DCPI 886/2007

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSON INJURIES ACTION NO. 886 OF 2007

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BETWEEN

##### WONG CHING HA Plaintiff

##### and

##### MANBRIGHT COMPANY LIMITED Defendant

##### trading as NGAN LUNG RESTAURANT

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

Dates of Hearing : 9 – 11 January 2008

Date of Handing Down Judgment : 31 March 2008

JUDGMENT

1. On 1st June 2006 at around 10 p.m. the Plaintiff Madam Wong Ching Ha (“Madam Wong”) entered the Defendant’s restaurant premises with her friend, Mr. Fung Ping Yan (“Mr. Fung”). After food was ordered, Madam Wong got up to go to the washroom located outside the restaurant on the 1st floor of Tin Yan Shopping Centre, Phrase 3, Tin Yan Estate, Tin Shui Wai, New Territories (“the Restaurant”). As she approached the door of the restaurant, she slipped and fell forward on the floor, landing on her right shoulder and her face.
2. Madam Wong commenced these proceedings claiming damages against the Defendant for negligence and breach of statutory duty under the Occupiers Liability Ordinance, Cap. 314 (“the Ordinance”). Madam Wong claimed that she slipped and fell at the Defendant’s Restaurant because the floor of the Restaurant was wet, greasy and slippery. She claimed the Defendant had permitted or allowed the floor to be kept in an unsafe, slippery or wet condition to the detriment of visitors; that the Defendant further failed to take any reasonable action or steps to keep the floor free from grease, water or liquid. Further, the Defendant had failed to warn visitors or customers of the Restaurant of the unsafe condition of the floor of the Restaurant.
3. The Defendant denied it was negligent. It claimed the floor of the Restaurant was being cleaned at about 10 p.m. and the cleaner had placed a yellow plastic A-shape warning sign at the place where floor cleaning was in operation. Furthermore, the Defendant had placed notices on various places of the Restaurant warning customers to take caution due to wet floors. The Defendant further claimed that the floor tiles in the Restaurant were non-slip tiles.
4. The Defendant claimed that Madam Wong had contributed to the negligence by failing to heed the condition of the floor, walking too fast, wearing impropriate foot-wear, failing to take notice of the warning signs within the Restaurant and failing to take care of her own safety.

**Liability**

Applicable Legal Principles

1. It is not disputed that the principles set out in the judgment of Megaw, L.J. in Ward v. Tesco Stores Ltd. [1976] 1 WLR 810 at 815 is applicable:

“It is for the plaintiff to show that there has occurred an event which is unusual and which, in absence of explanation, is more consistent with fault on the part of the defendant than the absence of fault.”

1. The above passage was adopted in the judgment of Hon. Sakhrani J in So Wang Chun v. Rainforce Limited and others (HCPI 64/2006 dated of Judgment 9 January 2008). Sakhrani J in paragraph 16 of his judgment referred to one of his earlier judgments in the case of Wat Kwing Lok v The Kowloon Motor Bus Company (1933) Ltd. (HCP 936/2005, 20 November 2007) where he held:

“The mere fact of the occurrence of the accident is not sufficient to give rise to a presumption of negligence on the part of the defendant. The burden of proof is on the plaintiff to show on a balance of probabilities that there has occurred an event which is unusual and which, in the absence of explanation, is more consistent with fault on the part of the defendant than the absence of fault. If, and only if, the plaintiff proves that the unusual event is more consistent with fault on the part of the defendant than the absence of fault, the evidential burden then shifts to the defendant to show, on a balance of probabilities, that the accident happened without negligence on its part.”

Factual Disputes

1. Whether the floor was wet and slippery?
2. Whether the entrance area inside the Restaurant was being cleaned at the time of the accident?
3. Whether there were warning signs in the vicinity where Madam Wong fell?
4. Whether Madam Wong contributed to the negligence by wearing unsuitable foot-wear or walking hurriedly or in such a way without regard to her own safety.

