## DCPI 908/2015

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 908 OF 2015

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BETWEEN

LAM YIN MAN Plaintiff

and

NG HING CHUEN 1st Defendant

YAN YAN MOTORS LIMITED 2nd Defendant

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Before: Her Honour Judge Winnie Tsui in Court

Dates of Hearing: 10, 11 and 13 October 2017

Date of Judgment: 25 October 2017

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JUDGMENT

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*INTRODUCTION*

1. A traffic accident occurred in the late morning of 23 December 2012 at a pedestrian crossing near Block 10, Kwai Shing Estate, Kwai Shing Circuit, New Territories. The plaintiff was injured in a collision with a public light bus driven by the 1st defendant.
2. The plaintiff was 18 years old. She claims against the 1st defendant for driving negligently causing the accident and against the 2nd defendant as owner of the minibus. The latter accepts that it would bear vicarious liability should the 1st defendant be found negligent after trial.
3. As a result of the accident, the plaintiff suffered injuries to her head, face and right thigh, and lost her right upper incisor. She also claims that she has subsequently developed psychiatric illness which was attributable to the accident.
4. In her opening submissions, she claimed a sum of $979,205.

*FACTUAL BACKGROUND*

1. I set out the factual background which is not in dispute.
2. The accident occurred just after 11 am. The weather was fine and the road surface was dry and in good repair. The speed limit of the road was 50km/h.
3. The police arrived at the scene shortly after the accident. Photographs were taken. A sketch plan was drawn. Mr Jackson Poon, counsel, appeared for the plaintiff. He accepted in opening that the photographs and the sketch plans of the police show the position of the minibus when it stopped immediately after the accident.
4. It is necessary to describe in some detail what the photographs and the sketch plans show:-
5. The part of Kwai Shing Circuit shown is by and large a straight stretch of road.
6. The pedestrian crossing is controlled by a pedestrian traffic light.
7. There are railings running alongside the pavement, with an opening at the pedestrian crossing.
8. Part of the open area is covered with plastic studs for the visually impaired.
9. There is no sign that any part of the railings was damaged in the accident.
10. The minibus stopped after it had passed through the pedestrian crossing. There was in fact a short (but unknown) distance between the crossing and the minibus.
11. One of the photographs show some skid marks between the minibus and the crossing.
12. The minibus was generally aligned with the pavement. In other words, it was not stopped at an angle to the pavement.
13. What proves to be controversial is how close the minibus was to the kerb. One cannot be too scientific about this since the sketch plans were not drawn to scale and the photographs were taken from different angles, with some of them showing the minibus being closer to the kerb than the others. Mr Poon commented that the minibus was substantially closer to the kerb than to the centre line of the road while Ms Christina Lee, counsel for the defendants, suggested that it was equidistant to both sides.
14. On the whole, it would seem that the minibus was stopped in a position which was almost in the centre of the road, but perhaps marginally closer to the kerb than the centre line.
15. Whichever way one describes it though, one objective way of visualising how close the minibus was to the kerb is to take as a reference point the gutter covers located on the edge of the road and immediately next to the kerb. One can see at least from two of the photographs, which are close-up shots of the nearside of the minibus, that it had not gone over those gutter covers and that there was still some space between the covers and its nearside.
16. Lastly, I should highlight what is *not* shown in either the photographs or the sketch plans, but which is relied upon by the plaintiff. Before turning into the road, the minibus in fact stopped and waited at a traffic light. When it turned green, the 1st defendant had to take a right turn in order to drive into the road. It is not known precisely how far the right turn is from the pedestrian crossing but it seems it is not far.
17. It was accepted by the plaintiff in opening that there is no evidence that the minibus had at any time mounted on the pavement.
18. The plaintiff was later charged with the offence of pedestrian negligence (or sometimes known as jaywalking). She was acquitted after trial. The magistrate did so on two grounds. First, the plaintiff was not properly identified by the prosecution at the trial and, second, the 1st defendant did not see how the plaintiff stepped on to the road.
19. No charge was ever brought against the 1st defendant in relation to the accident.

