DCPI 764/2009

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 764 OF 2009

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BETWEEN

CHAN CHUNG KUEN Plaintiff

and

MTR CORPORATION LIMITED Defendant

\_\_\_\_\_\_\_\_\_\_\_\_

Coram: His Hon Judge Leung in court

Date of hearing: 12-13 July 2010

Date of judgment: 27 July 2010

**J U D G M E N T**

1. **Chan**, the Plaintiff, met an accident on 20 March 2008 when boarding the train at University Station along the East Rail Line operated by **MTR**, the Defendant. Due to the gap between the train and the platform, Chan’s left foot was injured. He commenced proceedings to claim damages from MTR.
2. Chan had been legally represented from the outset. Just before this trial began, Chan filed a notice to act in person. Chan made no application for adjournment. This did not amount to exceptional circumstance justifying any adjournment in any event. The trial proceeded and was conducted in English. Chan was assisted by the court interpreter. As indicated, I am handing down this judgment in English\*.
3. In dispute are the following major issues:
4. how the accident happened;
5. whether MTR was in breach of its common duty of care as the occupier or its duty of care generally; and
6. if MTR is liable, the quantum of damages.

**How the accident happened**

1. In the morning of 20 March 2008, Chan needed to take the northbound train from University Station (“**the Station**”) on the East Rail Line. He waited for the train on the platform of the Station (“**the Platform**”). In the course of boarding the train, his left foot sank into the platform gap. With the help of his friend, who was next to him, Chan managed to get on board the train. A passenger on board the train alerted the train captain through the passenger alarm device inside the train compartment and requested for assistance. Upon the train’s arrival at Tai Po Station, the platform staff summoned the ambulance and Chan was sent to the hospital. This much of what happened is not in dispute.
2. The pleaded case of Chan is this: In the course of attempting to board the train, he fell into the gap between the train and the Platform. As a result of the Accident, he suffered serious injuries to his left leg and lost consciousness temporarily. According to the further and better particulars, Chan estimated that he had lost consciousness for about 10 seconds.
3. The account Chan gave in his statement is this: In the course of boarding the train, he managed to land his right foot into the train compartment; but his left foot stepped into the void. His lower limb then sank into the platform gap and half of his body was trapped. He lost consciousness upon that.
4. MTR disputes Chan’s account that he fell into the platform gap and that he lost consciousness during the accident. The situation of the train in question and the relevant part of the Platform at the relevant time was captured by the CCTV camera on the Platform. The CCTV footage played in court shows the train moving into the Station, passengers alighting and boarding. At a certain point of time before the train was pulled out of the Station, the attention of some passengers on the Platform closer to the CCTV camera was apparently caught by something happening further away from the camera. This was believed to be the accident involving Chan. Unfortunately, the footage could not depict what happened with further clarity. The incident could only be a matter of tens of seconds.