A. Whether the floor was wet and slippery

1. The Plaintiff’s witnesses at the hearing were Madam Wong and her friend Mr. Fung. They claimed they saw no staff of the Defendant cleaning the floor at the time, neither were there any temporary yellow A-shape plastic signs placed at the entrance area inside the Restaurant when they entered the Restaurant nor when Madam Wong rose to go to the toilet. It was their evidence that Madam Wong was wearing sport shoes, T-shirt and a pair of jeans on that day when she entered the Restaurant. She claimed she was walking slowly as she approached the entrance of the Restaurant on her way to the toilet. Mr. Fung emphasized in his evidence in court that the floor was sticky and wet and when he went up to help Madam Wong to get up from the floor after the accident, he found her clothes had become wet.
2. On the other hand, the Defendant’s witness Mr. Lam Sze Keung, the trainee supervisor at the Restaurant on the day of the accident, claimed the Restaurant was cleaned 3 times a day and the final cleaning would take place at about 10 p.m. at night, one hour before the closing time of the Restaurant. He claimed that when cleaning was underway, the cleaner would place a temporary yellow A-shape plastic warning sign at area being cleaned to warn pedestrians to take caution. He also claimed that the Restaurant had also put up a number of warning signs at various places at the Restaurant warning customers of wet floors. He admitted, when the cleaner cleaned the floor, no detergent or cleaning agent would be used because the Restaurant was always clean. Furthermore, he claimed the Restaurant floor tiles were non-slip tiles, which should not be slippery even when they were wet.
3. Mr. Lam did not witness the accident. He admitted he heard Madam Wong screamed, he then went up to find out what had happened. When he approached her, he found a staff of the Restaurant had already given Madam Wong assistance by helping her to get up from the floor.
4. Mr. Lam agreed the floor was probably wet because the cleaner had been cleaning the floor. On the other hand, the Plaintiff claimed the floor was wet from grease not from cleaning.

B. Whether the entrance inside the Restaurant was being cleaned at the time of the accident

1. According to the evidence of Mr. Lam, the Restaurant has a seating capacity of 200 and it had one cleaning lady on duty. The cleaner would clean up the kitchen after the dining area was cleaned. It is not disputed that the closing time of the Defendant’s Restaurant was 11 p.m. It therefore seemed odd for the cleaner to conduct the final cleaning of the restaurant one hour before the Restaurant closed its doors. If Mr. Lam’s evidence is true and it took 15 to 20 minutes to finish cleaning the floor of the dining area, the kitchen staff would still be preparing food in the kitchen for customers when the cleaner started cleaning the kitchen. This would, if true, create obstructions to the kitchen staff, not to mention the customers who would still be dining in the dining area to have the floor cleaned right under their feet. One would have expected cleaning to start after the last customer left the Restaurant when the Restaurant closed its door. Whether the cleaning began at the kitchen before the dining area or vice versa is not a matter of great importance, but it seemed illogical for the Restaurant to give an impression that it was closing when the dining area was being cleaned and the customers were given notice to leave before their food arrived or while they were still dining. I find Mr. Lam’s evidence incredible and against common sense.

C. Whether there were warning signs in the vicinity where Madam Wong fell

1. Mr. Lam admitted in his evidence in Court that the area of the floor where Madam Wong fell was wet from cleaning and the A-shape yellow plastic warning sign was about 8 feet from the spot of the accident. He claimed there was also a white paper warning sign placed on the cabinet next to the entrance warning guests of the wet floor and the cleaner was about 10 to 11 feet away from the yellow A shape warning sign. The Restaurant had taken photographs at a reconstruction of the scene of accident (page 248 of the Bundle).
2. These photographs of scene reconstruction were obviously self-serving. Even if the A-shape yellow warning sign was present, it was some 10 – 11 feet from where the cleaner was cleaning the floor. The white paper sign on the cabinet next to the entrance suggested it was placed there permanently. If the sign is a permanent feature at the Restaurant, it hardly served as an adequate warning to guests at the Restaurant for it seems to suggest the floor of the Restaurant was wet all the time. As to the plastic yellow warning sign in the photograph, it is placed right in front of the entrance blocking the doorway. If, on the night of the accident such a warning sign had been placed at the same spot, it would be impossible for Madam Wong not to have noticed the sign because it was blocking her way at the entrance of the Restaurant. I find it inconceivable for the Restaurant to have placed a temporary yellow plastic sign on the floor right in front of the entrance one hour before closing time, giving potential customers the impression that the Restaurant is already closed. Furthermore, if the temporary yellow warning sign was placed at the entrance area, a distance of 10 to 11 feet from where the floor was being cleaned, one would expect the floor at the entrance area to be dried by the time Madam Wong approached it from the right hand side (p.248 of the bundle).
3. After considering the surrounding evidence and the evidence of Madam Wong, Mr. Fung and Mr. Lam, I find Madam Wong and Mr. Fung to be truthful witnesses. Their evidence were consistent and logical. I accept their evidence and reject Mr. Lam’s evidence that there was a temporary yellow A-shape warning sign placed at the entrance when Madam Wong approached the main restaurant door on her way to the toilet.