*THE ACCIDENT*

1. The plaintiff’s account of the accident is as follows.

*The plaintiff’s case*

1. She left home at about 11 am and was to report at work at noon in Tsuen Wan. She was therefore not in any hurry. She was standing on the pavement facing the pedestrian crossing and was waiting for the pedestrian light to turn green. It is her evidence that she has no memory of what happened from that point onwards. When she came to, she was lying in bed in a ward at the Princess Margaret Hospital (“PMH”).
2. She has no recollection how she came to collide with the minibus.
3. Apart from her inability to recall the accident, another noteworthy aspect of the plaintiff’s case is her evidence on where she stood on the pavement when waiting to cross the road.
4. In her statement of claim, she simply pleaded that she “was standing on the sidewalk facing the pedestrian crossing”.
5. In the defendants’ request for further and better particulars, she was asked “whether she was standing near the railings on her right hand side”, “on her left hand” or “in the [middle] of the opening leading to the pedestrian crossing”. Her answer was “cannot recall” to each of these questions.
6. In her witness statement, she simply said she was all along standing in the pedestrian area waiting to cross the road.
7. At trial, she was however able to say with a lot more precision about where she stood. Under cross-examination, she said she was standing in the middle of the opening, and on that small area of the pavement which is just between the edge of the kerb and the plastic studs. In other words, she was standing very close to the kerb. In re-examination, she was even able to mark on one of the photographs the spot on which she stood when asked to do so.
8. In closing, Mr Poon adopted this latest piece of evidence as the plaintiff’s final position as to where she stood.
9. In his statement made to the police about one month after the accident, the 1st defendant said that after he had made the right turn into the road, a passenger indicated that he wanted to get off at Block 10. At that point, he noticed that two persons were standing on the pavement waiting to cross the road.
10. Based on the above, Mr Poon submitted in closing that the accident occurred as follows:-
11. The 1st defendant steered the minibus close to the kerb so as to allow the passenger to get off.
12. But he was unaware that he had steered the minibus too close to the edge of the pavement.
13. The plaintiff was at the same time standing too close to the road.
14. As a result, “the right side of the Plaintiff’s body came into contact with the left front corner Minibus, leading to the Plaintiff’s injuries”.
15. Mr Poon further submitted that the plaintiff would not have dashed out to the road since she could see clearly that the minibus was approaching. Also, photographs taken of the plaintiff’s face when she was in hospital show that, argued Mr Poon, the facial injuries appeared in an oval shape and this is more consistent with the plaintiff’s face being hit by the left front corner of the minibus than her being hit by its nearside.
16. The plaintiff says that the 1st defendant was negligent since he was driving too close to the kerb and, given that he was aware of the waiting pedestrians on the pavement, he should have sounded his horn to warn them when the minibus approached the pedestrian crossing.

*The defendants’ case*

1. The 1st defendant gave evidence at trial. He has had over 20 years’ experience as a professional driver. He was driving at a speed of about 20 to 30 km/h after taking the right turn into the road. As there was still a distance away from Block 10, ie, the spot where one of his passengers wanted to get off at, there was no need for him to drive near the kerb yet.
2. On his nearside, he saw two pedestrians standing on the pavement waiting to cross the road. After the front of the minibus had gone past the pedestrian crossing, he heard a “pak” sound coming from the nearside rear of the minibus. He checked his left rear view mirror and saw that a woman had fallen on the road. He immediately stopped the minibus.
3. In cross-examination, he disagreed that he was driving too close to the kerb. He also denied that he was negligent in not sounding the horn to warn the plaintiff. Even though he noticed the two waiting pedestrians, he did not pay attention to what they were doing as his main focus was on the road ahead of him.

