DCPI 1127/2006

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1127 OF 2006

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BETWEEN

LAI HO CHUEN (a minor) suing by

his mother and next friend CHOW SUK FAN Plaintiff

and

HUNG LING YUNG Defendant

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Coram: His Hon Judge Leung in court

Date of hearing: 25-27 February 2008

Date of judgment: 30 April 2008

**JUDGMENT**

1. 16 July 2003 was the last school day before summer vacation for Lai (the Plaintiff), a 9-year-old pupil. The school finished earlier than usual that afternoon. Lai took the 24-seat light bus arranged by his school to the drop point where he was supposed to be picked up by his grandmother. Upon arrival, Lai alighted the light bus, passed the front of the van and sought to cross the street to meet his grandmother. He collided with the taxi driven by Hung (the Defendant). Lai is now a 13-year-old Form 2 student. His mother sues as his next friend for damages. Both liability and quantum are in dispute.

**THE ACCIDENT**

1. The accident happened at Shing Fong Street, Kwai Fong. This is a one-way street. On both sides of the street there are pavements. When Hung drove his taxi into the street, there was a line of parked vehicles by the pavement on his left. The light bus, and another vehicle behind it, stopped to the left of this line of parked vehicles, creating a double-parking scenario. There was enough room for Hung to drive along by keeping to the right of the street.
2. Meanwhile, two children have just alighted the light bus through the door on its left. Lai was the second of them. The bus assistant, Mrs Kwan, was on board to take care of the children. The first child left by himself for the abutting pavement. Lai passed round the front of the light bus to cross the street. In doing so, he collided with the taxi. The point of impact was near the front wheel on the near side of the taxi. Lai sustained injuries to his right leg.
3. Police investigated but there was no criminal prosecution in relation to the accident.
4. The above is common ground. The major factual dispute lies in: (1) the manner in which Lai crossed the street; (2) the speed of the taxi; and (3) the lookout of Hung from the taxi.

**How Lai crossed the street**

1. In court, Lai said that after alighting, he walked quickly in front of the light bus. He checked the traffic and saw a taxi coming not very fast from his right. In his statement to the police in 2003, the taxi was said to be about 6 metres away. Believing that he managed to cross the street in time, he went ahead. But he soon realised that he could not as the taxi arrived. He said he took 1 or 2 steps back but he agreed that he did not tell the police about this. In any event, he did not manage to avoid colliding with the taxi.
2. According to his statement to the police in 2003, Lai was asked and he answered the police that he actually ran, instead of walking quickly, to cross the street at the time. In court, Lai explained that running, when he was smaller (or younger), was equivalent to walking quickly now, when he has grown bigger (or older).
3. Eventually Lai also agreed that Mrs Kwan alighted the light bus after him. When she was holding him, asking him not to go so fast, he used force to fence off Mrs Kwan’s hand and ran.
4. Mrs Kwan attended court under a subpoena. According to her, she and Lai had just passed the left headlight of the light bus. She held Lai’s arm but Lai used force to fence her hand off and started to run very fast towards the street. At almost the same moment, she saw the taxi pass by. She was shocked by the accident.
5. The driver of the light bus has made a statement to the police. He could not be located. According to this statement, the driver saw Lai run in front of the light bus towards the street. He observed the approaching taxi and therefore sounded the horn to warn Lai. But Lai still collided with the taxi. Lai said in court that he could not remember whether the light bus driver sounded the horn.
6. I was asked by Mr Law for Lai at the beginning of the trial to consider exercising my discretion to rule the statement of the bus driver inadmissible. Insofar as this was an application, I refused it. But I made it clear that in considering the weight to be attached to the statement of the light bus driver, I of course bear in mind that he was not available for cross-examination.
7. Mr Law for Lai attacked the reliability of the evidence of Mrs Kwan and the statement of the light bus driver. He suggested that both of them had the tendency to avoid any blame which might be attached to them in respect of the accident. I do not think this is a fair accusation. The fact is no one has ever suggested any blame at all on either Mrs Kwan or the light bus driver since the accident.
8. Mrs Kwan came as an independent witness. Having heard her in court, I am impressed that she is honest, cares about the truth and was trying her best to tell the truth. As Ms Tsui for Hung acknowledged, Mrs Kwan might not be eloquent. But I find that she did tell the truth. In particular, regarding how fast Lai sought to run across the street after alighting the light bus, I prefer her evidence.
9. In my judgment, it is clear that after alighting the light bus and reluctant to be held back by Mrs Kwan, Lai just fenced her hand off and started running towards the street with a view to crossing it. As Mrs Kwan described, the incident, including Lai’s movement, happened so fast that I do believe Lai took any serious or adequate lookout for the traffic. Whether the light bus driver really sounded the horn upon seeing that, Lai could not realistically escape from the collision. Lai realised that but only too late.