D. Whether Madam Wong contributed to the negligence by wearing unsuitable foot-wear and walked hurriedly or in such a way without regard to her own safety

1. Mr. Lam claimed that Madam Wong was wearing a pair of high-heel wedged shoes; he could not recall her other items of clothings. He admitted he did not notice if she was wearing a pair of jeans, a skirt or dress. Neither did he recall if Madam Wong’s clothes were wet after the fall. He remembered, however, she was covering her mouth with her right hand when he approached her.
2. Madam Wong denied that she was wearing a pair of high-heel wedged shoes at the time of the accident. Both Madam Wong and Mr. Fung insisted that Madam Wong was wearing a pair of jeans, T-shirt and sport shoes with rubber soles. She further claimed that she was walking in a normal pace to the door of the Restaurant and she was in no hurry because she had just ordered the food. Mr. Fung’s evidence supported Madam Wong’s evidence.
3. Mr. Lam’s evidence was uncorroborated. If Mr. Lam had noticed Madam Wong’s footwear after the accident, why would he fail to notice her clothes and why did he fail to record the details of her shoes in the police statement taken shortly after the accident? It seems strange that he should remember details about her shoes but failed to remember the state of her clothes after the fall. Yet, this detail about her shoes only appeared in the witness statement taken for the benefit of this trial months after the accident.
4. As to his evidence about the non-slip tiles, when Mr. Lam was cross-examined on his knowledge of the Restaurant’s floor tiles, he said he was told the floor tiles were non-slip and from his own experience floor tiles in restaurants had to be non-slip.
5. It is clear that Mr. Lam’s evidence on the tiles was hearsay and an assumption based on his previous experience in other restaurants. His knowledge of floor tiles seemed to have stopped at the difference of non-slip tiles and ordinary tiles. There was no evidence on the type and grade of slip resistance floor tiles at the Restaurant. Mr. Lam’s knowledge of the Restaurant floor tiles was at best hearsay.

