## DCPI 1198/2020

[2023] HKDC 193

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 1198 OF 2020

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BETWEEN

NG WAI TAO Plaintiff

and

SIU PATRICK CHUN WAI 1st Defendant

SIU MAN WAI PAUL 2nd Defendant

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Before: Deputy District Judge Alan Kwong in Court

Dates of Hearing: 1 & 3 February 2023

Date of Judgment: 13 February 2023

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JUDGMENT

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1. ***INTRODUCTION***
2. The present action arose from a traffic incident (the “**Traffic Incident**”) that took place in the afternoon of 12 July 2018 on Mei Wan Street, Tsuen Wan.
3. It is not in dispute that:-

(1) The Plaintiff is a bus driver employed by Kowloon Motor Bus Co. (1933) Ltd.

(2) The 2nd Defendant is the owner of a private car bearing vehicle registration number UF3963 (the “**Private Car**”). He allowed the 1st Defendant, who is his younger brother, to use the Private Car.

(3) The Mei Wan Street was a two-way road.

(4) Shortly before the Traffic Incident took place:-

(a) The Plaintiff was driving a bus bearing vehicle registration number KK4121 (the “**Bus**”) along the Mei Wan Street towards the direction of Lau Kok Road (the “**SLK Bound**”).

(b) The 1st Defendant was also driving the Private Car along the SLK Bound of Mei Wan Street.

(c) The Private Car was behind the Bus, and there were a few vehicles between them.

(5) At the time when the Traffic Incident occurred, the traffic of the SLK Bound was congested, whereas the traffic of the opposite bound was smooth.

(6) The 1st Defendant somehow thought that Mei Wan Street was a one-way road[[1]](#footnote-1). With a view to avoiding the traffic congestion on the SLK Bound, the 1st Defendant caused the Private Car to cut into the lane of the opposite bound on the right (which was an on-coming lane).

(7) After overtaking a few vehicles, the 1st Defendant soon saw that a police car with license plate number AM7388 (the “**Police Car**”) was coming at him from the opposition direction[[2]](#footnote-2). The 1st Defendant had to stop the Private Car immediately in order to avoid collusion.

(8) It appeared that the Private Car stopped at a location that was on the right-hand side of the Bus towards its front. The Private Car faced the Police Car diametrically, and there was only a short distance between the Private Car and the Police Car when they stopped[[3]](#footnote-3).

(9) Subsequently, the 1st Defendant was charged with careless driving pursuant to section 38 of the Road Traffic Ordinance (Cap. 374).

(10) On 7th March 2019, the 1st Defendant pleaded guilty to, and was convicted of, careless driving under WKS17478/2018.

***SUMMARY OF THE PARTIES’ RESPECTIVE CASE***

***B1. Summary of the Plaintiff’s Case***

1. It is the Plaintiff’s case that when the Traffic Incident took place, the 1st Defendant drove the Private Car at a high speed, and he suddenly veered the Private Car in attempt to cut into the left lane of Mei Wan Street (*i.e. the* SLK Bound) ahead of the Bus[[4]](#footnote-4).
2. In light of the 1st Defendant’s action, the Plaintiff had to apply brake abruptly and immediately in order to stop the Bus, such that collision could be avoided. This caused the Plaintiff to sustain personal injury[[5]](#footnote-5).
3. The Plaintiff contends that the 1st Defendant was negligent and/or in breach of the duties required of a reasonably competent driver. The particulars in respect of the Plaintiff’s complaints of negligence and/or breach duties include, *inter alios*, the following: (i) the 1st Defendant drove the Private Car in a direction that was against prescribed direction; (ii) the 1st Defendant failed to maintain sufficient distance from the Bus and to ensure that there was sufficient space before he attempted to cut into the lane of the Bus; (iii) the 1st Defendant failed to pay sufficient notice to the road conditions, and be aware of the presence of the Bus; (iv) the 1st Defendant failed to give warning to the Bus that the Private Car was approaching; (v) the 1st Defendant failed to stop or control the Private Car or to apply the brakes sufficiently[[6]](#footnote-6).
4. The Plaintiff also contends that the 2nd Defendant is vicariously liable for the 1st Defendant’s negligence and/or breaches of duties[[7]](#footnote-7). In this connection, Mr. Tam Nok Ting, on behalf of the Plaintiff, relies on the fact that the Vehicle was owned by the 2nd Defendant but driven by the 1st Defendant. Mr. Tam submits that this constituted *prima facie* evidence showing that the 1st Defendant was the 2nd Defendant’s agent or servant[[8]](#footnote-8).
5. The Plaintiff claims that he suffered from neck and back sprain as a result of the Traffic Incident. Due to increasing neck and back pain, the Plaintiff sought emergency treatment from Princess Margaret Hospital, and he was admitted to the Accident and Emergency Department on 13th July 2018 at 1:46am[[9]](#footnote-9). This was a few hours after the Traffic Incident occurred.
6. As evidenced by the contemporaneous records, during the period from 13th July 2018 to 21st September 2018, the Plaintiff:-

(1) attended the Accident and Emergency Department of Prince Margaret Hospital on 7 occasions;

(2) sought diagnosis and treatment from various out-patient clinics and private medical practitioners on 14 occasions; and

(3) attended physiotherapy sessions on 7 occasions[[10]](#footnote-10).

1. From 13 July 2018 to 4 October 2018, the Plaintiff was granted sick leaves of 84 days in total[[11]](#footnote-11).
2. According to the Certificate of Assessment dated 4 April 2019[[12]](#footnote-12) issued by the Employees’ Compensation (Ordinary Assessment) Board, the Plaintiff suffered from “*neck and back injury resulting in residual neck and back pain*”, and his loss of earning capacity was assessed at 1.5%[[13]](#footnote-13).

***B2. Summary of the Defendants’ Case***

*The 1st Defendant*

1. It is the Defendants’ pleaded case[[14]](#footnote-14) that “*the Plaintiff did not and had no need to apply brake to stop the [Bus], suddenly or otherwise, to avoid any crash accident*”.
2. Mr. Danny Chan, on behalf of the Defendants, submits that:-

(1) At the time when the Traffic Incident took place, the traffic on the SLK Bound of Mei Wan Street “*was more likely to be stationary, or at best slow moving*” [[15]](#footnote-15) .

