DCPI 1067/2017

[2021] HKDC 1630

**IN THE DISTRICT COURT OF THE**

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1067 OF 2017

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BETWEEN

WAT TING CHEONG PAUL Plaintiff

and

PROSPER JET LIMITED trading as LA KAFFA Defendant

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Before: Deputy District Judge Eugene Yim in Court

Dates of Hearing: 23 October and 20 November 2018

Date of Judgment: 31 December 2021

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JUDGMENT

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*INTRODUCTION*

1. This trial is concerned with the plaintiff’s claim for personal injuries that he suffered while visiting a restaurant operated by the defendant at Shop G30, Dawning Views, 23 Yat Ming Road, Fanling, New Territories, Hong Kong (“Restaurant”) on 1 February 2017 (“Incident”).

*THE PLAINTIFF’S CASE*

1. The plaintiff’s case can be summarized in the following paragraphs.
2. At all material times, the defendant was a limited company incorporated in Hong Kong and carried on the business of the Restaurant under the trade name of LA KAFFA.
3. On 1 February 2017 at about 1:30 pm, the plaintiff and his wife visited the Restaurant for brunch and ordered two set meals known as Ham & Chesse Country Inn and Minestroni Macaro.
4. While consuming one of the set meals (“the Meal”), the plaintiff chewed certain substances which were mixed with the Meal. As a result, the plaintiff felt extremely painful inside his mouth and sensed that one of his upper left teeth was seriously damaged by chewing such substances.
5. The plaintiff immediately took out from his mouth such substances, which were suspected to comprise a piece of metal wire and another unknown hard object (collectively referred to as “the Objects”). The plaintiff placed the Objects on a piece of napkin and used his mobile phone to take photos of the Objects.
6. The plaintiff then made a complaint to the Restaurant. A lady who the plaintiff believed to be a supervisor of the Restaurant attended to the plaintiff’s complaint. The lady tendered an apology to the plaintiff and his wife on behalf of the Restaurant and promised to the plaintiff that the Defendant would be fully responsible for the damage caused to him.
7. The plaintiff left the Restaurant to seek medical treatment for his injuries.
8. A number of causes of action are pleaded in the Statement of Claim filed on 17 May 2017, including common duty of care, occupier’s liability, vicarious liability and contractual duties. At the trial, Mr Lo, counsel for the plaintiff, very sensibly confirmed that the plaintiff’s claim is essentially based on the tort of negligence.
9. In particular, the following particulars of negligence are pleaded in §14 of the Statement of Claim on the part of the defendant and/or its staff or workers: -

“ Particulars of Negligence

1. Exposing the dishes ingredients, foodstuff and provisions including the [Meal] prepared, cooked, provided and or purchased by the Restaurant to the conditions where foreign substances including dust, dirt and the [Objects] were capable to be introduced to them;
2. Failing to ensure or put in place any measure to ensure no foreign substances including the [Objects] could be mixed with the [Meal] prepared, cooked, provided and or purchased by the Restaurant;
3. Failing to devise any protective measure to ensure that all dishes ingredients, foodstuff and provisions including the [Meal] prepared, cooked, provided and or purchased by the Restaurant were fit and safe for human consumption; and
4. Failing to put in place a supervision system to oversee and/or control the production process in such a manner that all dishes ingredients, foodstuff and provisions whether prepared, produced, cooked, purchased, supplied and/or used by the Restaurant were safe and fit for human consumption.”
5. The plaintiff went to consult Dr Ting Pong Jor, Joyce (“Dr Ting”), a dentist, on the date of the Incident. The plaintiff was diagnosed to have suffered tooth fracture on his upper left first molar (“the Fractured Tooth”).
6. On 6 February 2017, the plaintiff visited Dr Yiu Bun Ka (“Dr Yiu”), a dentistry specialist, for treating the Fractured Tooth. Dr Yiu found that the Fractured Tooth had a vertical fracture that extended all the way to the palatal root and was split into two halves. The Fractured Tooth was diagnosed to be un-restorable. Upon medical advice, the plaintiff underwent a surgery to have the Fractured Tooth extracted and replaced by a dental implant.
7. By the Revised Statement of Damages filed on 11 January 2018, the plaintiff claims damages from the defendant in the total sum of HK$114,150.00, the details of which I shall turn to below.

