## DCPI 1341/2009

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 1341 OF 2009

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| BETWEEN | LI CHUEN | Plaintiff |
|  | and |  |
|  | MAN WAI CHEUNG | Defendant |

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Coram : Her Honour Judge Mimmie Chan in Court

Dates of hearing : 8 & 9 March, 2011

Date of handing down Judgment : 11 April, 2011

# JUDGMENT

**Background**

1. The Plaintiff, Mr. Li, was injured in the neck when his private car was hit from behind by the private car driven by the Defendant, Mr. Man. These proceedings are instituted by Mr. Li for damages in respect of the personal injuries he suffered as a result of the accident.
2. According to Mr. Li, he had stopped and parked his vehicle bearing registration number HX412 ("**Plaintiff's Vehicle**") on the right side of Hong King Street in Yuen Long on 20 September 2008. It was some time after 12 noon, and Mr. Li was waiting in his car, with the engine running, for a friend. Mr. Li's car was parked just before a bend or turn in the street, at a straight part of the street. According to Mr. Li, there were no vehicles in front of the Plaintiff's Vehicle, while a white vehicle was parked behind his car. There was a motorcycle and other vehicles parked behind the white vehicle. After some time, the white vehicle immediately behind the Plaintiff's Vehicle was driven away. Mr. Li claims that he then saw Mr. Man drive his car (vehicle bearing registration number HZ 3684 ("**Defendant's Vehicle**")) into Hong King Street, and then into the space behind the Plaintiff's Vehicle. According to Mr. Li, as Mr. Man was maneuvering the Defendant's Vehicle in his attempt to park the Defendant's Vehicle into the space behind the Plaintiff's Vehicle, the Defendant's Vehicle hit the rear of the Plaintiff's Vehicle, which had throughout remained stationary. Mr. Li claims that the collision was caused as a result of Mr. Man's negligence.
3. According to Mr. Man's defence, he had driven the Defendant's Vehicle, front first, into the empty space behind the Plaintiff's Vehicle. He then maneuvered the Defendant's Vehicle to the left, stopped the vehicle, and was about to reverse into the parking space again, when he saw the rear lights of the Plaintiff's Vehicle light up. Mr. Man claims that he immediately sounded his horn, to warn Mr. Li not to hit the Defendant's Vehicle, but the Plaintiff's Vehicle continued to reverse and collided into the front part of the Defendant's Vehicle. According to Mr. Man, the accident was hence caused entirely by the negligence of Mr. Li.
4. Mr. Li sustained soft tissue injury to his neck as a result of the accident.

**The issues**

1. The issues for determination at trial are:
   1. Was the accident caused by the negligence of Mr. Man?
   2. If the accident was caused by the negligence of Mr. Man, what are the damages recoverable by Mr. Li?