(2) The evidence appears to show that the Private Car did not actually cut into the lane of the SLK Bound ahead of the Bus[[16]](#footnote-16).

1. In the premises, it is contended the 1st Defendant was not negligent and/or in breach of duties. It is further contended that if the Plaintiff had suffered injury as a result of the Traffic Incident, this was wholly (or partially) ascribed to the Plaintiff’s own negligence in that he unnecessarily stopped the Bus in an abrupt manner. There was hence contributory negligence on his part[[17]](#footnote-17).
2. Knowing that the conviction under WKS17478/2018 is prejudicial to his clients’ case, Mr. Chan skillfully argues that the conviction was irrelevant as the 1st Defendant was convicted on the basis that he drove “*on the wrong side of the road*”[[18]](#footnote-18). He points out the 1st Defendant was not convicted on the basis that he caused the Private Car to cut into the lane of the SLK Bound ahead of the Bus.
3. Mr. Chan also stresses that the Traffic Incident did not involve any actual collision, and there is no contemporaneous record showing that the Plaintiff reported his alleged injury to the Police at the scene[[19]](#footnote-19).
4. Insofar as the Plaintiff’s present disabilities and/or conditions are concerned, Mr. Chan contends that they were ascribed to the previous injuries suffered by the Plaintiffs in 1999/2000[[20]](#footnote-20), 2001[[21]](#footnote-21) and 2011[[22]](#footnote-22). After all, the Plaintiff was able to continue driving after the Traffic Incident occurred[[23]](#footnote-23), and he did not attend hospital until a few hours afterwards.
5. Mr. Chan also relies on the opinion expressed by Dr. Chun[[24]](#footnote-24). According to Dr. Chun, as the Traffic Incident did not involve any collision and breaking was a conscious act, no whiplash injury would be caused under normal circumstances[[25]](#footnote-25). Dr. Chun opined that the Plaintiff’s conditions were ascribed to pre-existing degeneration[[26]](#footnote-26).

*The 2nd Defendant*

1. The Defendants deny that there was any agency relationship or master-and-servant relationship between them[[27]](#footnote-27). It is the Defendants’ case that the 2nd Defendant simply allowed the 1st Defendant and other family members to use the Private Car[[28]](#footnote-28).

***LEGAL PRINCIPLS ON ASSESSING CREDIBILITY***

1. In *Lee Fu Wing v Yan Paul Po Ting* [2009] 5 HKLRD 513 at 524, DHCJ Au (as Au JA then was) set out the well-established approach on assessing credibility. In the course of assessing the credibility of a party’s case, the Court shall consider the following matters:
   1. whether the party’s case is inherently plausible or implausible;
   2. whether the party’s case is, in a material way, contradicted by other evidence (documentary or otherwise) which is undisputed or indisputable;
   3. where it is shown that a witness has been discredited over one or more matters to which he has given evidence using the above tests, this is relevant to the assessment of his overall credibility; and
   4. the demeanour of the witnesses.
2. This well-established approach has been followed in subsequent cases[[29]](#footnote-29). I will apply the same in assessing the credibility of the parties’ case.

***LIABILITY***

***D1. The Liability of the 1st Defendant***

1. Having considered the contemporaneous documents and having heard the oral testimony of the witnesses, I am of the view that the Plaintiff’s case is preferable.
2. I find that when the Traffic Incident took place, the 1st Defendant did drive the Private Vehicle at a high speed, and he did attempt to cut into the lane of the SLK Bound ahead of the Bus. At the time, the Bus was moving at a speed of around 30km/hour. In order to avoid collision, the Plaintiff immediately applied brake and caused the Bus to stop abruptly. As a result, the Plaintiff suffered injury on his neck and his back. As the pain increased, the Plaintiff sought medical assistance at the Prince Margaret Hospital in the early morning on 13th July 2018.
3. I come to the aforesaid findings for a number of reasons.
4. **First**, the medical record of the Accident & Emergency Department of the Prince Margaret Hospital dated 13th July 2018 (which was signed by a doctor)[[30]](#footnote-30) is a piece of compelling contemporaneous evidence that supports the Plaintiff’s case.
5. The medical record set out the circumstances in which the Plaintiff suffered injury. It was stated that:-

(1) the patient was a “*bus driver*”;

(2) “*another car tried to overtake the bus”;*

(3) “*patient saw a car on his right so stepped on brake immediately (speed 30km/hour)”;*

(4) “*No collision”*

(5) “*sprained neck and back…”*

1. As Mr. Chan fairly accepted, it is hardly controvertible that the aforesaid information was provided by the Plaintiff to the medical staff at the Prince Margaret Hospital who were expected to perform medical treatment on him. In my view, the Plaintiff provided the information in question because he wanted the medical staff to understand the circumstances in which he was injured, such that he would be given the appropriate medical treatment to alleviate pain and discomfort.
2. Indeed, the medical record shows that the Plaintiff was admitted to the Accident & Emergency Department of the Prince Margaret Hospital at 1:46am on 13th July 2018[[31]](#footnote-31), and the whole consultation took 2 hours and 52 minutes. It appears to me that the Plaintiff must be under considerable pain and discomfort at the time. Otherwise, he would not have visited a public hospital so early in the morning (or so late at the night) and spent around 3 hours there.
3. In the circumstances, the Plaintiff had every reason to tell the truth to the medical staff of Prince Margaret Hospital. It is inherently unlikely that the Plaintiff orchestrated this visit (so early in the morning or so late at the night)[[32]](#footnote-32) for the purposes of generating false records to be used for building up a bogus claim in the future.
4. In the premises, I find that the information contained in the medical record dated 13th July 2018 was truthful and reliable.
5. **Second**, in my view, the Plaintiff was an honest witness. At the trial, the Plaintiff strived to answer the questions put to him. He was cooperative, and willing to provide information that assisted the Court. His answers were always succinct and to the point. He was also willing to make concession without hesitation[[33]](#footnote-33).
6. The Plaintiff was unshaken during cross-examination. In this connection, I wish to say as follows:-

(1) The Plaintiff was adamant that although the Private Car did not actually cut into the lane of the SLK Bound in front of the Bus, the Private Car did attempt to do so as it approached at a high speed and stayed very near to the Bus. Hence, he immediately braked to cause the Bus to stop. The purpose of doing so was to enable the Private Car to pass by the Bus, such collision could be avoided.