*DISCUSSION ON LIABILITY*

1. The plaintiff bears the burden to prove her factual case on how the accident unfolded.
2. The peculiar feature in this action is that the plaintiff herself cannot recount what had happened in the accident.
3. Nonetheless, the court’s task remains the same as in other civil cases, namely to examine and weigh the evidence relied upon by the plaintiff and decide whether, based on such evidence, she has proved her factual case on a balance of probabilities. Having considered her own testimony, which is very much limited in scope, and the photographs and sketch plans of the scene of the accident, it is plain and obvious that the evidence simply fails to establish her case up to the requisite standard of proof. It can in fact be safely added without any hesitation that the evidence does not go anywhere near establishing her case on a balance of probabilities.
4. I shall deal with each plank of the plaintiff’s case one by one.
5. First, the plaintiff says she stood very close to the road. More specifically, she stood in the small area between the plastic studs and the kerb.
6. This is to be contrasted with her inability to recall where she stood at the pleading stage – see paragraphs 15(a) and (b) above.
7. Naturally, in cross-examination, she was asked why five years after the accident, she could suddenly remember her exact location on the pavement whereas she expressly stated in her further and better particulars (given three years after the accident) that she could not recall.
8. Her explanation was that when she gave the further and better particulars, she did not understand the questions. This is clearly unbelievable. The questions relating to where she stood were simple and straightforward. In cross-examination, she understood the same questions with no apparent difficulty, even though she was under the stress of being cross-examined. It is hard to envisage why and how she would fail to understand the same questions when those further and better particulars were being prepared.
9. Her latest evidence on her position on the pavement seems to me to be a recent fabrication and is made with a view to advancing her case on how the accident happened. For that reason, I cannot possibly give any weight to her evidence in this regard.
10. Secondly, the plaintiff says that the 1st defendant had steered the minibus too close to the pavement.
11. There is simply no evidence before the court to substantiate that.
12. Obviously, the plaintiff cannot tell because she cannot remember.
13. Such allegation is not borne out by the photographs and the sketch plans. As noted in paragraphs 8(h), (j) and (k) above, when the minibus stopped, it was aligned with the pavement and there was a clear gap between its nearside and the kerb, measuring at least the width of the gutter covers and some short space.
14. Thirdly, the plaintiff alleges that she was hit by the nearside front of the minibus.
15. Similarly, there is no evidence to substantiate that.
16. Mr Poon submitted that the facial injuries show an oval shape and that is proof that the plaintiff was hit by the front, not the side of the minibus. This submission is simply not understood.
17. Further, Mr Poon submitted that the only blood stain was found on the plastic studs on the pavement but not on the road. It shows that the plaintiff had not dashed out on to the road but was hit by the left front of the minibus when it approached the pedestrian crossing. This is, obviously, pure speculation.
18. In any event, this is inconsistent with the position of the minibus as shown in the police photographs. The blood stain is a good indicator of where the collision took place. The minibus stopped at some distance from the pedestrian crossing. It is inherently more improbable than not that the minibus would have carried on to travel that distance after its front had hit the plaintiff.
19. All in all, there is a huge disconnect between the evidence before the court and the plaintiff’s case. She has patently failed to prove her case. All she has put forward is a theory, and nothing more. Worse still, the theory is not even a sound one. Even assuming that the plaintiff and the minibus were in the alleged positions, it is difficult to visualise in one’s mind how the plaintiff could have been hit by the minibus, given that she says she did not step on to the road and there is no evidence that the minibus went over the pavement at any time. It seems physically impossible for them to even touch each other.
20. There are two subsidiary points made by the plaintiff.
21. She relies on the fact that she was acquitted of jaywalking in the trial before the magistrate. As Ms Lee submitted, this fact is beside the point. There is no rule of law or evidence which suggests that an acquittal in such circumstances is indicative of negligence on the part of the driver.
22. The plaintiff also seeks to pray in aid the doctrine of *res ipsa loquitur*. Mr Poon submitted that the evidence gives rise to a *prima facie* case against the 1st defendant and it is up to him to show a plausible explanation consistent with the absence of negligence on his part. I accept Ms Lee’s submission that the mere occurrence of a collision between a pedestrian and a vehicle in unknown circumstances does not give rise to a *prima facie* inference that it was the driver who was negligent. The plaintiff’s reliance on the doctrine is misconceived.
23. Ms Lee submitted in closing that the plaintiff “has failed dismally to prove her case”. I agree. There is such a huge lacuna in her evidence that if the defendants had made a submission of no case to answer upon the conclusion of the plaintiff’s case, I would have readily acceded to it.
24. In the event, no such submission was made and the 1st defendant was called upon to testify. I find him to be a reliable witness. His evidence is straightforward, coherent and consistent with the police photographs and sketch plans and his own police statement. As in the trial before the magistrate, he said that after the front of the minibus went past the pedestrian crossing, he heard the “pak” sound and found the plaintiff on the ground. He did not know how she came to be hit by the minibus. I accept his evidence in its entirety.
25. I reject the plaintiff’s submission that the 1st driver should have given warning to the waiting pedestrians by sounding the horn as he approached the crossing. He did not observe anything unusual about them which should have prompted him to sound the horn. He was not driving negligently as alleged by the plaintiff.
26. For the above reasons, the plaintiff’s claim fails.