*THE DEFENDANT’S CASE*

1. The defendant’s case as pleaded in the Defence filed on 31 October 2017 can be summarized in the following paragraphs.
2. The defendant does not dispute that at all material times it was operating the Restaurant, which was one branch of a franchise of restaurants known as “La Kaffa Café”.
3. The defendant also does not dispute that the plaintiff was a customer visiting the Restaurant on 1 February 2021 at about 1:30 pm and ordered two set meals.
4. The defendant, however, gave a different version as to what happened after the plaintiff was served with the set meals by the defendant at the Restaurant.
5. It is the defendant’s case that the plaintiff made a complaint to a Ms Cheong of the Defendant that there was *a piece* *of unknown object* that was found in *a sausage* from one of the two set meals (“the Sausage”). Upon examination, Ms Cheong found such unknown object to have “the appearance of a thread of soft tin foil with the length of approximately 0.5 cm”.
6. The defendant’s case is that there was only one such unknown object and denies that there were a metal wire and another hard object (or the Objects) as alleged by the plaintiff.
7. After receiving the plaintiff’s complaint, Ms Cheong apologized to the plaintiff and promised to follow up with the supplier of the Sausage. Ms Cheong also offered to change the meal for the plaintiff, which the plaintiff accepted.
8. After eating the replacement meal, the plaintiff said to Ms Cheong that his tooth hurt. The plaintiff then took out something that he alleged to be debris of his broken tooth but Ms Cheong did not examine it.
9. Before the plaintiff left, Ms Cheong gave the plaintiff the business card of the Restaurant and said to the plaintiff that he could contact her for follow up if he saw a dentist and could prove that he sustained injuries as a result of the unknown object in the Sausage. The defendant denies that Ms Cheong ever said to the Plaintiff that the defendant would be *fully responsible* for the damages caused to the plaintiff.
10. The defendant admits that it was responsible for running and managing the Restaurant (see §8 of the Defence).
11. The defendant accepts that it has the duty to take reasonable measures to ensure the food provided in the Restaurant was safe and fit for consumption (see §9 of the Defence).
12. The defendant also accepts that it bears vicarious liability for tortious acts committed by its staff in the course of their employment, if any (see §12 of the Defence).
13. On the basis that the plaintiff’s complaint was in relation to *one piece* of unknown object *found in the Sausage* (as opposed to the Objects found in the Meal as alleged by the plaintiff), the defendant disputes liability on the following ground in §10 of the Defence:-

“10. The Defendant has, at all material times, taken all reasonably practicable measures in all circumstances to ensure the food served in the Restaurant was safe and fit for consumption. The Defendant avers the following:

1. The Sausage is one Chipolata Veal Sausage supplied to the Defendant by a frozen meat manufacturer company, “Polyfood Food Service Co. Limited” …
2. The Defendant has been purchasing frozen goods from the Supplier since December 2014. There had been no complaints until the present incident with the Plaintiff.
3. At the said time and date when the Plaintiff ordered [the set meals], the kitchen staff of the Defendant, in the course of preparing the [set meals], defrosted the Sausage and heated it by frying it in the pan.
4. There was no deformities or contamination to the Sausage visible to the kitchen staff of the Defendant.
5. During its preparation and up until it was served to the Plaintiff, there was no contamination by any foreign inedible objects to the Sausage.”
6. It is also the defendant’s case that, *if* the unknown object is found to be contained in the Sausage (which the defendant disputes), the defendant took no part in manufacturing the Sausage and liability (if any) lies with the supplier of the Sausage.
7. The Defence does not put forward any further or alternative defence on the basis of the plaintiff’s case that the Objects came from, and mixed with, the Meal instead of being found or concealed in the Sausage.
8. By the Answers to the Plaintiff’s Revised Statement of Damages filed on 9 February 2018, the defendant disputes that the plaintiff’s injuries, if any, were caused by the Incident. It is the defendant’s case that the Fractured Tooth, if any, was caused by ordinary everyday wear and tear, other underlying disease, exaggeration, other unrelated medical conditions and/or any other unrelated injuries.

*THE ISSUES*

1. The issues that fall to be determined by the court are essentially:-

1. Whether the defendant was negligent?
2. If yes, whether such negligence resulted in any damage suffered by the plaintiff?
3. If liability is established, what is the appropriate quantum of damages to be awarded to the plaintiff?