(2) It appears to me that the version of events given by the Plaintiff is convincing, and consistent with the objective circumstances of the case.

(3) The Plaintiff was also adamant that after the Traffic Incident took place, he did say to the policemen that he felt pain, but he could continue driving.

(4) I do not think that the Defendants can make a song and dance about the fact that the statement made by the police officer dated 12th July 2018 was silent about the Plaintiff’s injury (*see* paragraph 34(2) below). This is hardly surprising as the focus of the statement made by the police officer was the 1st Defendant’s careless driving. In any event, the Plaintiff never alleged that his injury was very serious.

(5) It is true that Plaintiff only attended hospital to seek medical assistance a few hours after the Traffic Incident[[34]](#footnote-34). However, as Mr. Chan fairly accepted, it is not uncommon that the pain of a person who suffers physical injury might only exacerbate after sometime. As mentioned, the Plaintiff did attend the Prince Margaret Hospital during very late hours. Having observed the Plaintiff, I am not convinced that he is the kind of dishonest person who would orchestrate a self-serving visit to a hospital for the purpose of building up a false claim. In contrast, it appears to me that the Plaintiff is a diligent person who is serious about his job duties. This was why he insisted to complete his driving duties after the Traffic Incident occurred. In fact, the Plaintiff never claimed that his injury was so serious that he had to stop driving immediately.

(6) Insofar as the Plaintiff’s conditions are concerned, I disagree with the suggestion that the Plaintiff was evasive about his previous injuries. The injuries took place a long time ago back in 1999/2000[[35]](#footnote-35), 2001[[36]](#footnote-36) and 2011[[37]](#footnote-37). There is nothing odd about the fact that the Plaintiff only had vague recollection about the details. In any event, as will be elaborated below, it does not appear to me that the previous injuries had any direct correlation with the present injury.

(7) Lastly, Mr. Chan criticized the Plaintiff’s oral evidence in regard to the pain that he suffered at the time. In his oral evidence, the Plaintiff said that he felt painful on his back/shoulder in the beginning, and sometime later he started to feel painful on his neck. This does not appear to be consistent with the medical records on 13th July 2018 as well as the medical report dated 9th July 2020[[38]](#footnote-38), which recorded that the Plaintiff suffered from neck and back sprain and that he complained about back and neck pain.

(8) I agree with Mr. Chan’s submissions that there is an inconsistency. However, I disagree that the Plaintiff is dishonest. In determining whether a witness is dishonest and incredible, it is necessary to consider whether he or she has a motive to lie on the matter in question. I do not see why the Plaintiff would wish to deceive the Court as to when his neck pain started. He would not attain any advantage by alleging that the neck pain only started sometime after the Traffic Incident took place. This even creates an impression that the pain was not caused by the Traffic Incident. It appears to me the reality is such that the Plaintiff’s memory regarding the details of his pain has faded due to lapse of time. I am unable to accept the suggestion that the Plaintiff concocted the pain out of the blue or that he exaggerated his conditions. After all, the Plaintiff’s pain and injury (on both his neck and his back) were well-documented in the contemporaneous medical records[[39]](#footnote-39).

(9) Mr. Chan reminded me that there are unscrupulous claimants who concoct bogus claims out of greed, and they often seek to make a mountain out of a molehill. This might be true. However, having observed the Plaintiff and having considered the contemporaneous records and documents, I am not persuaded that this is one of those cases.

1. All in all, I find that the case and evidence of the Plaintiff makes sense and are credible.
2. **Third**, I am skeptical about the 1st Defendant’s case and evidence in regard to the Traffic Accident:

(1) In paragraph 5 of the Statement of Claim, it was expressly pleaded that “*the 1st Defendant suddenly veered the Private Car…and attempted to cut into the [SLK] Bound…”,* and the *“Plaintiff had to bake to stop the [Bus] immediately to avoid crash accident”.*

(2) In paragraph 5 of the Defence, the Defendants plead that “*the Plaintiff did not and had no need to apply brake to stop the [Bus], suddenly or otherwise, to avoid any crash accident*”. However, the reasons why the Plaintiff did not need to apply brake to stop the Bus were not pleaded. It was not pleaded that the 1st Defendant did not attempt to overtake the Bus; nor was it pleaded that the vehicles (including the Bus) on the SLK Bound were stationary or almost stationary.

(3) In his witness statement, the 1st Defendant did not spell out the reason why it was not necessary for the Bus to stop immediately and/or abruptly. He did not state that the Bus was stationary (or almost stationary) at the moments shortly before he stopped the Private Car[[40]](#footnote-40). He did not state that he was not attempting to overtake the Bus at the time.

(4) It is apparent that the circumstances in which the Traffic Incident took place are important in the present dispute. If it were true that the 1st Defendant did not seek to overtake the Bus and that the Bus was stationary (or almost stationary) at the time, these allegations should have been raised *expressly* and *unequivocally* in the pleadings and the witness statements.

(5) As such, I am skeptical about the 2nd Defendant’s oral evidence that the vehicles on the left lane (i.e. the SKL Bound) were stationary at the time. I am also skeptical about any suggestion that the 1st Defendant were not trying to cause the Private Vehicle to overtake the Bus at the time.

1. **Fourth**, I take into account that the Plaintiff’s case is by and large consistent with the evidence and materials[[41]](#footnote-41) from the driver of the Police Car, namely Mr. Chan Tak-Cheung, Alexander (the “**Police Driver**”) who was a senior police constable:-

(1) The Police Driver prepared a sketch on 12th July 2018 (the “**Sketch**”). It did show that the Private Car stopped on the right-hand side of the Bus towards its front. The Private Car leaned slightly towards the Bus. It was not the case that the Private Car and the Bus were parallel. In my view, the Sketch shows that the Private Car tried to overtake the Bus.