**Conclusion**

1. I am satisfied the Plaintiff has proved on a balance of probabilities that the floor of the Restaurant was wet and slippery and that was the cause of the accident. Even if there were signs posted on some areas of the Restaurant, they were permanent features of the Restaurant and cannot serve as an effective warning to customers when the Restaurant’s floor became wet from cleaning which took place only three times a day. As to the claim that there was a temporary yellow plastic warning sign placed on the floor at the time of the accident, if it was so, why was there a need for permanent warning signs posted in the Restaurant unless the floor of the Restaurant was permanently in a wet state. Yet, the Defendant admitted the floor was wet from cleaning. As an occupier, the Defendant has clearly failed to make sure the floor of the Restaurant was clean and dry and not a hazard to its customers who were invited guests of the Restaurant. They are different from passers-by or pedestrians in a shopping mall as in the case of Cheung Wai Mei v The Excelsior Hotel (CACV 38/2000) and the case of So Wang Chun and Rainforce Limited v. others (HCPI 64/2006).
2. Neither do I consider Madam Wong had contributed in any way to the negligence of the Defendant. In the case of Lai Wai Tan Peter v. Secretary for Justice acting for Hong Kong Police Force (DCPI 1469/2000), the police officer slipped and fell inside the toilet of a police station because he did not notice the condition of the floor before he entered the toilet. There is a difference between somebody who entered the toilet of his work place expecting the toilet floor to be wet and the customer of a restaurant who would usually expect the floor of a restaurant to be clean and dry. Furthermore, as the Defendant’s Counsel Miss Leong admitted, the police officer in the case of Lai Wai Tan was familiar with the surroundings of the police station while Madam Wong, who was unfamiliar with the Restaurant, would not expect the floor at the entrance of the Restaurant to be wet and slippery. I am not convinced the Defendant had taken reasonable steps to look after the safety of its customers as an occupier. Merely placing a warning sign on a cabinet next to the entrance is not sufficient. In any event, neither Madam Wong nor Mr. Fung saw any warning signs next to the entrance on a cabinet. Even though there may be a letter from the Tin Shui Wai Police Station dated 16 June 2006 stating that police officers attending the scene did notice a temporary warning sign had been placed nearby, there is no evidence from the police where the temporary sign was. If the temporary warning sign the police referred to was the temporary A-shape plastic warning sign, one would expect the police to have specified it. I find the evidence from the Tin Shui Wai police station unhelpful. The Plaintiff has satisfactorily shown the Defendant to be negligent and liable under the Occupiers Liability Ordinance. The Defendant had further failed to discharge the burden that the accident happened without negligence on its part.

**Quantum**

1. Madam Wong’s injuries resulting from the accident were as follows:
2. 0.5 cm linear laceration wound over the upper lip;
3. slight fracture over the right first upper incisor;
4. tenderness over right shoulder.
5. After the accident, Madam Wong was admitted into the Accident & Emergency Department of the Tuen Mun Hospital on the night of the accident. She was treated at the Accident & Emergency Department and discharged the same night. She consulted Dr. Pong Ho Wing, the dental surgeon on 19 June 2006, she subsequently received dental treatments to her front incisors and two porcelain crowns were made for her in July 2006.