*THE EVIDENCE*

1. The plaintiff testified in court in support of his case on the circumstances in which the Incident happened as well as the extent of the injuries he sustained.
2. The defendant was acting in person and was represented at the trial by Ms Cheong Sin Yi (“Ms Cheong”), who was a director and a shareholder of the defendant.[[1]](#footnote-1) The Defence was verified by a Statement of Truth made by Ms Cheong for and on behalf of the defendant. Ms Cheong was also the person who signed the franchise agreement dated 28 November 2014 in relation to the franchise of the Restaurant on behalf of the defendant.
3. Ms Cheong also gave evidence on behalf of the defendant at the trial in relation to what happened in the Restaurant on 1 February 2017. During her evidence, Ms Cheong also confirmed that she was the one who received and handled the complaint from the plaintiff at the Restaurant on the date of the Incident.
4. In addition to his own oral evidence, the plaintiff relies on a photo that he took immediately after he removed the Objects from his mouth (“Plaintiff’s Photo”).[[2]](#footnote-2) When giving evidence in court, Ms Cheong confirmed that she was aware that the plaintiff took a photo immediately after the Incident. She also accepted that the Plaintiff’s Photo was the same as the one taken by the plaintiff on the spot. By the agreement of the parties, a clearer version of the Plaintiff’s Photo was retrieved from the plaintiff’s mobile phone and added to the trial bundle during the course of the trial.[[3]](#footnote-3)
5. By the Order made by Master S.H. Lee dated 3 November 2017, no expert evidence as to liability shall be adduced in written or oral form in this action. It was further ordered that no expert medical evidence shall be adduced in written or oral form in this action.
6. In the absence of expert evidence, the plaintiff relies on a medical certificate issued by Dr Yiu dated 6 February 2017 and an official receipt issued by Dr Yiu dated 7 February 2017.
7. I should also mention that the plaintiff did not initially disclose in these proceedings *any* documentary proof in relation to the medical treatment that the plaintiff received from Dr Ting on 1 February 2017 (*i.e.* the date of the Incident).
8. On such basis, Ms Cheong (understandably) cross-examined the plaintiff (who gave evidence in court first) as to the extent of his alleged injuries and whether (or not) he sought immediate medical treatment on the date of the Incident as alleged. It was under such circumstances that the plaintiff said when he consulted Dr Ting on the date of the Incident, he underwent an X-ray examination.[[4]](#footnote-4) He also said that he actually had with him a receipt issued by Dr Ting.
9. Mr Lo fairly informed me that this was also the first time he was aware of such document. Mr Lo then suggested to add this document to the trial bundle. I then pointed out to Mr Lo that as the trial had already commenced and this was a new document, I was not prepared to allow Dr Ting’s receipt to be added to the trial bundle unless it was done by the parties’ agreement.
10. This topic arose again when Ms Cheong was under cross-examination. Mr Lo asked Ms Cheong whether, after questioning and listening to the evidence of the plaintiff, she now accepted that the plaintiff visited Dr Ting on 1 February 2017 and the plaintiff incurred HK$550 for such consultation. Ms Cheong confirmed that she accepted the plaintiff’s evidence on this point. By the parties’ agreement, an official receipt issued by Dr Ting dated 1 February 2017 was added to p 166 of the trial bundle.
11. The plaintiff and Ms Cheong of the defendant were both cross-examined by the other side, which I observed. Their evidence will be assessed in conjunction with the documentary evidence adduced by the parties and the inherent probabilities of their respective cases.