(2) The Police Driver also made a police statement dated 12th July 2018. There, he mentioned that the Private Car attempted to cut into the left lane (*i.e.* the lane of the SLK Bound) in front of the Bus. He also mentioned that at the time, he had to apply brake immediately to stop the Police Car in order to avoid collision with the Private Car. Later, he asked the 1st Defendant whether he understood that it was dangerous to overtake from a lane with on-coming traffic.

1. The Police Driver prepared the Sketch and his statement within the same day shortly after the Traffic Incident took place. It did not appear that he had any reason to put forward a version of events that was false.
2. However, I do not lose sight of the fact that the Police Driver did not give evidence in the present proceedings and he was not subject to cross-examination by the Defendants’ Counsel. As such, I remind myself that I should approach the aforesaid materials with some skepticism, and the weight that they carry must be limited.
3. For all the above reasons, I accept the Plaintiff’s case, and I make the findings set out in paragraph 22 above.
4. I find that the 1st Defendant was negligent and in breach of the duties set out in paragraph 5 above. He should not have driven the Private Car on the opposing lane against prescribed direction. He should not have attempted to cause the Private Car to overtake the vehicles (including the Bus) on the SLK Bound without observing and paying sufficient notice to the road conditions. He should not have caused the Private Car to approach the Bus and to stay near to the Bus without giving sufficient warning and/or notice in advance. He should not have attempted to cause the Private Car to overtake the Bus without giving sufficient warning and/or notice in advance. He should not have attempted to cause the Private Car to overtake the Bus when there was insufficient distance between the two vehicles.
5. I find that as a result of the 1st Defendant’s negligence and/or breach of duties, the Plaintiff had to apply brakes abruptly in order to stop the Bus immediately, such that collusion could be avoided. I also find that the Plaintiff was reasonable, and he could not be criticized. I accordingly reject the Defendants’ contention on contributory negligence.
6. For all the above reasons, I hold that the 1st Defendant is liable to the Plaintiff for damages.

***D2. The Liability of the 2nd Defendant***

1. However, I am unable to find that the 2nd Defendant is vicariously liable for the 1st Defendant’s negligence and/or breach of duties.
2. The mere fact that a person permits his close family members to use his vehicle is *ipso facto* insufficient to establish various liability: *Norwood v Navan* [1981] RTR 457 at 461D-K (*per* Ormrod LJ); *Lau Tat Wing v Lo Oi Ming & Anor* [2018] HKDC 1203 at para 38 (*per* Deputy District Judge Christopher Chain).
3. In the present case, there is simply no evidential basis to suggest that the 1st Defendant acted as the 2nd Defendant’s agent or servant at the time of the Traffic Incident. There is not a shred of evidence showing that the 1st Defendant were carrying out any task or performing any duty for the 2nd Defendant. I cannot see how I can draw an inference of agency from the mere fact that the 2nd Defendant paid for the insurance policy in respect of the Private Car that covered the 1st Defendant as an additional driver. This fact merely shows that the 2nd Defendant permitted the 1st Defendant to use the Private Vehicle from time to time.
4. Mr. Tam fairly accepts that the evidence is thin. This is an understatement. I am afraid to point out that the Plaintiff’s case against the 2nd Defendant is completely hollow.
5. During cross-examination, the 2nd Defendant told the Court that:-

(1) Members of his family, including the 1st Defendant and himself, lived in the same residential complex (but in different units). His family had two cars (one of which was the Private Car). Whilst the 2nd Defendant and the Defendants’ father paid the majority of the expenses, the 1st Defendant also made some contribution.

(2) He was the school manager of a kindergarten in Kowloon, which involved investments from his family as well as outsiders. He received salaries from the kindergarten, but *not* subsidies for vehicle expenses. Whilst the 1st Defendant worked as an IT manager for the same kindergarten that employed him, the 1st Defendant reported to the principal of the kindergarten (*not* himself).

1. It appears to me that the 2nd Defendant was a truthful and honest witness who had nothing to hide. His evidence was direct and succinct. I accept the 2nd Defendant’s evidence.
2. On the evidence, there is plainly no room to contend a relationship of agency existed between the 1st and 2nd Defendants. As such, the 2nd Defendant could not be vicariously liable for the 1st Defendant’s negligence and/or breach of duties.
3. I accordingly dismiss the Plaintiff’s claims against the 2nd Defendant.

***QUANTUM***

***E1. Causation***

1. In considering the disagreement between the medical experts of the parties on the question of causation, I bear in mind the guidance given by the Court of Appeal in *Lee Kin-kai v Ocean Tramping Co Ltd t/a Ocean Tramping Workshop* [1991] 2 HKLR 232 on the approach.
2. In *Wong Pou Yin Kennie v Maxim’s Caterers Ltd* (HCPI 753/2009, 11th May 2012) at para 38, To J stated:-

“…Causation is essentially a matter for the judge and not doctors. **The judge will be assisted by medical evidence but is not bound by it. The law and medicine apply different standards as regards causation.** Doctors practise the science of aetiology. They look for clinical cause or irrefragable chain of causation which is to be proved beyond reasonable doubt. But, **in law there is causation if it is shown on a balance of probabilities that the accident was a substantial contributing cause of the injury. It does not need to be the sole cause.  In considering causation, the judge is bound to use common sense.**”

1. It is also pertinent to refer to the following propositions in *Clerk & Lindsell on Torts* (23rd Ed), para 2-09 and *Charlesworth & Percy on Negligence* (15th Ed), para 5-04, which were cited in a recent judgment, namely *Leung Mui Yi v Fu Hong Society* [2023] HKDC 36, para 85-86 (*per* Deputy District Judge Teresa Wu):

“85. 正如第二被告人強調，原告人承擔舉證責任，須提出足夠證據證明若非因為第二被告人的疏忽，則原告人不會蒙受相關損害，即在建立侵權責任的因果關係中的「若非」標準（“but-for” test）。Clerk & Lindsell on Torts (23rd Ed) §2-09對該原則的應用有以下觀察（另見§§2-05 & 2-07）：