**Speed of the taxi and Hung’s lookout**

1. According to Hung, he turned into the street and drove at about 10 kph. He admitted he saw the stationery light bus and the private car behind it. He had no idea that it was actually a school bus or being used as a school bus. It was a white light bus as he could see. He agreed that it was a busy street. He paid attention to the street situation. He maintained the speed forward by the right of the street.
2. Mr Law for Lai submitted that Hung should have noticed that the light bus was used as a school bus. Mr Law referred to the photograph depicting the light bus at the scene after the accident. He attempted to establish that there was this thing appearing on the right rear window of the light bus. He suggested that this was a school bus sign. He also sought to refer to the relevant regulations prescribing such kind of school bus sign.
3. To begin with, there is no evidence from any witness that there was such a sign at that position. Lai did not say this. Mrs Kwan could not say this. The mother was never in a position to say this. From the photograph, one can only see that the vehicle was a white light bus. I have tremendous difficulty in accepting that this thing appearing on the right rear window of the light bus was a sign, not to mention something with any writing on it. To me, it is equally, if not more, probable that this was merely the back of the top part of back seat of the light bus, which one could see through the transparent rear window. If the regulations referred to by Mr Law are relevant, then they only assist in dismissing the suggestion that this was such a sign because the prescribed sign should consist of white letters and characters of “CAUTION CHILDREN 小心學童” on a red background. What is depicted in the photograph is nothing of that sort. Whether the light bus had therefore complied with the relevant regulations is irrelevant for the present purpose.
4. Mr Law for Lai argued that whether or not there was such a sign at the rear of the light bus, Hung should still have noticed that the light bus was carrying children on board. He argued that Hung should have been able to see children on board the light bus, had he kept a proper lookout before he drove past the light bus.
5. In my view, such inference lacks the primary factual basis. Hung never denied seeing the rear of the light bus after entering the street. This was not difficult since the height of the light bus exceeded its surrounding vehicles. However, he could not see children inside the bus from his angle (i.e., the driver seat on the right of the taxi). There is no evidence that there were any children in the back seats and, if yes, whether the children could be seen from Hung’s angle. One should also take into account that thing seen either on or through the right rear window of the light bus, whether it was a sign or the tall back of the back seat of the bus, which could have blocked part of the view. Whether there were then other children on board the bus, there is no evidence of where they were sitting. There is also no evidence of any remarkable movement on board the light bus at the time which should have attracted Hung’s attention from his driver seat.
6. Meanwhile, there were admittedly other people in the vicinity of the street at that time of the day. People might cross the road through the iron railings along the pavements. Hung was aware of that and paid attention to his left, right and front. This is Hung’s evidence, which I accept. In the circumstances, it is in my view not surprising that Hung did not come to be aware that there were children on board the light bus.
7. Mr Law for Lai also questioned the speed at which Hung was travelling immediately prior to the accident. One of the police officers involved in the investigation recorded in his statement that the speed of Hung’s taxi was about 20 kph. In the statement given by Hung to the police on the following day, Hung stated that he was driving at about 10 kph. Mr Law suggested that Hung changed his evidence in order to alleviate his possible responsibility.
8. When asked, Hung frankly admitted he could not explain the officer’s statement. He could only guess that the police officer got it wrong. This was not Hung’s statement and he probably had no opportunity of reading it. Hung has always maintained his evidence on the speed of his taxi since his statement to the police. In my view, not much can be said against Hung’s such evidence by reference to this police statement. It also happened that in his statement to the police, the light bus driver was specifically asked and he too stated that the taxi was travelling at about 10 kph. However I accept Hung’s evidence in this regard even without having to rely on the light bus driver’s statement.
9. Lastly, the circumstantial evidence does not suggest that Hung’s evidence on the speed of his taxi at the time is inherently implausible. Evidence such as skid mark on the street or dent on the body of the taxi upon collision, which could have suggested a high speed of the taxi, is absent.