*WHETHER THE DEFENDANT WAS NEGLIGENT*

1. Central to the question of negligence in this case is the factual dispute between the parties as to the circumstances in which the plaintiff sustained his alleged injuries whilst consuming food at the Restaurant on the date of the Incident.
2. As noted above, the plaintiff’s case is that he chewed the Objects, namely a piece of metal wire and an unknown hard object, when eating the Meal. His evidence in court was in line with his pleaded case.
3. Naturally, the plaintiff was heavily cross-examined by Ms Cheong. It is the plaintiff’s evidence that the Meal included fried egg, salad, hash brown, sausages and toast. This was not disputed by the defendant. The plaintiff explained that at the time when he sensed that he chewed the Objects, he was putting into his mouth a bit of different food ingredients from the Meal together, including sausage, fried egg and salad. He was therefore adamant that when complaining to Ms Cheong, he did not say that the Objects (or any unknown object) were found in the Sausage.
4. When asked by Ms Cheong, the plaintiff also explained that by his observation, what he suspected to be a piece of metal wire was about 1 inch in length whereas the other hard object was about 1 cm in length and was as hard as a diamond.
5. Likewise, Ms Cheong’s evidence in court was largely in line with the defendant’s case. Ms Cheong’s evidence was that the plaintiff clearly complained to her that there was *one piece* of unknown object *found in the Sausage* from one of the set meals ordered by him. According to Ms Cheong’s examination, such unknown object was a tin foil which measured about 0.5 cm in length. The plaintiff did not complain about finding any other unknown object from the two set meals on the date of the Incident.
6. It was also her evidence that she offered to replace the set meal for the plaintiff. The plaintiff accepted the offer and consumed the replacement meal. When the plaintiff left the Restaurant after eating the replacement meal, he did tell Ms Cheong that his tooth was hurt and he would have to see a dentist. According to Ms Cheong’s evidence, the plaintiff then took out something that he alleged to be debris of his broken tooth, which Ms Cheong refused to examine at that time. Ms Cheong then gave the plaintiff the business card of the Restaurant for him to contact Ms Cheong, if needed.
7. During her evidence in court, Ms Cheong did not dispute that the two set meals ordered by the plaintiff, including the Meal, were prepared and served by the Defendant (or its staff). Ms Cheong, however, explained that the defendant should not be liable for any injuries sustained by the plaintiff given that the unknown object was said to be found in the Sausage, which the defendant ordered from a very reliable supplier, and there was nothing that the defendant could have done to discover the unknown object.
8. In this regard, it was also Ms Cheong’s evidence that, as a result of the plaintiff’s specific complaint about the Sausage, she immediately related the matter to the franchisor of the Restaurant, who in turn contacted the supplier of the Sausage. The response that Ms Cheong received from the franchisor as well as the supplier was that it was impossible for the Sausage to contain any tin foil inside. Ms Cheong confirmed that she did not take any further follow-up action or make any further enquiries either with the franchisor or the supplier of the Sausage.
9. Ms Cheong’s evidence that the plaintiff’s complaint on the date of the Incident was just in relation to a tin foil found in the Sausage was, of course, challenged by Mr Lo during cross-examination.
10. Having carefully analyzed all the evidence and considered the parties’ submissions, I have the following observations in relation to what happened on the date of the Incident.
11. While it is the defendant’s case that the plaintiff only complained about finding *one* piece of unknown object from the Sausage, Ms Cheong accepted the Plaintiff’s Photo was the same as the one taken by the plaintiff on the spot.
12. Whether it is the version at p 99 of the trial bundle or the better version at p 167 of the trial bundle, one can see that there were *two* objects in the Plaintiff’s Photo. From p 167 of the trial bundle, it seems to me that one of the two objects looks more probable to be a thin metal wire than a tin foil. The other object appears to be an irregular shaped substance in white colour. This lend support to the plaintiff’s case.
13. When being asked by Mr Lo, Ms Cheong was unable to provide any satisfactory explanation in relation to what can be seen from the Plaintiff’s Photo (which, as accepted by Ms Cheong, was contemporaneously taken by the plaintiff). Ms Cheong insisted that she only saw and examined a tin foil on the spot.
14. It must be clear to Ms Cheong that there were *two* objects (as opposed to just one) in the Plaintiff’s Photo, so much so that when cross-examining the plaintiff, Ms Cheong actually asked the plaintiff whether the irregular shaped object in the Plaintiff’s Photo could be a filling falling out of his tooth, to which the plaintiff answered in the negative.[[5]](#footnote-5) This is telling.
15. The plaintiff’s case is supported by another contemporaneous document, namely the medical certificate issued by Dr Yiu dated 6 February 2017, which reads: -

“The above-named patient attended this dental clinic on 6/2/2017 complaining of a fractured tooth at the upper left side after chewing on a very hard object while dining in a restaurant. The object he had bitten on was reported by him to be a small sharp piece of bone and a metal wire.” (emphasis added)