“**The first step in establishing causation is to eliminate irrelevant causes, and this is the purpose of the ‘but for’ test**. The courts are concerned, not to identify all of the possible causes of a particular incident, but with the effective cause of the resulting damage in order to assign responsibility for that damage. **The ‘but for’ test asks: would the damage of which the claimant complains have occurred ‘but for’ the negligence (or other wrongdoing) of the defendant? Or to put it more accurately, can the claimant adduce evidence to show that it is more likely than not, more than 50 per cent probable, that ‘but for’ the defendant’s wrongdoing the relevant damage would not have occurred**. (**粗體底線後加**)”

86. 雖然原告人不需證明第二被告人的的疏忽是唯一導致她受傷的原因，但她必須證明那是必要的原因。Charlesworth & Percy on Negligence (15th Ed) §5-04指出：

“The ‘but for’ rule is generally the starting point in proving a causal connection between negligent conduct and the damage suffered. **The claimant seeks to show that but for the defendant’s negligence the injury complained of would not have arisen. If he succeeds, there is no additional requirement to show that the defendant’s negligence was the only, or the single, or even chronologically the last cause of injury**. This threshold ‘but for’ test is based on the presence or absence of one particular type of causal connection: **whether the wrongful conduct was a necessary condition of the occurrence of the harm or loss**. The test does not distinguish between legally relevant and other causes, yet it is not its function to do this. **It identifies whether the conduct in question was a factual cause**. At this stage we do not need to concern ourselves with all the other factors which combined to produce the total environment in which the damage could happen. **So it is often — and for most purposes correctly — described as a minimum threshold test of causation**. (**粗體底線後加**)”

1. Applying the legal principles, I am of the view that the conditions suffered by the Plaintiff was caused by and/or ascribed to the Traffic Incident, and I am also of the view that the opinion of Dr. Chan (*i.e.* the Plaintiff’s medical expert) is preferable to the opinion of Dr. Chun (*i.e.* the Defendant’s medical expert).
2. I come to these views for the following reasons.
3. There is no evidence showing that the Plaintiff had been suffering from any pain or discomfort (whether relating to his neck, back or otherwise) before the Traffic Accident took place on 12th July 2018. The evidence shows that shortly after the evidence took place, the Plaintiff was admitted to the Accident & Emergency Department Prince Margaret Hospital in the early morning of 13th July 2018 at 1:46am, and he spent almost 3 hours there[[42]](#footnote-42). As discussed above, I accepted that the Plaintiff must be under considerable pain and discomfort at the time. In light of the proximity between the time when the Traffic Incident occurred and the time when the Plaintiff sought medical assistance, I am of the view it is more likely than not that the Plaintiff’s pain and discomfort was substantially caused by and/or ascribed to the Traffic Incident, and he would not have suffered the conditions in question but for the Traffic Accident.
4. In the subsequent months, the Plaintiff further (i) attended the Prince Margaret Hospital on 6 more occasions; (ii) sought diagnosis and treatment from out-patient clinics and private medical practitioners on 14 occasions; and (iii) attended physiotherapy sessions on 7 occasions. These medical and/or physiotherapy sessions were evidenced by contemporaneous records. I have no doubt that that the Plaintiff attended these medical and/or physiotherapy sessions in order to alleviate the pain and discomfort that he was suffering at the time.
5. It is true that the Plaintiff suffered previous injuries in 1999/2000[[43]](#footnote-43), 2001[[44]](#footnote-44) and 2011. However, I am unable to find that these previous injuries were a substantial cause of the conditions suffered by the Plaintiff after the Traffic Incident[[45]](#footnote-45):-

(1) The injury that took place in 1999/2000 concerned the Plaintiff’s low back, whereas the injury that took place in 2001 took place in 2001 concerned the Plaintiff’s shoulder. These injuries took place almost two decades before Traffic Incident. As mentioned, there is no evidence showing that the Plaintiff had been suffering from any physical pain or discomfort on his back, his neck and/or his shoulder before the Traffic Incident took place. Further, there is also no evidence showing that the Plaintiff had been seeking medical treatment or medical assistance (whether in relation to his back, his neck or his shoulder) before the Traffic Accident took place. As such, I am of the view it is more likely than not that the conditions suffered by the Plaintiff after 12th July 2018 were not caused by the previous injuries back in 1999/2000 and 2001 (which were almost 2 decades ago).

(2) As regards the injury in 2011, it was concerned with the Plaintiff’s hand (including wrist, scaphoid, metacarpal bone and finger). Obviously, this had nothing to do with the conditions suffered by the Plaintiff in relation to his neck and/or his back. In any event, there was a time gap of 7 years between the Traffic Incident and this previous injury. I cannot see any correlation between the two.

1. I have also carefully considered the joint medical report prepared by Dr. Chun and Dr. Chan. Dr. Chun opined that the Plaintiff’s conditions were ascribed to pre-existing degeneration. It appears the bases of Dr. Chun’s opinion were that (i) without a collision, there should be no impact force on the Plaintiff’s body; and (ii) the braking was a conscious act that would not cause whiplash injury under normal circumstances[[46]](#footnote-46).
2. I have reservations about these suggestions:-

(1) I disagree that there was no impact force on the Plaintiff’s body simply because there was no collision. This is a matter of common sense. As the Plaintiff had to stop the Bus in an abrupt manner when the Bus was moving around 30km/hour, there must be some impact force on the Plaintiff’s body.

(2) When the Plaintiff saw the Private Car, he only had a very limited amount of time to react within one or two seconds. This was a matter of reaction. In the words of the Plaintiff, his act of applying brake to stop the Bus immediately was the instinct of a professional driver. It appears what the Plaintiff tried to say was that he applied brake to stop the Bus as a matter of reflex. It was not the case that the Plaintiff had ample time to consider what to do in the circumstances, such that he could adjust and prepare his body accordingly. As a matter of common sense, it was perfectly explicable as to why the Plaintiff would suffer whiplash injury.