Medical Opinions

1. Madam Wong consulted Dr. Henry Ching Lun Ho who produced medical reports on Madam Wong’s right shoulder injury on 4 August 2006, 11 September and 3 December 2007 (pages 38 – 50 of the Bundle). Dr. Ho recorded Madam Wong’s treatments after the accident in great details. They were consistent with Madam Wong’s evidence. Madam Wong sought treatments from a bonesetter from 2 June 2006 on a daily basis until 18 June 2006. As her shoulder remained painful and weak, she went to see Dr. Ho on 20 June 2006. Dr. Ho found on examination that her right shoulder was swollen with associated weakness and restricted arm movement at elevation, abduction and internal rotation. He concluded that these were positive impingement signs. She was put on anti-inflammatory medication and an MRI scan of the right shoulder on 21 June 2006. The result of the scan showed “bone bruising and oedema in the posterior part of the head of the right humerus and supraspinatus tendonitis and early subacrominal bursitis”. Dr. Ho gave her a steroid injection on the right shoulder and started her on physiotherapy treatments 2 to 3 times a week at the MD medical centre. Dr. Ho found that Madam Wong’s physical conditions to be compatible with blunt trauma to the right shoulder and the injury had affected her dominant upper limb. The MRI scan confirmed Dr. Ho’s findings that there was bone bruising and swelling inside the bone (bone oedema) and inflammation of the rotator cuff tendons. In Dr. Ho’s opinion, this resulted in some degree of cartilage damage and future degenerative arthritis which will cause persistent shoulder pain and impaired function of the right upper limb.
2. In Dr. Ho’s last and final medical report of 3 December 2007 after a medical examination at his clinic on 1 December 2007, he found Madam Wong still suffering from right shoulder pain radiating down the right arm that would increase with changes in weather. There was aggravated pain when Madam Wong lay on her right side, washed or brushed her hair with her right arm, or any similar movement using the right arm. Madam Wong complained that the pain disturbed her sleep and exercise. She could no longer play badminton, swim or dance. As a result she had gained 10 pounds in weight. Madam Wong also complained that she has weakness in the right shoulder and arm and she has difficulty holding her handbag or write longer than 5 minutes. She also found pouring tea from a teapot and eating with chopsticks with her hand extended difficult. On examination, Dr. Ho found Madam Wong’s right shoulder showed positive sign of reduced muscle tone as a result of wasting. He concluded that she still suffered from positive impingement signs, weakness and wasting of the shoulder muscles secondary to disuse due to the persistent pain. He found that her weakness and wasting had deteriorated since he first saw her a year before. In his assessment, Dr. Ho considered Madam Wong suffered from 13% whole person impairment. Dr. Ho recommended a shoulder arthroscopy operation to reduce the persistent pain and weakness of the right shoulder. He quoted a surgeon fee of HK$200,000 plus anaesthetist fee of HK$50,000, operating theatre HK$40,000 and hospital charges at HK$50,000. He further recommended post operation physiotherapy treatments of 96 sessions at HK$500 each and consultation and medication twice a week for six months at HK$2,000 each. The total cost of treatment of Madam Wong’s shoulder injury was estimated to be HK$500,000.
3. The Defendant produced medical reports from Dr. David H. F. Cheng who disagreed with Dr. Ho’s opinion (pages 55 – 67 of the Bundle). In Dr. Cheng’s opinion, the physical examination and the MRI scan findings showed Madam Wong suffered from a simple contusion with no internal injuries to the tendons and the rotator cuff. He disagreed that Madam Wong should receive an arthroscopic surgery. Even if there should be an arthroscopic surgery with post-surgery physiotherapy treatments, he estimated a much lower medical fee than the HK$500,000 quoted by Dr. Ho. In Dr. Cheng’s opinion, after examining Madam Wong in August 2007, she had reached a stabilized stage. He found the reason for the limitation of movement of the shoulder and the weakness was due to a lack of will to move which probably was due to pain associated with the movements. Dr. Cheng believed that though some aches and pain may be unavoidable, through exercise and resumption of activities, it is highly possible Madam Wong’s condition may improve with symptomatic treatments on a need-to basis. He assessed Madam Wong’s reduction in full range of motion and residual pain of the right shoulder to be a 10% upper limb impairment, which is equivalent to 6% whole person impairment. The loss of earning capacity, in his opinion, is 6%. Dr. Cheng considered Madam Wong’s injury to be mild to moderate. She may not be suitable for manual work requiring frequent elevation of right upper limb but she can return to her job as a cashier. He agreed, however, that her sporting activities might be impaired.
4. Both doctors gave evidence at the hearing. It is quite clear that Dr. Ho held a different opinion on the treatment of Madam Wong’s condition from Dr. Cheng. Dr. Ho did not believe Madam Wong’s condition could be improved with physiotherapy or exercise because she had already tried the exercises and physiotherapy treatments. He agreed, however, that the charges he quoted of half a million dollars is based on the fee at a private ward in a private hospital. He agreed the charges at a general ward in a private hospital would be much less and the same applied to the surgeon’s operation fee. He admitted that his own fees could be reduced depending on the financial situation of the patient.
5. According to Dr. Cheng’s evidence in Court, he would not recommend an arthroscopic operation to reduce the pressure on the bursa in an acrominal-plasty operation. The reason being that after surgery, the patient would be required to work and trained up the muscles around the right shoulder. It required a lot of hard post-operative work by the patient. Further, the procedure of arthroscopy can add further inflammation and pain to the patient. He did not see Madam Wong as a suitable candidate. In his opinion, Madam Wong would be better off with increase exercise and 30 to 50 sessions of physiotherapy to guide her through rehabilitation, after which she would need to carry on with the exercises at home. The charges for physiotherapy sessions in the private sector, in his opinion, are between $300 and $400 per session. The operation costs he estimated to be around $60,000. In Dr. Cheng’s opinion, it is up to Madam Wong to decide whether to take the operation as a last resort and the risk is that it may not take away the pain. He weighed the success rate at 50%.