**LIABILITY**

1. The basis for alleging liability is that Hung: (1) failed to keep a proper lookout; (2) failed to slow down prior to passing by the light bus; and (3) failed to sound the horn prior to passing by the light bus.
2. Both counsel referred to *Fardon v Harcourt-Rivington* (1932) 146 LT 391 where the court of appeal said (at 392):

“The root of this liability is negligence, and what is negligence depends on the facts with which you have to deal. If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence; but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions.”

1. In *Moore v Poyner* (1975) RTR 127, the defendant was aware that children were in the habit of playing in the residential area and there was a large coach parked on the nearside of the road. The unseen 6-year-old child ran into the road in front of the coach and was struck by the vehicle driven by the defendant. The defendant was driving at 30 mph, the speed limit of the road. In order to stop spontaneously to avoid the collision, he would have had to slow down to something like 5 mph when he passed the front of the coach. The court of appeal referred to *Fardon* (above) and found (at 133B-134A) that the likelihood of a child running into the path of the defendant’s car at the precise moment at which he was passing the coach was so slight that it was not a matter which the defendant ought to have considered to require him to slow down to such an extent mentioned above. Browne LJ (at 134D-F) summed it up as follows:

“In general, it seems to me quite clear that it is not negligent for the driver of a car, who is driving at a reasonable speed, not to slow down, or not to sound his horn, when passing a vehicle parked on his near side, whether that vehicle is a coach, or a lorry or a car. Any sort of vehicle parked on the near side must to some extent mask a driver’s view of anybody who might come out in front of it; but it seems to me that it would be putting an impossible burden on drivers to say that they must slow down or sound their horn, or both, every time they pass a parked vehicle.”

1. The above was referred to in *Ng Ching Hung v Lau Shun Hing*, CACV 182/1990, 27 March 1991 (at pp.5-6). The court of appeal held that the mere existence of a possibility that a passenger, stepping down from a maxi cab which has stopped to allow him to alight, might then immediately attempt to cross the road was not the real issue. The issue was whether the driver in all the circumstances, including that possibility, acted with reasonable care. The court considered the suggestion that the driver should immediately have sounded his horn or moderated his speed, given that possibility, to be too heavy a burden on the driver.
2. The same considerations were referred to in the subsequent cases of *Kong Chung Ching v Lam King Ho* [1992] 1 HKC 104 and *Ho Hing Yuen by his father and next friend Ho Hon Kaim v Lee Wai Kai*, HCPI 58/2003, 31 May 2004. Different facts of the cases led to different conclusions. In *Kong Chung Ching*, the plaintiff was actually seen standing on the kerbside of the road some 20 to 30 feet away before he rushed into the road when the defendant’s van was some 8 to 10 feet away. The defendant was liable for failing to take extraordinary precaution. But in *Ho Hing Yuen*, the court reiterated (at paras.31-32; 41) that to say that a reasonable and competent driver was expected to guard against pedestrians running out, as opposed to emerging, from between parked vehicles would be to put the duty of care far too high on a driver. The appeal on the speed issue was dismissed: see CACV 258/2004, 10 May 2005.
3. A driver has many things to look at in order to drive safely, and if for a split second he does not observe the movement at a particular spot, it cannot be said that he has failed to keep a proper lookout: see *James v Alger*, unrep, 6 March 1986 (CA), per Parker LJ. In the present case, Hung has 20 years of driving experience. As I found above, Hung was aware that there were other pedestrians and some might even cross the street. He therefore paid attention to his left, front and right. There is no evidence that immediately prior to the accident, there were actually pedestrians crossing the street. More importantly, he could not have been alerted to the possibility of children running out in front of the parked light bus. The only other child who alighted the light bus at the time did not cross the street. The suggestion that the light bus created the only blind spot to Hung is not relevant. In the circumstances, I am not satisfied that Hung should be to blame for failing to keep a proper lookout or to sound the horn when passing by the light bus.
4. There is no suggestion that driving at about 10 kph was in excess of the speed limit in the street. By the time of the collision, the near side of the taxi was near the offside of the light bus and hence the point of contact close to the front wheel of the taxi. There was no evidence of skid mark on the street surface, which might have suggested that Hung had to brake hard in order to bring the taxi to a halt. In the circumstances, I am not satisfied that Hung should be to blame for not further slowing down the taxi when passing the light bus. This was not what he was reasonably expected to do in the circumstances. The fact that there was allegedly not much room for the taxi to swerve to its right in case of emergency is not relevant.
5. Objectively, in view of how Lai sought to run across the street and the manner in which Hung was managing his taxi, there was nothing more which Hung could have reasonably done to avoid the collision. Liability in the present case is not proved.