*QUANTUM*

1. Having found against the plaintiff on liability, her claim stands to be dismissed. However, in case I am wrong on liability, I set out below my rulings on quantum.

*Injuries and treatment*

1. Immediately after the accident, the plaintiff was sent to the Accident & Emergency Department of the PMH. She was seen at about 11.30 am. The attendance notes show that she was “alert” on arrival and she scored 15/15 on the Glasgow Coma Score suggesting that she was then fully conscious. The provisional diagnosis was “Head injury and amnesia”. She was admitted to the Department of Neurosurgery of the PMH on the same day for further management.
2. At that department, physical examination revealed the following:-
3. Her right upper incisor was missing and left upper incisor slightly loosened.
4. There was a 0.5cm laceration over her right eyebrow, a 1-cm laceration over her right nasal bridge and a 1-cm laceration above her right upper mouth corner. The lacerations were cleaned and sutured.
5. There was an incidental finding of femoral bone lesion but it was not related to the injury. She was referred to the orthopaedic surgeon for investigation.
6. She was discharged on 26 December 2012. She attended two follow-up sessions at the neurosurgery clinic on 1 February and 1 March 2013. Her wounds had healed with no significant complications. She had defaulted on follow-up since 1 March 2013.
7. With the above referral, the plaintiff was also seen at the Department of Orthopaedics & Traumatology of the PMH while hospitalised. She attended the orthopaedic out-patient clinic on 8 January 2013. She also complained of right thigh pain after the injury but an MRI detected no abnormality. She defaulted on the follow-up session on 7 January 2014.
8. She went to the A&E Department of the PMH more than once in January 2013 complaining of right thigh pain.
9. A temporary false tooth was put in for her missing incisor.
10. On 14 June 2013, the plaintiff attended Three Good Tong CMC for Chinese acupuncture. The diagnosis was post-traumatic stress disorder.
11. On 13 November 2015, she attended Kam Tin General Out-patient Clinic complaining of, amongst other things, “depressed mood most of the day”, “loss of interest or pleasure”, “insomnia or hypersomnia nearly every day”. She was referred to Tuen Mun Mental Health Clinic and was first seen there on 8 January 2016. She has attended follow-up sessions since then, roughly on a monthly or bi-monthly basis. The diagnosis was adjustment disorder with depressive symptoms. She has been receiving pharmacological treatment.
12. In total, she was granted sick leave of 67 days.

*Expert reports*

1. The plaintiff was examined by Dr Walter King and Dr Ian Nicholson, specialists in plastic surgery appointed respectively by the plaintiff and the defendants, on 23 May 2016. The doctors made a joint report dated 27 May 2016, in which they set out their agreed opinions.
2. Their findings were as follows:-
3. There were multiple scars on the plaintiff’s face. But they are all faint and inconspicuous and can be covered up by cosmetic powder except the 1-cm scar which appears at the right corner of her mouth;
4. However, the doctors feel uncertain exactly how the small scar will affect her job as a part-time model since they think the pre-existing pimples and acne condition of her face are more disturbing than the small scar at the corner of the mouth which is not eye-catching;
5. Missing right upper incisor;
6. Bilateral knee abrasions; and
7. Head injury.
8. The doctors further agreed that the plaintiff’s current complaints were all caused by the accident. The treatments she had received were standard and appropriate. Her prognosis is good and the estimated cosmetic disability is 2%.
9. The plaintiff was also examined by psychiatric specialists, namely Dr Tsang Fan Kwong and Dr Peter Wu, appointed respectively by the plaintiff and the defendants, on 20 July 2017. The doctors made a joint report dated 7 August 2017.
10. They agreed on the following:-
11. The diagnosis is adjustment disorder with mixed anxiety and depressed mood;
12. The illness was caused by the accident;
13. The prognosis is good and the intensity of the symptoms would be alleviated after further treatment;
14. The resulting whole person impairment is 10%.