1. In the premises, I prefer the opinion of Dr. Chan (*i.e.* the Plaintiff’s medical expert), which appears to be more consistent with the facts and objective circumstances of the case.
2. For all the above reasons, I find that the Traffic Incident (and the 1st Defendant’s negligence and/or breach of duties) were, on the balance of probabilities, the substantial contributing cause of the neck and back soft issue sprained injury suffered by the Plaintiff, and the Plaintiff would not have suffered these conditions but for the Traffic Incident (and the 1st Defendant’s negligence and/or breach of duties).

***E2. PSLA***

1. Whilst the Plaintiff claims HK$150,000 under this head, the Defendants suggest HK$10,000.
2. Mr. Tam referred me to *Ding Kwok Keung v Moretide Investment Ltd* [2018] HKDC 605; *So Kim Lung v Lee Pak Wai* (HCPI 494/2010, 1st November 2012); *Yeung Ho Man v Shun Kin Leung & Anor* [2020] HKCFI 2531; *Lee Chit Ming v Man Siu Hung* (HCPI 1242/2014, 15th March 2017); *Ip Siu Fung v Hung Wai Sum* [2021] HKDC 534; and *Ki Tak Yan v IO of Kam Yuen Building & Anor* [2020] HKCFI 2956.
3. Mr. Chan referred to *Siu Lai Yee v Wong King Hay* [2021] HKDC 1304; *Wong Pou Yiu Kennie v Maxim’s Caterers Ltd* (*supra*); *Wong Tak v Lau Yue Hung* (HCA 7526/1981, 14th December 1983); *Lau Tak Ting v Lo Oi Ming* [2018] HKDC 1203.
4. Whilst each case will have to be decided on its own facts, I have considered the cases cited by Counsel as reference. It does not appear to me that the cases cited by Mr. Chan are appropriate comparables. For instance, *Siu Lai Yee* (*supra*) concerned a female driver who was sternly criticized by the Court for concocting and exaggerating alleged injuries on multiple respects, and the learned Judge held that she only suffered a minor sprain of the soft issue of her neck. As such, the learned Judge considered that a sum of HK$10,000 was reasonable.
5. I am of the view that *Ding Kwok Keung* (*supra*) and *So Kim Lung* (*supra*) are more appropriate comparables:

(1) In *Ding Kwok Keung* (*supra*), the plaintiff was a 52-year old driver and lorry worker who suffered a mild sprained back injury without neurological complication. At the time when the joint examination took place, he was in a satisfactory state, and he had full range of back movement. PSLA was awarded at HK$150,000.

(2) In *So Kim Lung* (*supra*), the plaintiff was a mini-bus driver who suffered whiplash injury. He suffered injury to his lower back and neck with no neurological complication. He was granted sick leave of 6 months. PSLA was awarded at HK$120,000.

1. I have carefully compared the factual circumstances of the present case with the factual circumstances of the cases cited by both Counsel. Taking all the circumstances into account, I am of the view that a sum of HK$120,000 would be adequate and reasonable.

***E3. Pre-Trial Loss of Earnings***

1. The Plaintiff’s monthly salary was HK$33,164.31, and he was granted 84 days’ sick leave[[47]](#footnote-47).
2. Whilst Dr. Chun opines that reasonable sick leave should be 2 days, Dr. Chan opines that the sick leave granted by the doctors who treated the Plaintiff from time to time were appropriate[[48]](#footnote-48).
3. In *Tam Fu Yip Fip v Sincere Engineering & Trading Company Limited* [2008] 5 HKLRD 210 at para 18, Le Pichon JA held that the Court is not bound by the mere issue of sick leave certificates, and the same are no more than a piece of evidence that has to be evaluated in light of all the available evidence.
4. Hence, the Court has to form its own opinion on the sick leave granted based on the totality of the evidence: *see Rai Surya Prakash v Pacific Crown Security Services Ltd & Anor* [2020] HKCFI 917, para 42 (*per* DHCJ Anson Wong SC).
5. I have carefully considered the medical evidence before me as well as materials that were used for the purposes of employees’ compensation. It cannot be said that the injury suffered by the Plaintiff was very serious. It appears to me that sick leave of 60 days should be adequate and reasonable in the circumstances.
6. On this basis, the award for loss of earnings is HK$69,645.05 (*i.e.* HK$33,164.31 x 60/30 months x 1.05).

***E4. Loss of Earning Capacity***

1. The Defendants contend that the Plaintiff has resumed his job as a bus driver without limitation or restriction, and there is no substantial risk that the Plaintiff may lose his job. Hence, he is not entitled to claim any damages under this head[[49]](#footnote-49).
2. However, as pointed out by the Plaintiff during cross-examination, he was already 60 years’ old, and he wished to extend his employment with Kowloon Motor Bus Co. (1933) Ltd (“**KBM**”). In considering whether his employment would be extended, KMB would consider the records in respect of the Plaintiff’s injuries, accidents and sick leaves in the past. As of the time when the trial took place, the Plaintiff had not yet known whether his employment would be extended.
3. The Plaintiff’s evidence makes sense, and is neither contradicted nor seriously disputed.
4. I accept the Plaintiff’s evidence. I also accept that the Plaintiff will suffer a disadvantage due to the injury arising from the Traffic Incident. There is a real risk that he may not be able to extend the employment as per his wish.
5. However, bearing in mind that the injury was not very serious, I am only prepared to award a sum of HK$66,328.62 under this head, representing 2 months of the Plaintiff’s salary at the time of the Traffic Incident.

***E4. Special Damages/Pretrial Expenses***

1. As pleaded in the Revised Statement of Damages[[50]](#footnote-50), the Plaintiff claims a sum of HK$18,000 that cover medical expenses, travelling expenses and tonic food.
2. The documentary evidence[[51]](#footnote-51) shows that the Plaintiff incurred no less than HK$24,855 on medical treatments and tonic food[[52]](#footnote-52). Having considered the available documents and the Plaintiff’s evidence, I accept that these expenses were reasonable and appropriate.
3. I accordingly award the sum of HK$18,000 as pleaded[[53]](#footnote-53).