**ASSUMING LIABILITY**

1. Assuming Hung is liable, I have no doubt that Lai was to a large extent to blame for the accident. Mr Law for Lai submitted that Lai should be one third to blame. Ms Tsui for Hung submitted that contributory negligence should at least be 60%. I find *Britland v East Midland Motor Services Ltd* (1998) (digested in Bingham’s *Motor Claims Cases*) and *Chiu Pan Mong (a Minor) v Tam Kak Kong*, DCPI 39/2001, 7 January 2002 to be relatively more helpful references. I accept Ms Tsui’s submission that an older plaintiff in circumstances like the present case should be 75% to blame. In the case of Lai, the degree of contributory negligence should be 60%.

**QUANTUM**

**Injuries and treatment**

1. Lai sustained a 4-cm wound to his right lower leg with bone exposure. The distal shaft of the leg was fractured and displaced. Within 2 weeks, he received 3 operations involving debridement, open reduction and external fixation, internal fixation, further wound debridement as well as skin grafting. He had been hospitalised for 23 days. Outpatient treatment followed after discharge. He was re-admitted for the removal of the metal implants in April 2004, for which Lai had to be hospitalised for 7 days. He had to wear pressure garment (in the form of a short pant) to control the scar on the skin donor site of the inner thigh until the end of 2004.

**Orthopaedic**

1. Dr S Y Chun and Dr K C Lam were the orthopaedic experts engaged on behalf of Lai and Hung respectively. Their latest reports were dated 2007. Their opinion was essentially ad idem. Both experts opined that Lai was able to get on with his normal daily activities including any sports. Dr Lam observed that Lai had indeed already engaged himself in ball games. There was no residual symptom apart from the insignificant length discrepancy (0.5-1cm) between his legs. Yet the discrepancy was expected to disappear when he grows up. No treatment was necessary. Meanwhile, if Lai desired, Dr Chun suggested the use of a shoe pad as insole. The experts agreed that Lai was unlikely to have any permanent impairment from an orthopaedic point of view.

**Cosmetic**

1. Cosmetic surgeons’ reports were commissioned from Dr D Lee and Dr I Nicholson on behalf of Lai and Hung respectively. There are scars at the skin graft donor site of the inner thigh, near the knee and the lower leg. Photographs of the scarred sites were contained in the expert reports. In court, I was also shown the current condition of some of these scarred sites.
2. In his first report in 2004, Dr Lee noted relatively active skin donor site of the inner thigh, some limitation to movement caused by the scars and the need to wear the pressure garment as well as intermittent treatment. Yet no plastic surgery or laser treatment was recommended. He assessed the permanent impairment due to the skin disorder to be 9%.
3. In 2007, Dr Nicholson found that the scars had become stable. They were noticeable but pale. They would not change to any noticeable extent with the passage of time. Lai no longer complained about the scars, apart from feeling embarrassed. No further treatment would improve their appearance. He assessed the permanent impairment to be 3%.
4. In his latest report in 2007, Dr Lee explained the difference between him and Dr Nicholson in their assessment of the percentage impairment. However he was also positive about the definite improvement of the scars and their static condition. They became asymptomatic without itchiness, tenderness or discomfort. He adjusted his assessment down to 6%.