5. Cheung was the Senior Station Control Officer stationed at the Platform at the time of the accident. He did not witness how the accident happened. But he gave evidence that later that morning, he received a report from his colleagues at Tai Po Station about an accident happened to a male passenger, later known to be Chan, at the Platform earlier on.
6. Cheung proceeded to where the accident was believed to have happened, which was the part of the Platform in front of door U5 or the 9th compartment of the train. He found the vicinity to be dry, clean, well illuminated and free of obstruction. He reported to the staff at Tai Po Station accordingly. In court, he confirmed that nothing untoward about the condition of the relevant part of the Platform was detected by the Duty Platform Supervisor of the Station during the daily platform check earlier on that morning either. Cheung recalled that because he had signed on the back of the inspection checklist compiled by the Duty Platform Supervisor that day.
7. MTR has disclosed a Passenger/Public Accident Report. It contained the report by the Station Supervisor of Tai Po Station and the captain of the train in question on 20 March 2008. According to the report, upon his arrival at Tai Po Station, Chan complained that while he was boarding the train at the Station, he accidentally stepped into the platform gap and fell down on the train floor. He was lifted up by his friend and continued the journey to the Tai Po Market Station. A passenger on board alerted the train captain by the passenger alarm device on the train and requested for assistance. Another Notification of Railway Accident and Occurrence dated 16 April 2008 contained a similar record of the complaint about how the accident happened.
8. In either report, there was no mention of any complaint that Chan had actually fallen into the platform gap and that his lower limb had been trapped by the gap. There was also no mention of any complaint about Chan having lost consciousness during the accident. In none of the hospital’s medical reports was there mention of any injury to Chan’s lower limb except for his fractured left leg. There was no record of complaint by Chan about loss of consciousness during the accident either. The very first Accident & Emergency attendance record on 20 March 2008 actually recorded that upon physical examination, Chan had no other injury apart from his left leg injury.
9. Chan’s left leg might have sunk into the platform gap to a certain depth to cause him the fracture. However his assertion that his lower limb actually sank into the gap so that half of his body was trapped is doubtful, in view of the circumstantial evidence.
10. What Chan said in court further undermines his case of how the accident happened. Chan took all by surprise by saying that he did not step into the platform gap. Instead, his left foot stepped on something that was slippery; and that caused him to slip and to sink into the platform gap. Such assertion was never pleaded or mentioned in his statement. Chan could not be heard to advance his case on this basis.
11. Even assuming that Chan is allowed to do so, his evidence of what caused him to slip was vague, even with reference to the photographs of the Platform. In his submission, Chan admitted that he had no idea what it was that caused him to slip.
12. I accept the evidence adduced on behalf of MTR. Save that Chan’s left foot accidentally stepped into the platform gap and was thus injured, his assertion that he slipped or that he fell with his lower limb sinking into the platform gap must be dismissed as being incredible.