***CONCLUSION***

***F1. Claims against the 1st Defendant***

1. In the premises, the Plaintiff is entitled to damages against the 1st Defendant, and the summary of my awards is as follows:

|  |  |
| --- | --- |
| PSLA | HK$120,000 |
| Pre-Trial Loss of Earnings & MPF | HK$69,645.05 |
| Loss of Earning Capacity | HK$66,328.62 |
| Special Damages | HK$18,000 |
|  | Sub-total: HK$273,973.67 |
| *Less* Employee’s Compensation (agreed) | (HK$107,273.41) |
|  | **Total: HK$166,700.26** |

1. I order that the 1st Defendant do pay HK$166,700.26 as damages to the Plaintiff.
2. I also award interest in favour of the Plaintiff as follows:

(1) Interest on general damages for PSLA at 2% per annum from the date of service of the Writ of this Action up to the date of the present Judgment (and thereafter at judgment rate until payment); and

(2) Interest on Pre-Trial Loss of Earnings and Special damages at half of the judgment rate from the date of the Traffic Incident (*i.e.* 12th July 2018) to the date of this Judgment (and thereafter at judgment rate until payment).

***F2. Claims against the 2nd Defendant***

1. I order that the Plaintiff’s claims against the 2nd Defendant in this Action be dismissed.

***F3. Costs***

1. The starting point is that costs should follow the event, and the winner is entitled to costs.
2. Whilst the Plaintiff is the winner in respect of the claims against the 1st Defendant, he is the loser in respect of the claims against the 2nd Defendant.
3. I do not lose sight of the fact that the 1st and 2nd Defendants retain the same legal representatives and ran the same case based on a joint pleading.
4. However, in *Chow Kwan Yee v Leung Mei Yin May & Anor* [2021] HKCA 832 at para 5, G. Lam J (as G. Lam JA then was) stated:-

“The fact that the defendants have jointly incurred costs does not mean that they are to be lumped together for all purposes relating to costs. It is for a plaintiff to choose which persons to sue, and if she chooses to sue, among others, someone who is ultimately found not liable, prima facie she should be ordered to pay the costs of the successful defendant. The fact is that the plaintiff has failed in her action vis-a-vis the 2nd defendant.”

1. In the premises, it appears to me that there shall be two sets of costs, instead of one set of costs. Whilst the Plaintiff is entitled to recover his costs from the 1st Defendant, the 2nd Defendant is entitled to recover his costs from the Plaintiff.
2. I make a costs order *nisi* that:-

(1) The 1st Defendant do pay the Plaintiff’s costs in the proceedings under this Action, to be taxed if not agreed (with certificate for Counsel); and

(2) The Plaintiff do pay the 2nd Defendant costs in the proceedings under this Action, to be taxed if not agreed (with certificate for Counsel).

1. Any application to vary the said costs order *nisi* shall be made within 14 days.
2. Lastly, I express my gratitude to Mr. Tam and Mr. Chan who have rendered helpful assistance to me.

( Alan Kwong )

Deputy District Judge

Mr Tam Nok Ting, Counsel instructed by Huen & Partners,

for the plaintiff

Mr Chan Kin Keung Danny, Counsel instructed by Francis Kong & Co, for the 1st and 2nd defendants