**Psychological**

1. In 2004 and 2005, Lai was assessed by the clinical psychologists of Lam Tin Special Assessment Centre. According to the report of Miss C K Lam, also a clinical psychologist of the centre, Lai was then observed to be disruptive at school. The mother was concerned that Lai was hyperactive and complained about bad peer influence. However no mention was made of any association between the accident and Lai’s such behaviour.
2. Worth noting is the intellectual ability tests carried out on Lai by the centre. It was found that his intellectual functioning actually lied in the superior range with comparable verbal and non-verbal skills. Various abilities were significantly above average. His relative weakness lied in sustained attention and repetitive tasks, which resulted in his avoiding some homework and copying tasks. Lai was believed to need motivation. No follow up in the centre was arranged.
3. Lai was assessed by Dr Frendi W S Li, clinical psychologist engaged on his behalf, in 2005. Dr Li produced her reports in 2006. According to her first report, Dr Li diagnosed post-traumatic syndrome (PTS) and discovered low self-esteem in Lai. Without ascertaining Lai’s pre-accident self-esteem, Dr Li believed the accident had some impact on him. She strongly recommended help by clinical psychologist. In her second report in the same year, Dr Li recommended 20 sessions of psychological therapy.
4. In 2007, Lai was arranged to see Mrs Hannah L K Chung, clinical psychologist of the Centre of Marriage and Child Guidance, engaged on behalf of Hung. Mrs Chung did not rule out PTS in Lai during the initial stage after the accident, but she observed that he has by and large recovered from it. By then, Lai’s general self-esteem and academic esteem had improved. However his overall self-esteem remained low, mainly because of the low social and parental self-esteem. In particular, parental self-esteem was said to be extremely low. Mrs Chung opined that the over-protection and high academic demand by the mother (evidenced by the limit on leisure activities and long hours spent in tutoring school) had strained parent-child relationship. Lai’s current problems were the result of the complex interplay between his personal characteristics, stress from the accident and the rehabilitation, mother’s reaction to the child’s loss in the accident, her inability to understand Lai’s need as a growing child and her wish to exercise control.
5. Lai’s condition no longer warranted a diagnosis of PTS. The reminiscence of the PTS might have a minor effect on Lai socially which amounted to 2% emotional and behavioural impairment. However this could be resolved over time and with psychologist’s help. Dr Chung recommended 6 sessions of therapy and 6 sessions of family counselling.
6. In her further report towards the end of 2007, Dr Li agreed that the PTS had reduced significantly and no longer affected Lai’s daily life. She recommended 6 to 10 sessions of psychologist therapy (as opposed to 20 before) and 6 sessions of family counselling. Mainly due to the low self-esteem, Dr Li assessed the impairment to be 5%.

**Pain, suffering and loss of amenities**

1. Mr Law for Lai submitted that Lai’s condition warrants an award of damages in the sum of HK$550,000. He relied on *Chan Yiu Ping v Mok Yuk Kwong & Ors*, HCPI 92/1998, 3 July 2000; *Lau Chi Ming v Ng Pak Chuen & Anor*, HCPI 1085/1999, 25 September 2000; *Poon Chi Kwong v Poon Wing Kee (Metal Works) & Anor*, HCPI 1340/2003, 23 December 2005.
2. Ms Tsui for Hung submitted that this case attracts an award not higher than HK$300,000. This is already higher than the amount pleaded in Hung’s answers. She referred to *Aqsa Rana v Tsui Luk Pui*, DCPI 68/2007, 24 September 2007; *Leung Yuk Kwan v Maple Professional Beauty Centre Limited*, HCPI 274/2002, 4 December 2002; *Susi Yanti & Anor v Chu Shiu Chuen*, HCPI 1176/2000, 2 November 2001.
3. I should take into account the age of Lai when he met the accident, the pain he must have undergone upon the accident and from the subsequent operations, periodical loss of amenities during his recovery, the eventual recovery of his orthopaedic condition, the extent and condition of the scars on his leg, the lack of serious impact of these scars on his physical movement though some embarrassment which he might feel about them, the relatively mild psychological impact caused by the accident as well as the generally good prospect of recovery from such impact too. In my judgment, an award which suits the circumstances of the present case and could stand the test against the above decided cases suggested by counsel should be HK$350,000.

**Loss of earning capacity**

1. Understandably, there is no basis for any claim for loss of earnings in the circumstances of Lai. However, an attempt was made to claim for his alleged loss of earning capacity.
2. To begin with, there is no evidence from the experts of any handicap or disadvantage, which Lai would be subject to as a result of any disability as at the time when he joins the labour market in the future. Mr Law for Lai referred to *Leung Pui Yuk v The Incorporated Owners of Albert House*, HCPI 828/1997, 17 September 2001 where the court made such an award in the case of a 6-year-old girl though she suffered only superficial injuries. However the real basis for such an award in that case was that the girl was found to have suffered post-traumatic disorder some 6 years after the accident. I do not see how such a case involving actual disorder can be borrowed for the purpose of this case where the psychological symptoms have largely subsided.
3. Mr Law for Lai suggested that the scars on Lai’s leg might restrict his choice of work in the future. I am not satisfied that this is supported by evidence. Again, the case of *Chiu Pan Mong v Tam Tak Kong*, DCPI 139/2001, 7 January 2002, referred to by Mr Law involved actual disfigurement of the 11-year-old boy’s leg which can hardly be borrowed as a comparable to the present case. It should also be noted that quantum in that case was in fact agreed by the parties subject to liability.