**Whether MTR was in breach**

1. The existence of a gap between the train and the platform is somehow inevitable. According to the pleading, Chan does not suggest otherwise. What he essentially complains about are that (a) the platform gap was too wide to be safe; and (b) there was inadequate warning or supervision to the passengers on the Platform.
2. On this basis, Chan contends that MTR was in breach of its common duty of care as the occupier of the Station owed to him as a lawful visitor; and the general duty of care to him as a passenger. The cause of alleged breach of statutory duty has been abandoned well before the commencement of trial.

*The platform gap*

1. According to the two incident reports of MTR mentioned above, the gap between the train and the relevant part of the Platform has been measured after the accident. It was 220 mm (about 8 inches and a half) wide.
2. In court, Chan disputed the measurement. He demonstrated that the gap was about 350 mm (about 13-14 inches). But there is no suggestion that he or his former solicitors have ever measured the gap after the accident. As he admitted in court, he did not even look at the platform gap before boarding the train at the material time. Chan’s evidence as to the width of the platform gap could only be based on his perception, if any, as a result of the accident.
3. Was the platform gap unreasonably wide? In his submission, Chan vaguely referred to the concern allegedly raised by certain Legislative Councillor or what he has learned from the press previously. MTR actually referred to the information revealed by the Government during the Legislative Council sessions both prior to and after the accident.
4. MTR has produced the minutes of a Legislative Council session on 6 November 1985, which of course predated the merger of the former Kowloon Canton Railway Corporation and MTR. The discussion was triggered by accidents to do with the platform gap at the Station.
5. In this 1985 session, the then Secretary for Transport explained that because of the physical constraint of the site, the Station was built on a curve in the railway line and there was a platform gap than at stations where the tracks and the platforms were straight. Nevertheless, the width of the gap along the whole length of the Platform was said to be within international safety limits and the Station has been passed as safe for public use by the Railway Inspector.
6. The Secretary further explained that because of the curvature of the railway line at that point, it was impossible to ensure that the gap between the carriages and Platform could be narrower. It was also necessary to take account of the relatively wider bodies of the Mainland through-trains. The the gap therefore had to be there.
7. After the accident in the present case, on 2 December 2009, the Legislative Council had another session on the safety concern arising out of accidents in connection with platform gaps. The now Secretary for Transport and Housing explained that the railway lines operated by MTR consist of 84 stations and 215 platforms. For the Light Rail, there are 68 stops with 159 platforms. MTR has already installed platform gap fillers at the edge of 253 platforms to narrow the platform gap by a width between 24 mm to 100 mm. MTR has also installed flash lights in a row at the edge of 4 other platforms which also serve to narrow those platform gaps by 30 mm. The remaining platform gaps are relatively narrow; and no retrofitting of platform gap fillers or flash lights is considered to be necessary.
8. At present, the annual patronage of the MTR network stands at 1.4 billion. About 30% to 40% of the incidents in the past 3 years involving platform gaps took place at platforms equipped with platform gap fillers. Nevertheless, the design of the existing station platforms in the railway system is considered to be safe.
9. The Secretary also explained that the pre-merger KCRC has studied the feasibility of retrofitting automatic platform gates at platforms along the East Rail Line. It was considered that as gaps are relatively wide at some stations with curved platforms, installing the gates may instead cause sight line obstructions to the wide platform gaps. Therefore MTR has to first conduct a trial on the mechanical gap filler system. The trial at Lo Wu Station has ended in October 2009.
10. I should perhaps consider with caution the use of the Legislative Council documents mentioned above as evidence of the truth of their contents. Having said that, I see no evidence of substance from Chan to contradict them. Chan has adduced no evidence to substantiate that it was reasonably practicable to reduce the platform gap in the circumstances of the Station. In his submission, Chan complained that there was no automatic screen door on the Platform. Yet likewise, he adduced no evidence to substantiate that it was reasonably practicable to install automatic screen doors on the Platform.

*The precaution*

1. Mr Sakhrani referred to the short summary of *Stracstone v London Transport Board*, The Times, 21 January 1966, in the *1966 Current Law Year Book* (at para.8317). In that English case, the passenger fell into the platform gap. The platform was marked with a white line and there was adequate lighting. The court held that the railway board had taken sufficient precautions and had not been negligent in all the circumstances of the case.
2. To understand all the circumstances of the case of *Stracstone*, this court managed to consult the actual report of the case in *the Times*. The platform gap in that case existed between an added carriage of the train and the curved part of the platform. The gap was about 11 inches wide. The evidence was that special precautions had been taken at other stations with other curved platforms and gaps varying between 10 inches and 13 inches. The precautions included white lines on the platforms with the words “Mind the gap”, an extension of the platform at a lower level, electric lights, signs which lit up when a train came in and members of the staff shouting “Mind the gap”. However the only warning at the station in question, as summarised above, consisted of a white line along the edge of the platform, supported by adequate lighting to illuminate it and the gap.
3. The accident in *Stracstone* was the first one of this kind in 7 years. The court there did not believe in the passenger’s evidence that there was an unusual crowd that morning that prevented her from watching out for the platform gap. In those circumstances, the court found that the precautions taken at the station in question were sufficient (to bring the platform gap to the attention of the passengers) and therefore dismissed the passenger’s claim.