Pain, suffering and loss of amenities

1. Madam Wong claimed, as a result of the accident, she is still suffering from persistent pain on her right shoulder and could not lift or elevate her right arm. She is thus prevented from lifting heavy objects with her right arm. She has difficulty eating with chopsticks using her dominant hand, the right hand, due to the pain of reaching or lifting her arm, her sleep is affected by the pain on the right shoulder and she cannot comb her hair or write with her right hand for an extended period of time. Prior to the accident, she enjoyed good health and had no history of injury or major illness. She used to be active in sports and swam every weekend in the summer and enjoyed dancing and playing badminton. After the accident, she could no longer pursue these sporting activities and her health suffered generally.
2. Madam Wong asked for an award of HK$300,000 under PSLA. Mr. Tsui, Counsel for Madam Wong, relied on the case of Lee Lap Pang v. Yuen Tat Wah t/a Chong Hing Motor Company & Anr. (HCPI No. 1111/1997), where the plaintiff was injured on the right shoulder during an industrial accident. Although there was no fracture or laceration, his right shoulder pain due to bicep and rotator cuff tendonitis and right elbow pain due to ulnar neuritis was found to be genuine. He was given two years’ sick leave by the doctors. The court awarded the sum of HK$200,000 under PSLA. In the case of Tsui Kwan Fai v. Goldfield N & W Construction Company Limited (DCPI No. 97/2006), the plaintiff fell from a ladder to the ground in an industrial accident. He suffered multiple injuries to his face, right upper limb and right shoulder. The doctor found he had a closed fracture of the head of the right radius and sustained soft tissue injury to his right wrist and right shoulder. The plaintiff was granted 9.52 months of sick leave, he was assessed to have suffered 3 – 6% impairment to the whole person. The sum of HK$300,000 was awarded under PSLA.
3. Miss Leong, on the other hand, submitted that an award of $180,000 is appropriate in the present case. She relied on the case of Limbu Muni Parsad v. Hyundai Engineering & Construction Co. Ltd. HCPI No. 1167/2003 (Judgment on 19 August 2004) where the plaintiff suffered a fracture to the L2 vertebrae, contusion of abdomen and right shoulder contusion. The award on PSLA was HK$200,000. She also relied on the case of Or Chun Kwong v Fu Sau Lun Jason & others HCPI No. 384/2005 (judgment on 8 December 2006) where the victim suffered from right shoulder acromio-clavicular joint subluxation. He was hospitalized for a total of 1.5 months and underwent 3 operations to re-align his dislocated right shoulder acromio-clavicular joint. The court awarded PSLA at HK$200,000.
4. I have carefully considered Madam Wong’s current conditions with the victims’ conditions in the cases referred to me by both counsel. I further take into account that it is an option opened to Madam Wong to have the surgery suggested by Dr. Ho that offers her a chance to improve her shoulder pain after a further period of discomfort of an operation and post operation physiotherapy treatments. The alternative, of course, as Dr. Cheng suggested, would mean that her right shoulder will continue to give her pain from time to time even if she took up physiotherapy treatments as suggested and continue to exercise her right shoulder regularly. Taking all these factors into consideration, the appropriate award I find is HK$200,000.

Agreed damages

Pre-trial loss of earnings and MPF benefits

1. This item has been agreed by the parties at HK$39,585. The pre-trial special damages has also been agreed by the parties at HK$87,330. The amount comes to HK$126,915.

Future medical expenses

Operation expenses

1. According to the evidence of Madam Wong’s doctor, Dr. Ho, Madam Wong’s right shoulder pain and weakness will not improve further unless an operation is done. According to Dr. Cheng, the Defendant’s expert, the chance of her condition improving with operation is 50/50 only. Dr. Cheng, however, agreed that the patient should be given an informed choice as to what she would be facing at an operation and post-operation should she choose to take up the operation. Madam Wong has expressed that she would take the operation if she could afford to do so. The Defendant queried the reason why Madam Wong did not consult a doctor at a public hospital and have the operation done in a Hospital Authority hospital. It is public knowledge that there is a long queue for operations at public hospitals.
2. In my view, it is up to Madam Wong to decide after having been fully informed of the pros and cons of such an operation whether to go ahead with surgery. I have no doubt that by now she would have been fully informed of the advantages and disadvantages of such an operation. Madam Wong at 39 years old should benefit more from the operation than an older person. Further, she is entitled to seek treatments privately rather than wait for surgery at the Hospital Authority and expect taxpayers to bear the burden. The award should therefore be allowed.
3. Prior to the hearing, Dr. Ho estimated the operation cost to be in the region HK$340,000. He explained at the hearing that it is based on a single room in the private hospital for 3 to 4 days plus an operation fee of HK$200,000. Dr. Ho admitted at the hearing that his charges would be reduced for a patient in a general ward of a private hospital. Madam Wong’s claim under this item is now reduced to HK$120,000. In Dr. Cheng’s estimation, an arthroscopy could be done in 2 hours as an outpatient. As a general ward patient, the surgeon’s fee should be around HK$50,000 which included the anaesthetist’s charge, together with 2 days hospitalization, the total costs should be around HK$60,000. I accept Dr. Cheng’s estimation of medical charges to be close to the market rate and I allow the sum of HK$60,000 under this head.

