## DCPI 1056/2004

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1056 OF 2004

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BETWEEN

HU KAI MEI MILDRED Plaintiff

and

PANG YUN SHING 1st Defendant

ESA DA TONG INTERNATIONAL

TURCKING COMPANY LIMITED 2nd Defendant

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Coram: Deputy District Judge Wesley Wong in Court

Date of Hearing: 27-28 June 2006

Date of Handing Down Judgment: 7 July 2006

JUDGMENT

1. The Plaintiff on 4 May 2002 was walking on the pavement of Yen Chow Street. She was injured when a light goods vehicle driven by the 1st Defendant rammed into the railing at the edge of the pavement. As a result the railing came off and hit the Plaintiff. The Plaintiff was thereby injured.

INJURY OF THE PLAINITFF

1. The Plaintiff was sent to the Caritas Medical Centre. She complained of pain and minor external injuries on the left side of her body. On examination she was found to have abrasion and bruising over her left forearm and left leg, swelling over the left index finger, left thigh and knee region. X-ray showed no fracture. She was diagnosed to have contusion injuries to her left upper and lower limb.
2. She was admitted and hospitalized until 9 May 2002. Analgesics and physical therapy were given during hospitalization. She could walk with a stick when she was discharged.
3. She had a medical assessment by Dr. Sum Kai Hoi on 8 December 2003. She told Dr. Sum that “she was followed up in orthopaedic specialist in Caritas Hospital, physiotherapy and occupational therapy were provided till August 2002. In March 2003 a nerve conduction test was performed and was diagnosed to be nerve contusion of the left anterior inter osseous nerve. There is weakness in pinch, grip and associate with numbness over left index finger. There is also occasional wrist pain on carrying heavy objects. There is no complaint on the left shoulder, elbow and lower limb. She has full recovery of the rest of her body. There is no difficulty in her activities of daily living. However there is a slight clumsiness on typing. There is a sense of weakness on supination ……..”
4. Her complaint to Dr. Sum was:-
   1. Symptoms were confined to left upper limb.
   2. Deviation of her wrist to ulnar side persisted.
   3. Pain in wrist when carry heavy things.
   4. Mild numbness over the tip of her left index finger and to a lesser extent the tip of her left thumb.
   5. Weakness in her ability to bend those 2 digits (flexion) which leads to her tending to drop things like spoons and bowls.
5. In January 2005 Dr Wong Sze Hong from the Caritas Medical Centre noted her hand function was fair with some limitation in her basic activity of daily living suggested reconstructive surgery by means of tender transfer, however she was noted to have severe depression and post-traumatic stress syndrome and the reconstructive surgery was cancelled. She was referred to the Psychosomatic Clinic for assessment of suspected Post Traumatic Stress Disorder and depression. She told Dr Li in the Psychosomatic Clinic that she suffered from frequent nightmares and flashbacks of the accident about 2 months after the accident. She also had intense anxiety and felt on edge most of the time. She became irritable and agitated. She also reported hyperarousal symptoms which was triggered by the traffic noise. She also suffered from fragmented sleep, early morning wakening, decreased appetite, impaired concentration and poor memory, a sense of worthlessness.