1. See paragraph 7 of the 1st Defendant’s Witness Statement [↑](#footnote-ref-1)
2. See paragraph 9 of the 1st Defendant’s Witness Statement [↑](#footnote-ref-2)
3. See the sketch prepared by the police officer at page 182 of the Trial Bundle. During cross-examination, the 1st Defendant accepted that the sketch was by and large a fair depiction of the Traffic Incident. [↑](#footnote-ref-3)
4. See paragraph 5 of Statement of Claim [↑](#footnote-ref-4)
5. See paragraph 5 of Statement of Claim [↑](#footnote-ref-5)
6. These complaints are included in the particulars under paragraph 6(a)-(k) of the Statement of Claim [↑](#footnote-ref-6)
7. See paragraph 6 of the Statement of Claim [↑](#footnote-ref-7)
8. See paragraph 20 of the Plaintiff’s Opening Submissions [↑](#footnote-ref-8)
9. See page 139 of the Trial Bundle, which is the contemporaneous medical record issued by Princess Margaret Hospital (Accident & Emergency Department) [↑](#footnote-ref-9)
10. These facts are pleaded in paragraphs 3 to 6 of the Revised Statement of Damages [↑](#footnote-ref-10)
11. Pleaded in paragraph 9 of Revised Statement of Damages. See also the Schedule of Sick Leave helpfully prepared by the Plaintiff’s legal team, which is produced at page 175 of the Trial Bundle. [↑](#footnote-ref-11)
12. Trial Bundle, page 200 [↑](#footnote-ref-12)
13. Pleaded in paragraph 9 of Revised Statement of Damages [↑](#footnote-ref-13)
14. See paragraph 5 of the Defence [↑](#footnote-ref-14)
15. See paragraph 24-34 of the Defendants’ Opening Submissions [↑](#footnote-ref-15)
16. See paragraph 35-42 of the Defendants’ Opening Submissions [↑](#footnote-ref-16)
17. See paragraphs 51-53 of the Defendants’ Opening Submissions. See also paragraph 7 of the Defence. [↑](#footnote-ref-17)
18. See paragraph 43-44 of the Defendants’ Opening Submissions. See also the summary of facts at page 192 of the Trial Bundle. [↑](#footnote-ref-18)
19. See paragraph 4 of the Defendants’ Opening Submissions [↑](#footnote-ref-19)
20. See Defendants’ Opening Submissions, paragraph 83(d)(i)-(ii). This appeared to be a back injury arising from a traffic accident. The Plaintiff was granted 50 days’ sick leave, and on 20th August 2000, it was assessed that he suffered 2.5% permanent incapacity. [↑](#footnote-ref-20)
21. See Defendants’ Opening Submissions, paragraph 83(d)(iii). This appeared to be injury to the Plaintiff’s arm and shoulder [↑](#footnote-ref-21)
22. See Defendants’ Opening Submissions, paragraph 83(d)(iv). This appeared to be injury to the Plaintiff’s hand, including wrist, scaphoid, metacarpal bone and finger. In his oral evidence, the Plaintiff said that this injury was due to a fight with his wife. [↑](#footnote-ref-22)
23. Defendants’ Opening Submissions, paragraph 84(c) [↑](#footnote-ref-23)
24. He is the Defendant’s medical expert. [↑](#footnote-ref-24)
25. See Joint Medical Report, paragraph 100 (page 119 of Trial Bundle); Defendants’ Opening Submissions, paragraph 84(b) [↑](#footnote-ref-25)
26. See Joint Medical Report, paragraph 104-107 (page 122 of Trial Bundle); Defendants’ Opening Submissions, paragraph 84(a) [↑](#footnote-ref-26)
27. See paragraph 6 of the Defence; Defendants’ Opening Submissions, paragraph 49 [↑](#footnote-ref-27)
28. See paragraph 4-6 of the 2nd Defendant’s Witness Statement [↑](#footnote-ref-28)
29. *see e.g. Hui Chi Ming v Koon Wing Yee* [2023] HKCFI 93 at para 147; *Salleh Abu Baker v Anway Ltd* [2021] HKCFI 3407 at para 12 (*per* Recorder William Wong S.C.). [↑](#footnote-ref-29)
30. Page 139 of the Trial Bundle [↑](#footnote-ref-30)
31. Mr. Chan correctly pointed out that this was the time when the Plaintiff was admitted to Accident & Emergency Department, and the Plaintiff probably arrived at the Price Margaret Hospital earlier. There is no evidence showing the exact time when the Plaintiff first arrived at the Price Margaret Hospital. However, this must be within a few hours before 1:46am on 13th July 2018. This was still very late at the night. [↑](#footnote-ref-31)
32. Ditto [↑](#footnote-ref-32)
33. For instance, he readily admitted his employer paid 4/5 of his salaries in respect of sick leaves. He also readily admitted that he purchased Thaikal pills and Lingzhi pill (which were tonic foods or health supplements) upon the recommendation of some friends, *not* doctors or medical professionals. He also readily admitted that the Private Car never actually cut into the lane and stayed in front of the Bus, but he insisted that the Private Car was attempting to do so. [↑](#footnote-ref-33)
34. According to the Statement of Claim, para 3, the Traffic Incident took place at 16:54 of 12th July 2018. It appears that this is based on paragraph 3 of the statement made by the Police Driver produced at page 183 of the Trial Bundle. [↑](#footnote-ref-34)
35. See Defendants’ Opening Submissions, paragraph 83(d)(i)-(ii). This appeared to be a back injury arising from a traffic accident. The Plaintiff was granted 50 days’ sick leave, and on 20th August 2000, it was assessed that he suffered 2.5% permanent incapacity. [↑](#footnote-ref-35)
36. See Defendants’ Opening Submissions, paragraph 83(d)(iii). This appeared to be injury to the Plaintiff’s arm and shoulder [↑](#footnote-ref-36)
37. See Defendants’ Opening Submissions, paragraph 83(d)(iv). This appeared to be injury to the Plaintiff’s hand, including wrist, scaphoid, metacarpal bone and finger. In his oral evidence, the Plaintiff said that this injury was due to a fight with his wife. [↑](#footnote-ref-37)
38. Page 93 of the Trial Bundle [↑](#footnote-ref-38)
39. E.g. see the records and reports produced at pages 87 to 93 of the Trial Bundle [↑](#footnote-ref-39)
40. In all fairness, in paragraph 7 of his Witness Statement, the 1st Defendant did say that the traffic in front of him (on the SLK Bound) was heavy and were not moving as the vehicles seemed to be waiting for a left turn. However, it appears that this refers to time shortly before the Traffic Incident took place, not the moments when there was almost a collision. [↑](#footnote-ref-40)
41. Pursuant to paragraphs 3 and 4 of the consent order made by Master Matthew Leung dated 27th October 2020, these police materials were admitted as evidence and placed in trial bundle for reference [↑](#footnote-ref-41)
42. See medical record dated 13th July 2018 at page 139 of the Trial Bundle [↑](#footnote-ref-42)
43. See Defendants’ Opening Submissions, paragraph 83(d)(i)-(ii). This appeared to be a back injury arising from a traffic accident. The Plaintiff was granted 50 days’ sick leave, and on 20th August 2000, it was assessed that he suffered 2.5% permanent incapacity. [↑](#footnote-ref-43)
44. See Defendants’ Opening Submissions, paragraph 83(d)(iii). This appeared to be injury to the Plaintiff’s arm and shoulder [↑](#footnote-ref-44)
45. See Defendants’ Opening Submissions, paragraph 83(d)(iv). This appeared to be injury to the Plaintiff’s hand, including wrist, scaphoid, metacarpal bone and finger. In his oral evidence, the Plaintiff said that this injury was due to a fight with his wife. [↑](#footnote-ref-45)
46. Paragraph 100 of the joint medical report produced at page 119 of the Trial Bundle. [↑](#footnote-ref-46)
47. See table of sick leave at page 175 of the Trial Bundle [↑](#footnote-ref-47)
48. See paragraphs 129 to 130 of the Joint Medical Report (page 126 of the Trial Bundle) [↑](#footnote-ref-48)
49. Defendants’ Opening Submissions, para 97-101 and Closing Submissions, para 64-68. [↑](#footnote-ref-49)
50. Paragraph 30 [↑](#footnote-ref-50)
51. See the schedule at pages 176-177 of the Trial Bundle. As clarified by Mr. Tam, the items in this Schedule also include expenses on tonic good. Mr. Tam has also helpfully provided me with the bundle references in respect of the individual items in the Schedule. [↑](#footnote-ref-51)
52. As clarified by the Plaintiff in his oral evidence, the tonic food purchased were Thaikal pills and Lingzhi pill. They were recommended by friends. [↑](#footnote-ref-52)
53. Mr. Tam fairly accepted that the Plaintiff would adhere to the sum of HK$18,000 as pleaded. [↑](#footnote-ref-53)