**Was the accident caused by the negligence of Mr. Man?**

1. The question of Mr. Man's liability turns on my factual finding on whether Mr. Li had reversed the Plaintiff’s vehicle, or whether the Plaintiff's Vehicle had remained stationary all along, and that it was Mr. Man who had negligently hit the Plaintiff's Vehicle from behind, in the course of Mr. Man's negligent maneuvering of the Defendant's Vehicle when parking it. This in turn depends on whether I prefer Mr. Li's, or Mr. Man's, version of the events.
2. On the facts of this case, I cannot agree, as Counsel for Mr. Li suggests, that the position of the damage at the left rear of the Plaintiff's Vehicle is more consistent with Mr. Li's claim. I do not see the damage to the vehicles as being illustrative of how the collision had taken place in this case.
3. It is Mr. Man's case throughout, from the time when he made his statement to the police, until trial, that he had sounded his horn before the collision. Mr. Li's evidence at trial, when he was asked whether he had heard Mr. Man sounding his horn, was simply that he had not paid attention.
4. Both parties have sought to rely on various statements which had been made to the police shortly after the accident in September 2008.
5. Mr. Man relies on the police statement made by Mr. Tam Kin Cheung ("**Mr. Tam**"), who was at the material time working at Midland Realty ("**Midland**"). The collision took place just outside the shop premises of Midland on Hong King Street. According to Mr. Tam, he had heard a vehicle sounding its horn outside Midland's premises at about 12:20pm on 20 September 2008, and when he looked outside, he saw two vehicles. He did not know from which vehicle the sound of the horn had come. Mr. Tam then saw two persons alight from the vehicles to confer. He did not know what had happened, but a policeman came in later into Midland's premises and asked Mr. Tam if he had witnessed a traffic accident. Mr. Tam told the police that he had not witnessed the actual collision, but had heard the sound of the horn of a vehicle.
6. Counsel for Mr. Li sought to make a distinction as to whether Mr. Man had sounded the horn of his vehicle once (as Mr. Tam suggests), or twice (as Mr. Man claims). I do not regard such distinction to be of material significance, if I accept that Mr. Man had indeed sounded his horn.
7. Although Counsel for Mr. Li described Mr. Man as a "shifty and unimpressive" witness, I do not agree that there were material changes in Mr. Man's evidence, as Counsel suggests. It is true that whilst Mr. Man had stated in his statement made to the police after the accident that he had seen the rear lights of the Plaintiff's Vehicle come on, and then had seen the Plaintiff's Vehicle reverse before he sounded his horn, Mr. Man claimed when cross-examined in Court that he had sounded his horn when he saw the rear lights come on as he had sensed that the Plaintiff's Vehicle would reverse. However, Mr. Man did explain that the sight of the rear lights coming on, the reverse of the Plaintiff's Vehicle, and his sounding of the horn had all happened within seconds, one following the other closely, such that it was not possible for him to particularize the exact sequence of events. I am satisfied that as the accident and the events, from the time when Mr. Man maneuvered the Defendant's Vehicle to the left and stopped, to his sounding his horn and the moment of collision, all took place within seconds, it would be impossible in the normal course for Mr. Man to recall the exact sequence and minute details of these events.
8. Mr. Man's evidence is that after the collision, Mr. Li had moved the Plaintiff's Vehicle forward. Counsel for Mr. Li had criticized Mr. Man's credibility by drawing distinction between the claim made in Mr. Man's statement to the police that the Plaintiff's Vehicle had been moved 2 to 3 feet forward, and his claim in the statement filed in these proceedings that the Plaintiff's Vehicle had been moved 1 to 2 feet forward. Again, I do not find this inconsistency to be material, bearing in mind, as Mr. Man's Counsel has pointed out, that Mr. Man was in the Defendant's Vehicle which was behind the Plaintiff's Vehicle at the material time, and that it would have been difficult for Mr. Man to make an accurate assessment as to the distance which the Plaintiff's Vehicle had moved forward.
9. Overall, I find Mr. Man's evidence to be credible, and consistent in the material respects. I believe his evidence that he had sounded his horn before the collision. It follows that I accept his claim that he had sounded his horn because he saw the rear lights of the Plaintiff's Vehicle come on and the Plaintiff's Vehicle reversing.
10. On the other hand, I do not regard Mr. Li to be totally honest and reliable as a witness. His initial claim that he had not been injured or involved in any traffic accident before 20 September 2008, and his evidence on the effects of an earlier motor car accident which took place in August 2008 are contradicted by the medical records of Dr. Kenric Lau who had treated him. According to Dr. Lau, Mr. Li was still suffering from a sprained back as a result of the accident in August 2008, with 60% limitation in the range of movement in his lower back on 24 September 2008.
11. Further, Mr. Li's evidence in relation to his income from his business as a decoration work contractor has not impressed me as being forthright. The bank statements which he produced to support his claim of alleged loss of income do not support his claim of a profitable business from which he allegedly obtained income of approximately $10,000 per month, representing one third of his alleged average monthly income of $30,000. Contrary to Mr. Li's claims, Counsel for Mr. Man has shown that at least on the face of the bank statements produced by Mr. Li, Mr. Li's business was operating at a loss, when one considers the expenses and withdrawals made from the account and the evidence of the limited deposits made.
12. A further doubt is raised from the statement of Mr. Leong Hung Wai, the police officer who had investigated the accident on 20 September 2008. According to Mr. Man, he had demanded $1,200 from Mr. Li as compensation for the damage to his vehicle after the accident, but Mr. Li only proposed to pay $800 instead. On his part, Mr. Li claims that after the collision, he had demanded $1,300 from Mr. Man, but Mr. Man was only prepared to pay $300. However, according to the account given by Mr. Leong, the investigating officer, Mr. Li had told him that Mr. Man had demanded $800 as compensation, which he refused to pay. Counsel for Mr. Man highlights the fact that according to Mr. Leong's account, Mr. Li had made no mention to Mr. Leong of his own demand for compensation from Mr. Man, which is inconsistent with Mr. Li's case that the accident was due entirely to Mr. Man's fault.
13. Since the onus is on Mr. Li to prove to the Court, on a balance of probabilities, that the accident and his injuries were caused by Mr. Man's negligence, I regret that on the evidence available, I am unable to find that it is more probable than not that the collision took place in the manner claimed by Mr. Li.