**Medical expenses**

1. Hospital expenses in the sum of HK$4,700 is agreed.
2. Future psychological consultation expenses are claimed. As mentioned above, Dr Li recommended 6-10 therapy sessions and 6 sessions of family counselling at HK$1,500 each. Dr Chung recommended 6 therapy sessions at HK$1,200 each and 6 family counselling sessions at HK$1,000 each.
3. In court, the mother confirmed that despite the recommendation of the clinical psychologists, she had made no arrangement for the psychological therapy or family counselling for herself or Lai. Instead, she sought help from a social worker, regarding what she viewed as Lai’s behavioural problem. The mother referred to the high cost of these sessions. Asked by her counsel, she verbally agreed to make such arrangement if the claim for these future expenses is allowed. She said she would wait until after this litigation is over.
4. I have difficulty in believing in the mother on this. If this was a conscious decision to postpone the therapy and counselling, I am surprised that the welfare of Lai should not be made to wait, particularly when I am not convinced that the mother had any good reason to wait. Lai’s parents earned a total of about HK$34,000 per month. The fact was that the mother would rather spend allegedly tens of thousands on arranging private tuition for Lai and tonic food after the accident. This was clearly not a matter of ability to afford. When being referred to the comments of Mrs Chung on her lack of insight into the straining relationship between her and Lai, the mother expressed her thought that there was nothing wrong about their relationship. I cannot help feeling unconvinced that the mother ever really subscribed to the recommendations of the psychologists.
5. Having said that, I have to consider the claim on the basis of the needs of Lai according to the experts, not the mother. Both clinical psychologists recommended such consultation. Therefore, I should refrain from allowing the approach of the mother to prejudice Lai’s opportunity to receive such consultation. As in most cases, the court has to be satisfied and expects, but could not monitor, that the compensation to be awarded would be used for the purpose for which it is claimed. With some reluctance, I would still have made an award for the cost of such consultation. But I would have allowed only the amount conceded by Hung in his answers, i.e., HK$7,200 for 6 sessions of therapy for Lai.

**Loss of earnings of mother**

1. The mother was a clerk earning about HK$14,000 per month. According to the pleading, the mother took 20 days off work to take care of Lai. They consisted of 10 days in August 2003, 7 days in April 2004, 2 days in October 2007 and 1 day in November 2007. This led to the alleged loss of 20 days’ income in the amount of HK$8,847.50. She repeated this in her statement.
2. However, the mother confirmed in court that she was paid on a salary basis. The days off taken did not cause her any deduction of salary. She then revealed that she utilised her annual leave for her days off. She said she asked for such leave verbally from her employer. There is no record or confirmation from her employer. In view of this, Mr Law for Lai changed to submit as if this is a claim for the mother’s loss of the annual leave but only for 17 days in August 2003 and April 2004. Ms Tsui for Hung did not take any pleading point but argued that there was no loss of income as a result of taking the annual leave. This must be right. I also wonder on what basis the loss of annual leave would be measured by the number of days’ income, in the absence of suggestion or evidence that the mother would have received those income in lieu of the leave but for Lai’s accident.
3. The mother further claims for the value of her care and service provided to Lai for 3 months at HK$6,000 per month. Where the mother and Lai live under the same household and I am not satisfied that care would not have been provided but for the accident, I would not have allowed this item of claim. It should be noted that allegedly for the care of Lai, domestic helper was engaged and the cost of that is also claimed in this action.

**Private tuition fee**

1. According to the pleading, it is claimed that due to the accident, Lai needed private tuition since September 2003. The amount allegedly incurred until now amounted to nearly HK$74,000. It is claimed that such need would have to last for another 5 years in the future which would cost another HK$51,000.
2. Due to his physical condition and adjustment need during his initial recovery stage, it might be reasonable to provide private tuition to assist Lai to catch up with his studies. However Mr Law for Lai in his submissions sought to justify the need for private tuition at various stages since September 2003 into the future 3 to 5 years. All were basically said to be the aftermath of the accident. It is this that I do not accept.
3. As mentioned above, Miss Lam of Lam Tin Special Assessment Centre reported that Lai’s intellectual functioning lies in the superior range, with comparable verbal and non-verbal skills. The setback in his academic achievement was attributable to his lack of interest in sustained attention and repetitive tasks. Mrs Chung’s reports (mentioned above) gave a very comprehensive analysis of the complex interplay of factors including the major factor of the high parental expectation of his academic achievement. This is supposed to be helped by psychologist, not by private tuition.
4. In court, it was revealed that both Lai and his sister are attending private tuition. While the mother said that it was Lai who told her that he needed the private tuition, Lai on the other hand said in court that he actually did not like it or revision. In my view, it is more likely than not that consistent with her high expectation of the children, the mother would have sent Lai to private tuition in any event. I am not satisfied that there was a causal link between the accident and the mother’s decision to continue sending Lai to private tuition or the need for this after the initial recovery stage.
5. Lai managed to resume school in October 2003. I accept that for the purpose of assisting him to catch up, private tuition at the initial stage was not unreasonable. I would have allowed HK$4,800 claimed for private tuition in September 2003.