1. What are the precautions taken by MTR with the Platform (which is also curved) and the platform gap of 8 inches and a half in the present case?
2. The Legislative Council documents mentioned above recorded the Government’s information that MTR has deployed staff during peak hours at all station platforms to patrol and to help passengers with boarding and alighting in an orderly fashion. Flashing lights have been installed at the edge of all curved platforms on the East Rail Line so as to draw the passengers’ attention to the platform gaps.
3. In his evidence, Cheung confirmed that the edge of the Platform is equipped with such neon light. The light flashes during the dwell time of the train to alert the passengers of the platform gap. The CCTV footage depicts that. In his evidence, Chan also admitted the existence of such lights on the platform edges in other stations.
4. Cheung also explained the other visual warnings to the passengers to mind the platform gap. MTR has identified a certain section of the Platform as black spots and pictogram was painted at various locations along the edge of the Platform to alert the passengers. Along the edge of the Platform, the Chinese characters “小心空隙” (meaning “mind the gap”) were painted in prominent size in yellow on a number of locations including the relevant part of the Platform corresponding to the 9th compartment of the train.
5. Besides, there were notices at various locations on the Platform including one in the vicinity of the relevant part corresponding to the 9th compartment of the train. Between the part of the Platform corresponding to the 8th compartment and the 10th compartment of the train, there is overhead light box. The notices and the light boxes carried the same warning message to passengers to mind the platform gaps.
6. Cheung also explained the audio warning. Whenever a train was approaching, there would be announcement in Cantonese, Mandarin and English to alert the passengers on the Platform. The passengers would be reminded to stand behind the yellow line and to mind the platform gap. When the train came to a halt, the duty Platform Supervisor would manually activate a public announcement to inform the passengers of the destination of the train and to remind them to mind the platform gap. Again, the announcement would be broadcasted in Cantonese, Mandarin and English.
7. There were 4 loudspeakers above the platform edge along the positions corresponding to the U1 door of the 7th compartment and U5 door of the 9th compartment. In other words, the relevant part of the Platform where the accident in the present case happened was right under these speakers. Repeated announcements to advise the passengers to mind the platform gaps were broadcasted repeatedly during the dwell time of the train. The various instruments of visual and audio warnings on the Platform are depicted in the photographs produced at the trial; and they speak for themselves.
8. Chan said that he had never been to the Station before the accident. He admitted that there was broadcast of announcement to advise the passengers to mind the platform gap in other stations; but denied hearing such announcements before he proceeded to board the train at the Station. In his submission, he also criticised the lack of staff on the Platform to give instruction as to safety.
9. I reject the evidence of Chan as being incredible. But whether he heard the announcements or whether there was MTR staffs on the Platform to supervise the boarding and alighting on the day in question is not causative of the accident. According to Chan, he carried on the business of trading in goods in the past two decades. He purchased various kinds of goods in Hong Kong and brought them to Shenzhen for sale. This required him to travel frequently across the border by train. He admitted that he was aware of the warnings prior to the day of the accident. In other words, he needed no reminder to mind the platform gap prior to boarding the train on the material day.
10. The CCTV recording footage depicts that there were not many passengers getting on board or alighting the train at the relevant part of the Platform at the material time. As in the case of *Stracstone* (above), there was no congestion. The report of MTR dated April 2008 mentioned above also recorded that the Platform was not crowded during the accident. All the passengers managed to board and to alight uneventfully. In court, Chan also said he had waited for the passengers to alight first before boarding. His friend, who was travelling with him at the time, managed to enter the train compartment uneventfully immediately before him. He admitted that he did not pay attention to the platform gap. Nevertheless, he managed to land his right foot inside the train compartment. The accident happened only when his left foot stepped into the platform gap. For the purpose of his newly raised case that he slipped and fell, he even agreed that had he not slipped, he would have boarded the train uneventfully!
11. Mr Sakhrani submitted that the size of the platform gap was modest compared to the size of his step. If Chan had cared to mind the platform gap, he could have boarded the train safely. He did not care to do so and therefore the accident happened. In the circumstances, I agree.
12. In his submission, Chan added that the accident was caused by the negligence of the employees of MTR. What he complained about was the lack of staff on the Platform to come to assist him after the accident. But this had nothing to do with the occurrence of the accident.
13. It is Chan’s burden to prove the alleged breach of duties on the part of MTR. There was no indication by way of pleading or otherwise that the evidential doctrine of *res ipsa loquitor* applies in the circumstances of this case. In any event, I accept the evidence adduced on behalf of MTR in respect of the precautions taken. Chan has failed to prove that MTR was in breach of its duty to put in place safety precautions that were reasonable and practicable in the circumstances. I find that MTR is not liable.
14. In the unlikely event that MTR can somehow be said to be in breach of its duty, Chan must be considered as the main author of the accident.