**If the accident was caused by the negligence of Mr. Man, what are the damages recoverable by Mr. Li?**

1. I will only deal very briefly with the damages which may be recoverable by Mr. Li, if I had accepted his claim.
2. On the basis of the medical evidence and the joint medical report, I consider that Mr. Li's neck injury as a result of the accident was very minor. I would have awarded him $50,000 for pain, suffering and loss of amenities.
3. I am not satisfied, on the evidence available, that Mr. Li's earnings at the material time were $30,000 per month. There is inadequate evidence of his income from his business as a decoration contractor. I would only have allowed his claims for damages on the basis of his monthly salary as a painter, at $800 per day. By virtue of Mr. Li's admission under cross-examination that his working capacity just before the accident had been affected by his earlier accident in August 2008, I would only have accepted his claims on the basis of his working 20 days a month. Thus, his pre-accident monthly income should be $800 x 20, namely $16,000.
4. I would have allowed Mr. Li's claim for pre-trial loss of earnings at $16,000 x 6 months, being the appropriate period of sick leave, at $96,000.
5. According to the medical experts, Mr. Li was capable of returning to his original work. Mr. Li did not in fact seek further medical treatment for his neck injury after February 2009. According to his evidence, he did resume his pre-accident work in March 2009, and his working capacity and earnings improved after 6 months. In December 2009, Mr. Li claims that he earned about $15,000 per month on average, and by the time of trial, his monthly earnings were over $20,000, since the industry had improved.
6. In respect of Mr. Li's pre-trial loss of earnings, I would have allowed him ($16,000 - $15,000) x 18 months, from March 2009 to September 2010 (as claimed), in the sum of $18,000.
7. On the basis of Mr. Li's evidence in relation to his current condition, I do not regard that he suffers any real disadvantage in the labour market and would not have made any award for loss of earning capacity.
8. Special damages of $8,550 had been agreed between the parties.

**Conclusion**

1. Mr. Li’s claims in this action are dismissed. I will make an order nisi that the costs of the action are to be paid by Mr. Li to Mr. Man, with certificate for counsel, to be taxed if not agreed. Mr. Li’s own costs are to be taxed in accordance with the Legal Aid Regulations.

(Mimmie Chan)

District Judge

*Miss Jolie Chao, instructed by Messrs. Joseph Leung & Associates (assigned by the Director of Legal Aid), for the Plaintiff*

*Mr. Gary Chung, instructed by Messrs. Winnie Leung & Co., for the Defendant*