1. In other words, in addition to the Plaintiff’s Photo, 5 days after the date of the Incident, the plaintiff reported to Dr Yiu that his tooth was injured by *two* objects (as opposed to *one* object) while dinning at a restaurant.
2. I turn now to the defendant’s version of events. According to Ms Cheong’s evidence, when the plaintiff first complained to her that there was an unknown object in the Sausage, the plaintiff did not mention at all that he chewed on or was injured by the unknown object.[[6]](#footnote-6) It was in such circumstances that Ms Cheong apologized to the plaintiff, promised to follow up with the supplier of the Sausage and offered to change the meal for the plaintiff.[[7]](#footnote-7) Ms Cheong then took away the napkin with the unknown object.[[8]](#footnote-8) Ms Cheong went back inside the kitchen, examined the unknown object on the napkin and found the unknown object to have the appearance of a tin foil.[[9]](#footnote-9) The plaintiff then spent another 20 to 30 minutes in the Restaurant eating the replacement meal.[[10]](#footnote-10) When the plaintiff left the Restaurant, he told Ms Cheong that his tooth was hurt and he would have to see a dentist.[[11]](#footnote-11) The plaintiff also took out something that he alleged to be debris of his broken tooth.[[12]](#footnote-12) I should mention that this is conspicuously in line with how the defendant’s case is pleaded in the §§4-5 of the Defence.
3. As such, it is the defendant’s case that the plaintiff *never* said to Ms Cheong on the date of the Incident at all that the Fractured Tooth or any other injury that the plaintiff sustained was caused by the unknown object found in the Sausage. This is contrasted by the plaintiff’s evidence that he made an immediate complaint to the Restaurant that he was injured by chewing the Objects from the Meal.[[13]](#footnote-13)
4. I must say that I find it inherently improbable, if not illogical, that, upon the defendant’s case, having earlier found an unknown object in the Sausage and not long afterwards felt painful due to a broken tooth, the plaintiff would have just left the Restaurant in the manner as alleged by the defendant without mentioning to Ms Cheong at all how he thought his mouth was injured or indicating that the Fractured Tooth might have been caused by the unknown object found from the Sausage throughout his entire stay at the Restaurant.
5. Under cross-examination, Ms Cheong eventually conceded that the plaintiff did say to her that his tooth was injured by chewing unknown object(s) from the set meals when he first complained to her.
6. In this connection, it is the defendant’s pleaded case that when the plaintiff left the Restaurant, Ms Cheong specifically said to the plaintiff that he could contact her for follow up *if* he saw the dentist and *could prove* he sustained injuries because of the unknown object from the Sausage (see §5(4) of the Defence). I find it rather unusual, if not odd, that a restaurateur would communicate with a customer in such a way given the circumstances alleged by the defendant. As it turned out, this part of the defendant’s case is not supported by Ms Cheong’s witness statement or her oral evidence in court.
7. As noted above, it is also the defendant’s case that as the plaintiff specifically made a complaint that the unknown object was found in the Sausage, the defendant followed up with the franchisor and the supplier of the Sausage. Ms Cheong explained at the trial that she followed up the matter with the franchisor by email and the franchisor in turn contacted the supplier of the Sausage. When asked by Mr Lo why none of such email(s) was produced in support of the defendant’s case, Ms Cheong sought to explain that her lawyer(s)[[14]](#footnote-14) told her it was unnecessary to do so.
8. The Incident took place on 1 February 2017. In the Statement of Claim filed on 17 May 2017, the plaintiff pleaded his case that he was injured by the Objects from the Meal when dinning at the Restaurant. The Defence was verified by the Statement of Truth signed by Ms Cheong dated 18 October 2017. In other words, by mid-October 2017 the latest, *if not earlier*, it must have been clear to the defendant what the plaintiff’s allegations were and, hence, that there was a factual dispute as to how many objects were found by the plaintiff and where they were found. If there were any truth in the defendant’s case, the email(s) with the franchisor and/or the supplier of the Sausage would have been crucial, and easily available, evidence showing a contemporaneous record of the defendant’s version of events. I therefore find Ms Cheong’s explanation on this point entirely unconvincing.
9. For the foregoing reasons, I find the plaintiff’s account in relation to what happened on 1 February 2017 to be more credible than the defendant’s account. In particular, given that *two* objects (as opposed to just *one* object) were removed from his mouth (which is corroborated by the Plaintiff’s Photo taken immediately after the Incident as well as his complaint made to Dr Yiu just a few days later), I find it inherently improbable that the plaintiff would have come to a conclusion and said to Ms Cheong on the spot that the object(s) that injured him came from within the Sausage specifically. I therefore accept the plaintiff’s evidence on how the Incident happened and reject Ms Cheong’s evidence on this point.
10. I should add that I do not find it necessary for me to specifically make a finding as to whether (or not) Ms Cheong said to the plaintiff that the defendant would be *fully responsible* for the plaintiff’s injuries – which, one way or the other, was only an immediate reaction from Ms Cheong on the spot and does not (and cannot) assist the Court on the question of liability.
11. The defendant does not dispute that it was responsible for running and managing the Restaurant (see §8 of the Defence). The defendant also accepts that it owed a duty to its customers to take reasonable measures to ensure the food provided in the Restaurant was safe and fit for consumption (see §9 of the Defence) and bore vicarious liability for tortious acts committed by its staff in the course of employees, if any (see §12 of the Defence).
12. §10 of the Defence only deals with the sourcing and preparation of sausages, which does not assist the defendant given my finding of facts above. The Defence contains no averment as to what reasonable/ practicable measures that the defendant had taken to ensure that the food served in the Restaurant was safe and fit for consumption *generally*.
13. Under cross-examination, Ms Cheong accepted that it was possible for foreign objects to land on their dishes in the course of preparation and delivery to the tables for customers at the Restaurant. Ms Cheong also admitted that, unlike some high-end restaurants, the Restaurant did not have a practice of covering their dishes with a lid when they were delivered from the kitchen to the tables for customers.
14. By preparing, providing and/or serving the Meal in which the Objects (which were not safe and fit for consumption) were found, it is clear that the defendant fell short of what is required by the above duty of care to its customers.
15. For the above reasons, I have no hesitation in finding that the defendant was negligent in failing to take all or any reasonable measures to ensure that the Meal prepared, provided and served to the plaintiff at the time of the Incident was safe and fit for consumption.

