s police statement 5 days before he took the Defendant’s police statement. It is further to be noted that the Plaintiff had attended the police station to give his first police statement well after he was discharged from the hospital. It was given 1½ month after the accident.
3. The Plaintiff claimed in Court he did not read Urdu well, however in paragraph 4 of his witness statement prepared in December 2007 he admitted he spoke Urdu.
4. The two sets of photographs were taken at the scene soon after the accident showed the exact position of the Plaintiff and the Defendant’s vehicles on Kwai Sau Road after the accident. It is evident that the Plaintiff’s vehicle would not be able to pass the Defendant’s van if the Defendant’s left passenger door was opened fully. The door was at least 4 ft. wide, and with the Plaintiff’s vehicle illegally parked straddling over the kerb, the pavement and the road, it was impossible for any vehicle driving into Kwai Sau Road to go down the road when the Plaintiff’s vehicle had caused such an obstruction.
5. It is also evident that the Plaintiff could have parked his van completely onto the pavement without straddling the kerb and Kwai Sau Road, it would have helped to ease traffic on Kwai Sau Road in an area busy with transportation vehicles. If he had, as he claimed in his last statement to the police on 16 April 2006, opened the front passenger door fully and failed to notice the traffic on Kwai Sau Road behind him, he must be responsible for his own recklessness. It showed he had failed to pay any regard to other users on the road when he parked illegally on the pavement jutting out to the road to load cartons of goods into his van. The act of opening the front passenger door fully onto the road further created an obstruction to other road users.
6. On the other hand, according to the Defendant’s version of what happened is consistent with the Plaintiff’s 15 February 2006 statement to police, that the Plaintiff saw the Defendant’s lorry approaching and he proceeded to close the front passenger door. That he had been holding it down, the door sprang open because the carton of goods on the front passenger seat was pressing against the passenger door. As it was not closed properly, it might well have suddenly sprung open before the Defendant’s lorry had completely passed the Plaintiff’s van, causing serious injuries to the Plaintiff’s index and middle fingers. This was caused by the Plaintiff’s own negligence and failure to look after his own safety in his eagerness to load as many cartons of goods into his van as possible.
7. I am also convinced the Plaintiff speaks and understands Cantonese after having lived and worked in Hong Kong for over 37 years. I do not find it logical that the police officer would deliberately twist the Plaintiff’s words in the first police statement. I am satisfied the Defendant had told the truth that he had proceeded into Kwai Sau Road cautiously and slowly at a speed of 3-5 kph. He had also observed the other road users on Kwai Sau Road such as the Defendant and the 40 ft. lorry on the left both before and at the time he drove into Kwai Sau Road. I believe the Plaintiff did see the Defendant’s lorry approached as described by him to the police on 15 February 2006. I accept the Defendant’s evidence that the front passenger door had sprung open suddenly due to the weight of the carton of goods heaped onto the passenger seat. The open passenger door with the Plaintiff’s hand on the door hit against the rear side of the Defendant’s lorry injuring the Plaintiff’s fingers causing the tips of two of his fingers to be cut off. It was an unfortunate accident, but not an accident caused by the Defendant’s negligence.
8. I find the Plaintiff has failed to prove his injuries was caused by the Defendant’s negligence. I therefore dismiss the claim against the Defendant.
9. Cost nisi – Costs to the Defendant to be borne by the Plaintiff to be taxed if not agreed. The Plaintiff’s own costs prior to the discharge of legal aid to be taxed in accordance with Legal Aid Regulations.

(H.C. Wong)

District Judge

Parties :

Plaintiff, in person, present.

Mr. Paul K.N. Wu instructed by Messrs. T.S. Tong & Co. for the Defendant.