DCPI 1109/2007

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 1109 OF 2007

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BETWEEN

CHEUNG KAN PUI Plaintiff

and

CHAN CHIK FAI Defendant

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

###### Before: Deputy District Judge J. Ko in Court

Date of Hearing: 18 April 2008

Date of Delivery of Judgment: 18 April 2008

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JUDGMENT

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1. This is the hearing for the assessment of damages suffered by the Plaintiff as a result of her assault by the Defendant on 12th March 2006.

2. The Plaintiff and the Defendant were neighbours occupying adjacent units in the same housing estate. On the day in question, the Plaintiff and her son had a dispute with the Defendant and the Defendant’s friend over the slamming of door at the Defendant’s unit. A heated argument ensued and both the Plaintiff and the Plaintiff’s son were assaulted. The Defendant was subsequently convicted by the Magistrate of the offence of inflicting grievous bodily harm on the Plaintiff and was ordered to serve 150 hours of community service.

3. The Plaintiff commenced this action against the Defendant on 30th May 2007 to claim for personal injuries. Interlocutory judgment was entered on 7th July 2007 with damages to be assessed.

4. The Defendant is absent today. I am satisfied that the Defendant has been duly notified of this hearing.

5. The Plaintiff was 78 years old at the time of the assault and is now 80 years old. She has been on Comprehensive Social Security Assistance. She is claiming the following damages:

1. pain, suffering and loss of amenities in the sum of $400,000; and
2. travelling expenses in the sum of $1,000.

6. After the assault, the Plaintiff was taken by ambulance to the Accident and Emergency Department of North District Hospital (“NDH”). She was not able to walk and complained of left hip and buttock pain. Physical examination revealed that her left lower limb was rotated and shortened. X-ray showed left hip fracture. The provisional diagnosis was left hip fracture.

7. The Plaintiff was then admitted into the Department of Orthopaedics and Traumatology of NDH for further treatment. The treating doctor observed local tenderness at left hip region and plain x-ray of left hip confirmed a subtrochanteric fracture of left femur.

8. An operation called “left hip Gamma nailing” was performed on 17th March. The operation lasted a whole day. After the operation, the Plaintiff was given a course of physiotherapy and walking exercise. On 26th March, she was transferred to Tai Po Hospital for further treatment. She was hospitalized for nearly two months. She had to use a wheelchair when she was discharged.

9. At the follow-up consultation with the specialist outpatient clinic of NDH on 17th August, the Plaintiff was able to walk with a frame without left hip pain. X-ray showed satisfactory fracture alignment and there was no implant failure.

10. At present, the Plaintiff still complains of pain and weakness in her left leg. She claims that the pain is at times so severe that her sleep was affected. She cannot walk far.

11. The Plaintiff’s evidence is consistent with the medical evidence adduced and I accept her evidence.

12. The Plaintiff’s solicitor relies on *Siu Leong Ching*, HCPI 170/2003 and *Tsang Hing Yuen*, HCPI 906/1998 and suggests an award of $400,000 for PSLA. I consider that the injuries suffered by the Plaintiff, whilst by no means trivial, is fortunately less severe than those suffered by the plaintiffs in the cases cited. Taking everything into consideration and, in particular, the pain associated with the injury, the period of hospitalization and treatment and the effect of the injury on the Plaintiff, I take the view that an award of $380,000 for PSLA is justified.

13. A sum of $1,000 is claimed in the Statement of Damages for travelling expenses. This, according to the Plaintiff, was spent in taking taxi to and fro her home and the hospitals to attend follow-up treatments. Although no receipt has been adduced, I consider such amount reasonable and allow the claim.

14. I therefore assess the Plaintiff’s damages at $381,000.

15. Interest on general damages will be awarded at 2% per annum from the date of the writ and interest on special damages will be awarded at half the judgment rate from the date of the assault.

16. Costs normally follows the event. I also order the Defendant to pay the Plaintiff’s costs of this assessment, to be taxed if not agreed. The Plaintiff’s own costs is to be taxed in accordance with Legal Aid Regulations.

(J. Ko)

Deputy District Judge

Miss L. Cheng, of Messrs. K.B. Chau & Co. (assigned by Director of Legal Aid), for the Plaintiff

Defendant: acting in person, absent