*CAUSATION*

1. The defendant disputes that the alleged injuries sustained by the plaintiff, including the Fractured Tooth, were caused by the Incident.
2. Mr Lo informed me that no expert medical evidence was adduced by the plaintiff in view of the amount claimed by the plaintiff. As noted above, by the Order made by Master S.H. Lee dated 3 November 2017, no expert medical evidence shall be adduced in written or oral form in this action. I can understand this in the interests of procedural economy and proportionality.
3. Mr Lo referred me to *Li Sau Keung v Maxcredit Engineering Limited & Anor*, CACV 16/2003, 25 November 2003, unrep, in which Cheung JA said at pp 20-22:

“*The proper approach*

54. The approach of the court in considering the question of causation in the light of themedical evidence is stated by this Court (per the late Hunter JA) in *Lee Kin-kai v Ocean Tramping Co Ltd t/a Ocean Tramping Workship* [1991] 2 HKLR 232:

“1. a) Causation is essentially a matter for the judge and not for the doctors.

b) The judge will be assisted by the medical evidence but is not bound by it.

2. a) The law and medicine apply different standards.

b) In law there is a casual connection if it is shown on the balance of probabilities that the accident was a substantially contributing cause of the injury. A cause is sufficient, it does not need to be the sole cause.

c) The doctors on the other hand practice the science of aetiology. They look for “clinical cause” or “irrefragable chain of causation” which is to be proved beyond reasonable doubt or beyond any doubt.

3. The judge when considering causation is not only entitled, but is bound to use his common sense.”

*The circumstances*

55. In considering the cause of the plaintiff’s disability in the back region, the court is not confined to the medical evidence but is entitled to look at all the surrounding circumstances. There is evidence that the plaintiff on admission to the hospital had informed the hospital that he had a fall after being hit by the water pipe. The hospital record revealed that on admission there was “tenderness over the upper thoracic and lower lumbar spine” of the plaintiff. There were also “some bruises and swelling” at the same region. These are objective evidence which supports the plaintiff’s claim of a fall and is consistent with an injury to the L4 which is at the lower lumbar spine.” (emphasis added)

1. In *Yeung Pan Nam v Personal Representative of Tong Yu Tat Anthony, deceased & Ors*, HCPI 240/2012, 1 April 2015, unrep, DHCJ Paul Lam SC said at pp 16-18:

“39. On causation, the ultimate question is whether Yeung’s injuries were caused by Singh’s negligence. It is correct that the immediate cause of her injuries was the sudden stop of the Bus. However, there could be more than one cause. Causation can be established so long as Singh’s negligence was one of the material contributing factors; and it does not need to be the sole, or dominant, cause.