*The plaintiff’s background pre-accident*

1. When the accident happened in December 2012, she was 18 years old. Earlier in May that year, she completed her DSE examination. In her amended revised statement of damages, it is pleaded that at the time of the accident, she worked as a saleslady and “was earning on average for the past 12 months prior [to] the accident a sum of HK$7,000.00 per month and a part-time model earning HK$1,500 per month”.
2. The plaintiff says she started part-time modelling when she was at secondary school. She did it both for interest and for earning pocket money. She did not join any modelling agency but advertised herself on Facebook. She mainly did photo shooting and received job orders from private photographers, photography clubs and shopping malls. The fees would vary from job to job and be in the range of $500 to $1,000 per job. Since she was still a student, she would only work for one to two days a month. Her plan upon graduation had been to receive training as a beautician and work at the same time as a part-time model. She wished to pursue a dual career in the future.
3. In this action, the plaintiff has compiled an album of more than 270 photographs to demonstrate her work as a part-time model before the accident. The photographs show her in different costumes and adopting various postures. They are shot in different settings – some of them at what appear to be indoor studios and others outdoor. About a dozen of them are apparently taken during some commercial activities. In her oral evidence, the plaintiff explained that some of the photographs were taken when she was employed as a showgirl at a function featured in the Ani-Com and Games Hong Kong (香港動漫電玩節). Also featured in the photographs are other young girls in the same outfits.
4. In this action, she has also disclosed a number of certificates showing that she had attended courses in beauty therapy and treatment. They were obtained in 2013 and 2014.

*Post-accident*

1. As a result of the accident, the plaintiff still feels intermittent right thigh pain aggravated by weather changes. She also experiences low mood, depression and fear, especially of pedestrian crossings, poor sleep, anxiety and irritable emotions and loss of self-confidence and self-esteem.
2. Because of the multiple facial scars, she cannot resume her work as a model.
3. In early March 2013, her condition having improved, the plaintiff set off to look for a new job. She started to work for a clinic as an attendant and earned a comparable salary as her previous job.