**Domestic help**

1. Lai’s family used to employ domestic helper until shortly before the accident. The mother gave evidence that since the children have grown up and their grandmother could help taking care of them, the decision was not to employ domestic helper any more. The need for domestic helper arose again only out of the accident and the need of Lai.
2. This is the claim for the cost of domestic helper during the 4 months from August to December 2003 and the 11 months from February to December 2004. The mother gave evidence regarding the difficulty faced with by Lai after discharge from the hospital in August 2003, which required the care of a helper particularly as the mother had a full-time job. The evidence was that Lai was confined at home during the 2 months after discharge. He started to walk with a walking frame in October 2003 when he also resumed school. He could walk towards the end of 2003 when the physiotherapy also ceased. In April 2004, he was re-admitted for the removal of implants. The pressure garment was worn until the end of 2004. I am satisfied that it was not unreasonable to engage domestic helper to take care of Lai during these periods.
3. However, the evidence was also that the helper did the household work for the family too. Ms Tsui for Hung challenged the mother’s explanation for the amount claimed. It was also suggested that the domestic helper would have been engaged in any event. Nevertheless, I would have allowed but only half of the amount claimed, i.e., HK$30,925.

**Travelling expenses**

1. Taxi was taken for Lai’s transportation during the one year since August 2003 from and to school and hospitals. The amount claimed had to be adjusted down to about HK$3,500 at the end of the trial. I would have allowed this amount as being reasonable.

**Tonic food**

1. A total amount in excess of HK$20,000 is claimed. There is no documentary evidence of this item of claim. I agree with Ms Tsui’s observation about the mother’s unsatisfactory evidence in respect of this item of claim. I agree that a nominal amount of HK$5,000 would have been reasonable compensation.

**Shoe pad**

1. Dr Chun suggested that *if Lai desires*, he could use shoe pad in the form of insole to tackle the minor length discrepancy between the 2 legs. However, as Lai confirmed in court, he had never been provided or used such a pad since the accident in 2003 or even since the suggestion was made in 2007. I am not satisfied that this item is necessary.

**Others**

1. Wheelchair, walking frame and damaged clothing in the amount of HK$860, HK$160 and HK$75 would have been allowed.

**Summary**

1. Had Hung been liable, the damages to be paid would have been as follows:

PSLA HK$350,000

Medical expenses HK$ 11,900

Private tuition HK$ 4,800

Domestic helper HK$ 30,925

Travelling expenses HK$ 3,500

Tonic food HK$ 5,000

Others HK$ 1,095

Total: HK$407,220

1. There would have been interest on damages for PSLA at 2% p.a. from the date of writ (30 June 2006) and interest on special damages at half judgment rate from the date of accident (16 July 2003) to today. Interest from today would have been to accrue at the judgment rate. Credit would have had to be given to the 60% contributory negligence on the part of Lai.

**CONCLUSION AND ORDER**

1. Failing to prove liability as a matter of law and fact, Lai’s claim by his mother must be dismissed. It is at least fortunate to see that Lai has recovered well and, as far as I could observe during the trial, remains an impressive and intelligent boy. It is hoped that he would continue to grow up healthy.
2. The claim is dismissed with costs, to be taxed, if not agreed. The amount involved warrants the engagement of counsel. Lai’s own costs shall be subject to legal aid taxation.

Simon Leung

District Judge

Representation:

Mr Dennis Law instructed by Messrs Simon Siu, Wong, Lam & Chan for the Plaintiff (upon the instruction of the Director of Legal Aid)

Ms Jennifer Tsui instructed by Messrs Kenneth C C Man & Co for the Defendant