…

43. The correct approach is to take a broad view of the circumstances of the case by common sense. In *Stapley v Gypsum Mines Ltd* [1953] AC 663 at 681—682, Lord Reid held that:

“To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly and reasonably directed jury would decide it … The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any of them had acted properly the accident would not have happened but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard the one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally. It may often be dangerous to apply this kind of case tests which have been used in traffic accidents by land or sea, but in this case I think it is useful to adopt phrases from *Lord Birkenhead’s speech in Admiralty Commissioners v Volute (Owners)* [1922] a AC 129, 144, 145, and to ask was Dale’s fault ‘so much mixed up with the state of things’ brought about by Stapley that ‘in the ordinary plain common sense of this business’ it must be regarded as having contributed to the accident.” (emphasis added)

1. Applying the above approach to the present case, I have the following observations on the question of causation:
2. After cross-examination, Ms Cheong accepted that the plaintiff said to her that his tooth was injured by chewing the Objects from the Meal when he first complained to her at the Restaurant (see §61 above).
3. The official receipt issued by Dr Ting dated 1 February 2017 shows that the plaintiff visited Dr Ting for medical treatment on the date of the Incident. It also shows that an X-ray examination was done. The diagnosis on the date of the Incident was “ceramic crown and tooth fracture accidentally on upper left first molar”.
4. As noted above, after cross-examining the plaintiff, the defendant accepted at the trial that the plaintiff visited Dr Ting on the date of the Incident.
5. The medical certificate issued by Dr Yiu dated 6 February 2017 shows that the plaintiff consulted Dr Yiu for further treatment of the Fractured Tooth 5 days after the Incident. It is stated in Dr Yiu’s medical certificate:-

“The above-named patient attended this dental clinic on 6/2/2017 complaining of a fractured tooth at the upper left side after chewing on a very hard object while dining in a restaurant. The object he had bitten on was reported by him to be a small sharp piece of bone and a metal wire.

After examinations it was found that the upper left first molar (Tooth 26) exhibited a vertical fracture that extended all the way up to the palatal root. The tooth was clinically splitted into two halves. The tooth was certified to be unrestorable and it had to be extracted. After explaining to Mr. Wat, he agreed to have the tooth extracted. The tooth was then extracted after surgical sectioning. Different treatment options were suggested to the patient and he decided to have the extracted tooth replaced by a dental implant after wound healing and bone remodelling.

Mr. Wat was scheduled to come back after 4 weeks for an assessment of the implant site and the appropriate time for implant placement will be scheduled.” (emphasis added)

1. The official receipt issued by Dr Yiu dated 7 February 2017 also shows that the plaintiff was charged for “oral examination”, “minor oral surgery to remove fractured tooth”, “dental implant (astra tech)” and “implant-supported crown” (emphasis added).
2. Under cross-examination, the plaintiff was asked by Ms Cheong why there was a gap of 5 days before he visited Dr Yiu. The plaintiff explained that Dr Yiu, who was his usual dentist, was on leave on the date of the Incident. He wanted Dr Yiu to carry out any further treatment for the Fractured Tooth and decided to wait until Dr Yiu was back from holiday. I find the plaintiff’s explanation reasonable.
3. These are all objective evidence which supports the plaintiff’s claim that he was injured by chewing the Objects from the Meal on the date of the Incident and is consistent with the diagnosis of a fractured tooth from both Dr Ting and Dr Yiu.
4. One must not lose sight of the defendant’s own evidence that the plaintiff was already complaining about a fractured tooth at the time when he was leaving the Restaurant.

1. For the above reasons, and applying common sense and taking a broad view of the circumstances, I am satisfied that the plaintiff’s injuries, including the Fractured Tooth, were caused by the Incident on a balance of probabilities.

*CONCLUSION ON LIABILITY*

1. Given my analysis and findings above, I find the defendant liable to the plaintiff for negligence in relation to the damages suffered by him arising from the Incident.