**Quantum**

1. For completeness, I proceed to assess the quantum of damages, assuming that MTR is liable.

*Injuries and treatment*

1. Chan was sent to the Alice Ho Miu Ling Nethersole Hospital where X-ray showed fracture of distal third of his left tibia and left fibula neck (leg). There was no neurovascular deficit. Chan was given a left long leg plaster cast slab for temporary immobilisation. Close reduction and internal fixation of the left tibia was performed 5 days later. He was transferred to Tai Po Hospital for rehabilitation and physiotherapy. He was discharged about 3 weeks later.
2. Chan was followed up regularly. The hospital report recorded that his fractures had healed well. His last follow up was on 5 November 2008. The consultation summary on that day recorded that Chan did not complain about any pain; and he could walk unaided with some limping. There was mild numbness at the wound site but no weakness. It also recorded that Chan had defaulted physiotherapy due to long waiting time. He was reported to be unwilling to undergo such therapy; and he opted for self-mobilisation exercise instead.

*Present complaint*

1. Chan attended the joint examination on 29 October 2009 by Dr Peter Ko and Dr Henry Ho, the orthopaedic experts engaged on behalf of Chan and MTR respectively. Chan complained to the experts about intermittent pain and continuous numbness in the left lower leg. He claimed that the pain could occur suddenly without any precipitating event or factor. The pain would increase after an hour’s walk. He needed support to stand for half an hour. Climbing or squatting would increase the pain to a mild degree. He also noticed some decrease in dexterity of the left lower leg. There was no other active complaint. He also managed his usual activities of daily living and self-care.

*Medical expert opinion*

1. The experts produced their joint report on 25 November 2009. They agreed on the diagnosis of left tibia shaft spiral fracture and left proximal fibular fracture. It was also consistent with the mechanism of injury, i.e., trapping of his left leg in the platform gap. The treatment was appropriate and the rehabilitation period was adequate. The sick leave period was also appropriate and reasonable.
2. Dr Ko acknowledged that the x-ray taken on 29 November 2009 showed a solid union of the left tibia facture. But the doctor opined that there was solid evidence suggesting that Chan was still suffering from significant symptoms of pain and numbness in the left lower limb as well as stiffness in his left ankle. The muscle wasting in the left thigh and calf evidenced that he was not able to use his left lower limb to a satisfactory extent. The left leg numbness could be the result of some damage to the nerve during the operation.
3. Dr Ho noticed a mild wasting of the muscles of the left thigh and mild to moderate wasting of the left calf muscles. The doctor opined that the wasting and weakness in these muscles were caused by the trauma and the long period of non-weight-bearing and immobility. This could not be solely attributed to disuse of the lower limb due to pain. The symptoms in the lower limb were unlikely to be significant. The numbness in the left leg was probably caused by damage to the sensory nerves in the skin but should not affect his ability to walk.
4. Dr Ko opined that removal of the metal implants would be advisable in the case of a relatively young active individual for the avoidance of future complications. Removal of implants might partially decrease the possibility of pain caused by implant impingement. But such operation would not ease the numbness.
5. Dr Ho did not believe that removing the implants would significantly reduce Chan’s left leg pain. He agreed with Dr Ko that the numbness would persist even when the implant was removed. Dr Ho believed it was more important for Chan to strength himself with discipline training.0
6. Both experts considered that Chan should have no significant problem in managing his usual activities of daily life and self-care. They also believed that Chan could resume his pre-accident occupation. In Dr Ko’s view, Chan’s work efficiency and effectiveness would be affected to a moderate to severe degree. Chan would be limited by his residual pain in the left leg and lower walking and standing tolerance. Dr Ho opined that Chan’s lifting and carrying capacity would be reduced due to the residual weakness in his left lower limb.
7. Dr Ho advised that Chan should try to strength his muscles rather than to avoid activities completely. He was certain about Chan’s fitness to be engaged in less physically strenuous jobs such as cashier, security guard or telephone operator. Dr Ko made similar recommendations, in the event that Chan elected to seek for alternative jobs rather than resuming his pre-accident occupation.
8. In terms of percentage, Dr Ko assessed the permanent impairment suffered by Chan to be 8% of the whole person whereas Dr Ho assessed the same to be 4%.