*Major disputes on quantum*

1. On quantum, Ms Lee takes issue primarily with (1) the plaintiff’s alleged pre-accident earnings as a saleslady and as a part-time model, and (2) the alleged psychiatric injuries and causation. It is therefore necessary to examine closely the plaintiff’s evidence on these issues and determine its reliability and credibility.
2. There is, in my view, significant doubt on the truthfulness of the plaintiff’s testimony as there are a number of material and inexplicable discrepancies in her evidence.
3. First, as discussed above, her evidence on where she stood on the pavement just before the accident is unreliable. And it would appear that the oral evidence which she gave at trial has been made up in order to advance her case (or theory) on liability.
4. Secondly, as Ms Lee submitted, her evidence on her pre-accident earnings as a saleslady is unsubstantiated. I agree. In fact, her written and oral evidence, when taken together, is highly inconsistent and incoherent.
5. Although she pleaded in her amended revised statement of damages that she was earning a monthly salary of $7,000 pre-accident, she has produced no evidence to substantiate that. No documents, such as salary slips, have been provided. She has not even referred to these earnings in her own witness statement.
6. During cross-examination, she was asked questions about one of her certificates which states that she had attended and completed the Diploma of International Professional Beauty Therapist. The certificate was dated 26 September 2013. In her oral answer, she disclosed *for the first time* in these proceedings that this was a one-year *full-time* course in which she had enrolled since around September 2012.
7. In re-examination, she explained that the accident happened during her term break of about two to three weeks.
8. This is clearly contrary to her pleading. There, she claims loss of earnings during the sick leave periods, which were granted on and off from 23 December 2012 to 1 March 2013, totalling 67 days. This would suggest that she claimed to be working as a saleslady on a permanent basis, as opposed to working during the Christmas term break only.
9. In fact, this latest revelation about studying full-time is inconsistent with the various remarks made in the consultation notes which contemporaneously record her follow-up sessions shortly after the accident. In the session on 1 February 2013, the notes contain these remarks: “work as sales” and “Plan to see dental in China after lunar new year, then to resume work afterwards”.
10. All these cannot possibly be reconciled with her oral evidence that she was a full-time student at the time of the accident but was only working during the holiday.
11. The plaintiff’s position on her earnings as saleslady is entirely untenable. The inconsistencies in her evidence are of such a kind as would strongly suggest that she is an untruthful witness.
12. Thirdly, it is for the plaintiff to prove that she has in fact suffered from psychiatric symptoms as alleged. Ms Lee has sought to illustrate the discrepancies in the plaintiff’s evidence on this topic in detail in her written closing submissions. Amongst those discrepancies, I consider that the following two are material and cast serious doubt on the veracity of her evidence.
13. First, she reported psychiatric symptoms for the first time in November 2015, which was almost three years after the accident. This is to be viewed against the contemporaneous medical notes and records from the treating hospitals and clinics which did not refer to any earlier complaint.
14. Ms Lee accepted that mental problems may sometimes surface gradually but she stressed that generally speaking they do not appear suddenly after three years.
15. Secondly, in the joint examination by the psychiatric specialists, the plaintiff disclosed that during her four-day stay in the PMH, she considered jumping out of a window due to the scars on her face and that she was suicidal on and off. But since “the psychiatrist told her she should go to a hospital if she was suicidal”, she did not disclose her suicide ideas.
16. There is no mention of such suicidal ideas in the contemporaneous hospital attendance notes. Her explanation about not disclosing such ideas does not make sense. On the materials before me, the first time she saw a psychiatrist was on 8 January 2016, more than three years after the accident.
17. In fact, such ideas were not even mentioned in her witness statement or oral evidence. In fact, in cross-examination, Ms Lee asked the plaintiff twice what her feelings were during the hospital stay. The plaintiff replied that she felt painful and depressed and she worried about disfigurement. No mention was made of her suicidal thoughts.
18. If she had indeed experienced the alleged suicidal thoughts, there would have been no sensible explanation as to why she would have all along kept it to herself during her treatment and in the entire course of these proceedings, save when she was examined by the psychiatrists.
19. Overall speaking, given the various inconsistencies and discrepancies on material parts of the plaintiff’s evidence and the absence of any plausible explanation, I do not consider the plaintiff to be a credible witness. Unless there exists contemporaneous documentary evidence (or other objective evidence) in support of her allegations, I do not consider it safe or proper to give any weight to her own testimony.
20. On factual matters affecting quantum, I find as follows:-
21. The plaintiff has failed to prove that she was earning a monthly salary of $7,000 as a saleslady pre-accident.
22. On the other hand, I am satisfied that the plaintiff had engaged in part-time modelling. The photographs really speak for themselves. Although they are all undated, they are clearly taken on many different occasions. Based on the photographs, I am prepared to accept that the plaintiff earned on average a sum of about $1,500 a month before the accident.
23. I accept the agreed medical opinions of the plastic surgeons.
24. The plaintiff has failed to prove that she has suffered from her alleged psychiatric symptoms or if she has, those symptoms are attributable to the accident.
25. I am aware that I am departing from the agreed opinions of the psychiatric specialists on both diagnosis and causation. I consider that I am justified in doing so. As Ms Lee submitted, the overall lack of credibility of the plaintiff shakes the very core of the psychiatrists’ opinions. They have arrived at their opinions based on the history of the plaintiff, the available past medical records and the symptoms as reported by her. Here, the court has made an unfavourable assessment of the plaintiff’s credibility. The factual premise underlying the psychiatrists’ diagnosis is therefore in serious doubt. This renders their diagnosis unsafe.
26. Based on these factual findings, I proceed to deal with each head of claim.

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

1. The plaintiff claims $450,000 under this head. Against this, the defendant says that an award of $30,000 would be appropriate.
2. Having considered the cases cited by both sides, in particular, *Shabbina Khokhar v Europe Beauty International Ltd* DCPI 579/2007, 4 January 2008, *Leung Ka Yee v L&Y Beauty Centre Ltd* DCPI 196/2003, 22 October 2003 and *Orla Gilroy v Easy Up Investments Ltd* DCPI 1252/2004, 1 February 2006, I consider that an appropriate award for PSLA would have been $90,000.