*QUANTUM*

1. Based on my factual findings and the medical evidence referred to above, I now deal with each head of claim.

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

1. The plaintiff claims HK$80,000 under this head. Against this, the defendant says that an award, if any, should be no more than HK$7,000.
2. I must emphasize that the chief, if not the sole, complaint under the plaintiff’s pleaded case is in relation to the Fractured Tooth. When giving evidence in court, the plaintiff said that he felt depressed for a considerable period of time after the Incident and suffered from fear when eating. I note, however, this was not covered at all in his pleadings or witness statement. Nor is it supported by any medical evidence. As such, I shall assess this head of claim without taking into account any psychological condition(s) allegedly arising from the dental injury.
3. Having considered cases including *Orla Gilroy v Easy Up Investments Limited (t/a Caledonia Restaurant & Bar)*, DCPI 1252/2004, 1 February 2006, unrep; *Wong Wai Kit v Shek Ting Fung*, DCPI 1597/2007, 24 April 2008, unrep; *Wong Bik Chuen v Hua Min Tourism Automobile Transportation Co Ltd*, DCPI 2164/2009, 13 January 2011, unrep; and *Lam Yin Man v Ng Hing Chuen & Anor*, DCPI 908/2015, 25 October 2017, unrep, I consider that an appropriate award for PSLA for the plaintiff’s dental injury is $60,000.

*Special damages*

1. The plaintiff claims HK$33,550 for medical expenses, which comprise the medical fees charged by Dr Ting and Dr Yiu. This is supported by the official receipts issued by the two dentists. I award the sum claimed in full under this head.
2. The plaintiff also claims HK$100 for expenses on painkiller and HK$500 for travelling expenses. These are not covered or explained in the plaintiff’s witness statement or oral evidence in court. In the absence of evidence, I am afraid I am unable to allow these two items.

*CONCLUSION*

1. For the above reasons, I find the defendant liable for the plaintiff for damages in the total sum of HK$93,550, as follows:-
2. PSLA in the sum of HK$60,000
3. Special damages in the sum of HK$33,550
4. I award interest on general damages for PSLA at 2% per annum from the date of writ to the date of judgment, and interest on special damages at half judgment rate from the date of the Incident up to the date of judgment.
5. In §§37-40 of this judgment, I addressed the circumstances in which the official receipt issued by Dr Ting dated 1 February 2017 (*i.e.* the date of the Incident) came to be produced for the first time at the trial. In my view, the defendant was fully entitled to test or challenge the plaintiff’s claim for want of causation in the absence of such contemporaneous document, which could and should have been disclosed by the plaintiff much earlier.
6. With this point in mind, I make an order *nisi* that there be no order as to costs of this action. In the absence of any application made within 14 days to vary, such order *nisi* shall become absolute.
7. Lastly, it remains for me to thank both sides for their assistance, and to offer my sincere apology for the time taken for delivering this judgment.

( Eugene Yim )

Deputy District Judge

Mr Anthony Lo, instructed by Patrick Mak & Tse, for the plaintiff

The defendant appearing in person

1. See the Annual Return of the defendant filed on 30 October 2017 at p 140-148 of the trial bundle. [↑](#footnote-ref-1)
2. The Plaintiff’s Photo is located at p 99 of the trial bundle. [↑](#footnote-ref-2)
3. The better version of the Plaintiff’s Photo is located at p 167 of the trial bundle. [↑](#footnote-ref-3)
4. which was not specifically mentioned in the plaintiff’s pleadings or witness statement. [↑](#footnote-ref-4)
5. The relevant part of the evidence (taken in Punti) was as follows:

   “Q: 明白，明白，你會唔會覺得嗰個嘢係會係 – 可能係你補牙跌咗嗰啲嘢出嚟或者…

   A: 應該唔會喇，應該唔會。” (emphasis added) [↑](#footnote-ref-5)
6. See §24 of Ms Cheong’s witness statement. [↑](#footnote-ref-6)
7. See §26 of Ms Cheong’s witness statement. [↑](#footnote-ref-7)
8. See §27 of Ms Cheong’s witness statement. [↑](#footnote-ref-8)
9. See §29 of Ms Cheong’s witness statement. [↑](#footnote-ref-9)
10. See §32 of Ms Cheong’s witness statement. [↑](#footnote-ref-10)
11. See §34 of Ms Cheong’s witness statement. [↑](#footnote-ref-11)
12. See §34 of Ms Cheong’s witness statement. [↑](#footnote-ref-12)
13. See §8 of the plaintiff’s witness statement: “… 我除了向那女職員言名本人所進食的早餐內有紙巾上的兩件異物外，本人更清楚通知該名女職員，本人被那兩件異物引致口腔和牙齒受傷。” (emphasis added) [↑](#footnote-ref-13)
14. The defendant was legally represented in these proceedings until 6 July 2018. [↑](#footnote-ref-14)