PSLA

1. There are no less than 8 medical reports from various medical practitioners apart from those from the Caritas Medical Centre. I queried the necessity of having such a lot of examination by various doctors.
2. This is simply an injury of the left forearm and left leg with abrasion and bruising. There was no fracture. Having gone through all the medical reports save and except Dr. Edmond Woo, I find the Plaintiff had grossly exaggerated her residual disabilities.
3. I have excluded Dr Edmond Woo’s report as I declared Dr Woo is a friend of mine to avoid any party taking this as a ground of appeal in future. I had the sad experience of counsel making this as a ground of appeal when at the appeal he dug out a hall group photo taken some 40 years ago and said I was biased in accepting his report notwithstanding the fact that when that doctor was called I had already told the Plaintiffs that doctor is a good friend of mine.
4. I find the Plaintiff had grossly exaggerated her conditions because:-
   1. Upon physical examination by Dr. Sum the range of motion on left wrist was 0° motion on radial deviation while the normal range for the right was 35° ulna deviation and 15° radial deviation. Dr. Sum did not explain why it was a 0° motion. However when examined by Dr. Arthur Chiang when the Plaintiff moved the wrist actively by herself to show the maximum range of movement the ulnar deviation on right wrist was 40° and on the left was 30° while the radial deviation on the right was 20° and on the left was -30° which means the left wrist was staying in the ulnar deviated position and could not perform radial deviation. However when the left wrist was stretched passively he noted active muscle tone in both the radial and ulnar wrist muscles on passive stretching in the radial direction.
   2. Dr. Sum assessed the loss of sensation to be at 30% without explanation. Dr. Chiang opined that there is no satisfactory objective method for measuring the sensory impairment. According to Dr. Brian Choa the Plaintiff only complained there was mild numbness over the tip of her left index finger and to a lesser extent, the tip of her left thumb.
   3. She did not complain of chronic sleeping difficulties nor any mental problem when she was examined by Dr. Sum. The first complaint was to the medical officer in Caritas Medical Centre. According to the report of Dr Wong Sze Hung dated 10 September 2005 he stated, “On January this year her hand function was noted to be fair with some limitation in her basic activity of daily living. In view of such limitation…… reconstructive surgery was offered …… However she was noted to have severe depression and post-traumatic stress syndrome……”. That was in January 2005 which was 2½ years after the accident. The writ of summons was issued on 15 October 2004. I could not help but consider this as a deliberate attempt to boost her claim for damages. There is no objective test.
5. In any event according to Dr. Chung See Yuen who examined her on 24 August 2005 she complained that she could not sleep well. She often went to bed at around 1 a.m. and got up at 8 a.m. i.e. she had 7 hours sleeping. Dr. Chung noted, “Her sleep is fitful. She estimates she can sleep around 4 hours. She loved watching television before the accident. She usually goes to watch television in the sitting room when she cannot sleep. She may fall asleep again on the sofa. Her husband complains about the insomnia and she should not watch television in the middle of the night…….” So this was the pattern before the accident. Her chronic sleeping difficulties could not have been caused by the accident. Had she such chronic sleeping difficulties it is difficult to see how she could have gained a few pounds weight if she had such sleeping problem and that her appetite was not good as she told Dr. Chung.
6. Although the doctors consider the Plaintiff is the victim of post traumatic stress syndrome (PTSD) however per Syffiad J in *Limbu Saram Kumar v Cheng Man Chung* HCPI 382/2003 at paragraph 61, “….. Both psychiatrists consider he is the victim of PTSD. But with the greatest respect, I wonder how this can be so. As the literature on the disorder states PTSD comes into play when there is “an extreme traumatic stressor that involves actual or threatened death or serious injury, or other threat to one’s physical integrity and the person’s response involves intense fear, helplessness or horror – DSM – IV 309-81 Criterion A”.
7. The Plaintiff’s injury and the cause of the accident was for less severe that what is stated above. This is not a case where the Plaintiff could have been a victim of PTSD. It is difficult to understand how that could have emerged only 2½ years after the accident.
8. In conclusion I find that the Plaintiff had suffered abrasion and bruising of left forearm and left leg which resulted in mild numbness over the tip of her left index finger and to a lesser extent, the tip of her left thumb with a slight degree of radial deviation in her left wrist. As a result she suffered slightly in her grip when she applied these 2 fingers. Although this is not a case of PTSD to a minor extent it may affect her emotions.
9. In *So Chung Kwong v Ng Ming Fong* HCPI 527/1998 the Plaintiff a carpenter was struck by motor cycle, broken scaphoid bone in his left hand, minor abrasions, put in plaster, follow up treatment for 12 weeks, therapy for another 6 months, pain and lack of mobility persisted in left wrist, right palm and right ankle, sick leave for 2 years, upon recovery, only minor reduction in his capacity to work. The award under this head was $125,000.
10. In the present case there was no fracture and the injury of the Plaintiff was not as serious. The award should be less, but that case was in 1998 and with inflation, I am of the view and to be more generous I also award $125,000.00 under this head.

Pre-trial loss of earnings

1. A number of doctors opined that a period of 3 months sick leave is sufficient. The Plaintiff had gone back to work for Gilman in June 2002 and after one month she was dismissed since 10 July 2002. She said it was due to her lower efficiency because of her injury. She earned $8,800.00 per month prior to her being dismissed. She said after her dismissal she did not work. However from her own evidence she went to help out in her husband’s shop in New Golden Centre and worked full time from 1 p.m. to 8 p.m. It is not a case that she was not capable of getting a job because of her injury, it was because she, according to her, would not find a job.
2. I accept that 3 months’ sick leave is reasonable. Hence the Plaintiff is entitled to $8,800 x 3 x 1.05 = $27,720.00 inclusive of MPF.