*Pre-trial loss of earnings*

1. At closing, the plaintiff has revised her claim of loss of earnings as a saleslady to $3,500 (ie $7,000 x ½). I would have rejected this claim as the plaintiff has failed to provide proof of her pre-accident earnings and, further, her evidence in this regard is unreliable.
2. The plaintiff claims loss of earnings as a part-time model in the sum of $86,450 from the date of accident to the date of trial (ie $1,500 x [57 + 19/30] months).
3. The plaintiff says that she could no longer pursue her career in modelling after the accident because of her facial scars. The defendants argue that the scars are minimal and not apparent even on close examination, although the one at the right corner of the mouth is easier to see but it can be covered up by cosmetics. In any event, it is the joint opinion of the plastic surgeons that the pimples and acne condition of her face are more disturbing.
4. At trial, I had an opportunity to observe the plaintiff’s scars and the one at the corner of her mouth appears in white and is easily visible at close distance. I am satisfied that it has affected the plaintiff’s ability to get modelling assignments since. Whether the scar can be covered up by cosmetics is quite beside the point, as I would think in the modelling business, a scar is a scar. The existence of a visible scar on the face would certainly put her at a serious disadvantage. The acne problem was observed at the joint examination in May 2016. It is not necessarily a long-lasting problem. It is not known when it started. Nor is it clear if it has been continuous since that day. On the other hand, the facial scars have been there all the time. And they have prevented the plaintiff from securing further modelling assignments.
5. In the circumstances, I would have awarded the claim in full, ie $86,450.

*Loss of congenial employment*

1. The plaintiff claims $100,000 for loss of congenial employment. It is stressed on her behalf that as a young woman she would get huge satisfaction and take great pride in working as a model. The loss of such career prospect no doubt has caused substantial disappointment.
2. I accept that the facial scars are a big blow to the plaintiff who had clearly been very enthusiastic about being a model. Having considered the cases cited by the plaintiff, I would have awarded the sum of $30,000.

*Pre-trial expenses*

1. The plaintiff claims $3,040 for medical expenses, $500 for travelling expenses and $2,000 for expenses on tonic food. These items are agreed by the defendants.
2. I would have made an award of $5,540 under this head.

*Future medical expenses*

1. It would be reasonable for the plaintiff to receive treatment to improve the facial scars, as recommended jointly by the plastic surgeons. I would have allowed a sum of $58,000, as estimated.
2. It is also reasonable for the plaintiff to have an implant for the upper right incisor which was knocked out during the accident. She has produced a quotation of $45,600. I would have awarded that sum.
3. On the facts as found, I would have disallowed the sums claimed for further psychiatric treatment.

*Interest*

1. Interest should be awarded for the PSLA award at 2% per annum from the date of writ to the date of judgment. Interest on pre-trial loss of earnings and special damages should be awarded at half the judgment rate from the date of accident to the date of judgment.

*Summary on quantum*

1. The total award, excluding interest, would have been $315,590, as tabulated below:-

PSLA $90,000

Pre-trial loss of earnings:-

1. as saleslady 0
2. as part-time model 86,450

Loss of congenial employment 30,000

Pre-trial expenses 5,540

Future medical expenses:-

1. plastic surgical treatment 58,000
2. dental treatment 45,600
3. psychiatric treatment 0

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Total $315,590

*CONCLUSION*

1. As I have determined the issue of liability against the plaintiff, the action is dismissed.
2. I make an order *nisi* that the plaintiff pay the 1st and 2nd defendants’ costs of the action, to be taxed if not agreed, with certificate for counsel and that the plaintiff’s own costs be taxed in accordance with the Legal Aid Regulations.

( Winnie Tsui )

District Judge

Mr Jackson Poon, instructed by Tang, Wong & Cheung, assigned by the Director of Legal Aid, for the plaintiff

Ms Christina Lee, instructed by Cheng, Yeung & Co, for the 1st and 2nd defendants