Follow up consultation and physiotherapy

1. Madam Wong is also claiming 6 months of follow-up consultation with the surgeon at HK$2,000 per session plus follow up physiotherapy treatments. Mr. Tsui accepted the physiotherapy sessions to be reduced to 30 as suggested by Dr. Cheng at HK$400 per session, it amounts to HIK$12,000. However, the parties had failed to agree on the follow-up consultation charges. I am concerned if it is necessary for Madam Wong to consult Dr. Ho twice a week for six months after the operation if she was put under the care of a physiotherapist after the operation. No doubt, post-surgery, for perhaps 2 to 3 weeks, Madam Wong would be expected to consult the surgeon twice a week; but a month or 6 weeks after surgery when physiotherapy treatments commenced, the surgeon’s consultation would be reduced to once or twice a month and after three months, once every two months or once every three months for the first six to nine months; thereafter once every six months is reasonable. I will therefore allow the sum of HK$30,000 for follow up consultations and the sum of HK$12,000 for follow-up physiotherapy treatments. The total cost of the operation and follow up consultations and physiotherapy is: HK$60,000 + HK$30,000 + HK$12,000 = HK$102,000.

Future loss of income

1. Madam Wong has returned to her former job as a cashier, she is not asking for loss of future earnings but is asking for loss of job opportunity in the future in the sum of HK$34,800. This calculation is based on a 10% loss of income because she claimed she did not receive a 10% increase of salary she would have got had there been no accident. 10% of her salary is HK$580 which is equivalent to 10% of her pre-accident salary of $5,800 p.m. HK$34,800 is equivalent to 6 months of her present salary. Even though Madam Wong did not lose her job after the accident, she may, however, have to be retrained should she lose this job before finding alternative employment. The loss of job opportunities usually covers the period required for an alternative job to be found or for the Plaintiff to be retrained for a new job. In this regard, a period equivalent to 6 months of her present salary is suitable. I would therefore allow the sum of HK$34,800 which is equivalent to 6 months of her present monthly salary of HK$5,800 to be awarded under this head. I do not think she should be compensated for future loss of earnings based on a multiplier of 12 years since the arthroscopy operation would have helped to relieve her of the pain and restore the full use of her right arm.

Summary

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| 1. | PSLA | HK$200,000 |
| 2 | Pre-trial loss of earnings and  special damages | HK$126,915 |
| 3. | Future medical expenses  Arthroscopy operation and follow  up consultation and physiotherapy | HK$102,000 |
| 4. | Loss of job opportunity | HK$34,800 |
|  | Total | HK$463,715 |

Interests

1. There will be interest on PSLA at 2% per annum from the date of writ to the day of judgment. Interest on special damages at half judgment rate from date of accident to date of judgment, thereafter at judgment rate until full payment.

Costs

1. Costs nisi: cost to follow the event. The Defendant to pay the Plaintiff’s costs to be taxed if not agreed. The order will be made absolute should there be no application on costs within 14 days of the day of this judgment.

( H.C. Wong )

District Court Judge

Parties :

Mr. R. Tsui instructed by Messrs. John Ip & Co. for the Plaintiff.

Miss Susanna Leong instructed by Messrs. Tong Kan & Co. for the Defendant.