*Pain, suffering and loss of amenities (PSLA)*

1. According to the pleading, Chan claims an amount of HK$280,000 for his PSLA. MTR contends that an appropriate award should be HK$150,000. Mr Sakhrani referred to *Cheng Chi Ming v Li Chau Wan & Anr* [2005] HKLRD H6 and *Imitiaz Perviz v Senibo Development Ltd* HCPI 437/2005 (21/8/2007). The court in those awarded HK$250,000 for apparently more serious injuries and permanent impairment than those of Chan in the present case.
2. Chan’s tendency to withhold the truth is more apparent when his evidence in support of his claim for special damages is considered below. At this juncture, it suffices for me to say that I am not impressed by Chan’s evidence in this respect. Placing appropriate weight to the medical expert evidence, and in particular that of Dr Ho, I think an award of HK$180,000 would have been reasonable for the genuine degree of PSLA suffered by Chan.

*Loss of earnings*

1. According to the hospital’s patient assessment form filled in upon his admission, Chan reported that he was unemployed. This was contrary to his case that for the past 2 decades, including the very day of the accident, he had carried on his own business of cross border trading in goods. In court, he explained that the nurse did not understand his occupation and therefore suggested putting down on the record that he was unemployed.
2. According to the hospital documents, Chan indicated that he had financial problem 5 days after the accident and was therefore referred by the hospital to seek social welfare assistance. Within 5 weeks, he expressed his intention to seek legal advice presumably with a view to claiming compensation for his injuries. Notwithstanding his alleged financial problem, he somehow managed to engage his solicitors without legal aid. As mentioned above, his legal representation lasted until the commencement of the trial.
3. According to the revised statement of damages, at the time of the accident, Chan earned about HK$400 from his business per day and on average HK$10,000 per month. In other words, he is claiming that he worked on average 25 days a month. In his statement, he stated that since 2000, his business volume had dropped and so had the monthly income to less than HK$10,000. In court, he said that he meant HK$6,000-7,000 a month since 2000.
4. When asked in court why HK$10,000 was pleaded as the pre-accident average monthly income in the first place, Chan suggested that it was his solicitors’ idea to make up the figures; the figures being unimportant. Such suggestion is alarming. The fact was that the statement of damages was revised in February 2010 after Chan’s statement dated September 2009. Yet the pleading of the higher figure remained intact. When asked why he verified the truth of the pleaded case despite knowing that the figures were incorrect, Chan was evasive.
5. When asked in court, Chan also said that the monthly income of HK$6,000-7,000 was the net profit from his cross-border trade in goods. However, he said he has never filed any tax return or paid any profits tax in the past 2 decades. Notwithstanding the repeated requests by the solicitors for MTR before the trial, he has not disclosed any documentary proof of the volume of his business and, most important of all, his alleged monthly income before the accident. He has produced copies of his bank account passbook; but this was dated after the accident. In court, he explained that the account was opened for the purpose of receiving the public assistance money. He claimed to have no other bank account. He also claimed that his business income was invariably received in the form of cash.
6. Since Chan had been legally represented until the trial, there could be no misunderstanding of the duty to disclose relevant documents in respect of the issue of quantum. The consequence of the failure to do so is what Chan has to bear now. In front of this court are nothing more than bare assertions of Chan. But he is neither a credible nor a responsible claimant. I do not believe him. The court is under no obligation to make some findings anyway, if the evidence is so lacking.
7. Assuming that I am wrong above, I proceed to assess the quantum on the basis that Chan’s pre-accident monthly income was HK$6,000 as alleged. Chan had been given sick leave from the date of accident until mid-August 2008, amounting to 147 days. The orthopaedic experts considered that period was reasonable. Fairly, Mr Sakhrani accepted for the purpose of calculation that Chan was effectively out of work for a period of complete 6 months. The loss of earnings was HK$6,000 x 6 = HK$36,000.
8. Notwithstanding the medical experts’ assessment of Chan’s ability to resume his pre-accident occupation or to manage the recommended alternative jobs, the fact was that Chan has not worked since the accident. Chan told the medical experts that he had not attempted to find any other job. But he changed to say in court for the first time that he attempted to find work in the same month. He admitted that he ceased to look for any job since April 2010.
9. It does not appear to me that the alternative jobs such as security guard or even caretaker would offer him materially lesser income than his pre-accident income. In court, Chan admitted that he had actually been offered a cleaning job at HK$5,500 per month. He worked for only a day because he allegedly could not stand the smell of the detergent and could not wipe things at high level.
10. Considering Chan’s evidence, I have grave doubt as to his credibility in this respect. I am not prepared to find or to make assumption in favour of Chan in terms of any further loss of income.
11. However, taking into account his reduced efficiency in handling his pre-accident work and his current age of 59, I am prepared to accept that he would be faced with some disadvantage in the labour market. I would be prepared to award a sum of HK$36,000 for his loss of earning capacity.
12. Mr Sakhrani submitted that where there are too many imponderables that make the conventional method of computation inappropriate, the court is entitled to adopt a broad brush approach to arrive at a fair figure: see *Blamire v South Cumbria Health Authority* [1993] PIQR Q1. I do not believe that the result of such a broad brush approach would give rise to a materially different result from my above assessment.