Loss or earning capacity

1. I accept that she still suffered some residual weakness in her grip power and slower in typing. In Gilman her job was only to answer phone calls, filing, order papers, clearing up pantry and photocopy room and sometimes typing. She also had to move papers, clearing can food and replace distill water in the pantry. With her sort of injury and the opinion of doctors she can go back to type of work she had before. However she could be handicapped slightly because she said she is slower in typing.
2. In *Christopher Gordon Yeung v Lee Chu* CACV 131/2003 per LePichon JA at paragraph 100 “By its nature, the later question of loss of earning capacity cannot admit of a precise answer. The concept of “handicap” is too intangible and elusive for that. To answer the question, the judge must be qualitatively satisfied that a person may be forced into the job market and, due to his injury, will have to exert himself to secure a job similar to the one previously enjoyed. But once so satisfied, the judge usually can only award a rough and ready lump sum. Over the quantum of that lump sum, different judges may reasonably offer”.
3. Considering her age and slight disability she might be slightly handicapped even though Dr. Chung is of the view she is mentally fit to return to the pre-accident job as receptionist. I consider $40,000.00 to be an appropriate amount under this head.

FUTURE MEDICAL EXPENSES

1. The Plaintiff had undergone appropriate psychiatric treatment in the public sector and her mental condition had shown improvement after the treatment. Dr. Chung found that her mental problems had more or less stabilized but believed she needed to continue treatment at the clinic for another year to adjust to her injury and deal with her problems. Dr. Chung advised a visit to the clinic once every month. Since she responded to the treatment in the public sector it would be advisable to continue treatment at the public sector where her record is kept. The doctor thought it is appropriate to continue her treatment in the public sector. The treatment would be about $100 to $200 per session. So under this head I award $200 x 12 = $2,400.

SPECIAL DAMAGES

* + 1. Medical expenses

(1) Hospital expenses agreed at $2,981.00

(2) Bone setters fees agreed at $1,680.00

(3) As the Plaintiff could only produce receipts

in total $850 so I award $850 $850.00

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Total $5,511.00

* + 1. Travelling expenses

The Plaintiff claimed $8,236 saying she went

by taxi, but since she could walk without

difficulty it would only be reasonable to take taxi

to the clinic in the early hours. So I award ½ the

sum she claimed i.e. $4,118.00

* + 1. Costs of the stick is agreed at $89.00
    2. Damaged property is also agreed at $2,860.00
    3. Tonic food

The Plaintiff could only recall consuming Tin Chut and bird’s nest and claimed $20,110.00. I agree Tin Chut may be beneficial but bird’s nest is an extravagant item which is consumed generally. It has no bearing in respect of her injury. However there are decided cases that a reasonable sum should be awarded to pamper the injured so as to help psychologically for recovery, so I award a sum of $5,000 under this head.

Future loss of earnings

1. In Christopher Yeung’s case Le Pichor JA cited *Foster v Eyne and Wear Country Council* [1986] 1 All ER 567 the following passage of Lloyd LJ,

“The courts sometimes draw a distinction between ‘future loss of earnings’ and ‘loss of earning capacity’…… but this distinction seems to be based on nothing more concrete than the precision with which, from the evidence available, it is impossible to quantify the loss. There is, we think, no real distinction between these 2 heads of damage; where the evidence precludes mathematical assessment the Court has perforce to make the best estimate it can, but that estimate is still an estimate of probable future pecuniary loss”.

1. Since I have given an award in loss of earning capacity I do not need to deal with this head of damage.
2. For reasons aforesaid my assessment of damages for the Plaintiff is as follows:-

1) PSLA $125,000.00

2) Pre-trial loss of earning $27,720.00

3) Loss of earning capacity $40,000.00

4) Future medical expenses $2,400.00

5) Special damages $17,578.00

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Total $212,698.00

1. In the premises there be judgment for the Plaintiff in the sum of $212,698.00 with interests at 2% p.a. for PSLA from date of writ to judgment and ½ judgment rate for the rest from date of accident to judgment.
2. Order nisi: Costs to the Plaintiff with certificate for counsel. Plaintiff’s own costs be taxed in accordance with Legal Aid Regulations.

RIDER

1. There are more medical reports than necessary in such a simple case. It is a waste of costs and a lot of trial time. Proper costs should only be award for those which are necessary.
2. Pages 2 to 16, Pages 29 to 125 are unnecessarily inserted in the trial bundle, a lot of judicial time had been wasted going through all those pages. Hence the copying charges should also be disallowed on taxation.

(Wesley Wong)

Deputy District Judge

Mr. Kevin Wong instructed by Messrs. Weir & Associates assigned by DLA for Plaintiff.

Mr. K.C. Chan instructed by Messrs. Tsang, Chan & Wong for Defendants.