*Miscellaneous special damages*

1. Medical and travelling expenses are claimed in the sums of HK$3,000 and HK$1,500 respectively. No breakdown or detail of these alleged expenses was given in his statement or evidence in court. Based on the receipts disclosed, MTR conceded an amount of HK$1,150 for medical expenses. It is also prepared to concede an amount of HK$300 for travelling expenses. I would so award.
2. Chan claims a sum of HK$30,000 for future medical expenses for the removal of metal implants from his leg and the incidental hospitalisation and physiotherapy. He relies on the opinion of Dr Ko. However, what Dr Ko commented was that removal of the implants would be advisable and recommended in a relatively young active individual for the avoidance of future complications. Whilst the removal of the implants might partially decrease the pain due to possible implant impingement, it would not ease the numbness. Dr Ho shared similar views.
3. There is no medical evidence of implant impingement. In his statement or in court, Chan expressed no wish to have the implants removed some 2 years and 4 months after the accident. I would not allow this item of claim.

*Summary*

1. Assuming liability is established, I arrive at the following assessment of the quantum:

PSLA HK$180,000

Loss of earning HK$ 36,000

Loss of earning capacity HK$ 36,000

Miscellaneous special damages

Medical HK$ 1,150

Travelling HK$ 300

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Total: HK$253,450

1. Until today, interest would have been accruing on general damages at 2% per annum from the date of writ; and on special damages (excluding loss of earning capacity) at 4% per annum from the date of accident.

**Order**

1. The action is dismissed. I make a nisi order that Chan shall pay the costs of this action, including any costs reserved, to MTR. For the avoidance of doubt, I certify the engagement of counsel. In the absence of any application within 14 days to vary, this costs order nisi shall become absolute.

Simon Leung

District Judge

The Plaintiff, appearing in person

Mr Ashok SAKHRANI instructed by Messrs Deacons for the Defendant

\* For the purpose of Chan, assistance of the court interpreter may be arranged for the handing down of this judgment.