## LA/MPI/17897/2008 (S29)

## DCPI 1427/2009

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1427 OF 2009

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BETWEEN

Rivera, Sally De Guzman Plaintiff

and

Chan Hoi Sing trading as

Sing Kee Vegetable Wholesale Defendant

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

Coram: H.H. Judge Chow

Date of Hearing: 28th December 2010

Date of Handing Down Judgment: 6th January 2011

Judgment

1. This is the Plaintiff’s action against the Defendant for damages for injuries and losses sustained by her as a result of an accident she had at the Defendant’s vegetable shop known as Sing Kee Vegetable Wholesale (“the Shop”) at Ground Floor, 36D Hop Choi Street, Yuen Long.
2. At about 10:30 a.m. on 3 August 2008, the Plaintiff attended the Shop to buy some vegetables. Access to the Shop is either by way of steps or a concrete ramp at its front. She walked up the ramp in order to look for taro. She could not find it and she returned to the pavement. She turned around and took one step back down the slope. Then she slipped and fell. She used her left hand to support herself. If touched the concrete slope; it also slipped and got injured.
3. The Defendant is the owner of the Shop. He failed to keep the entrance of the Shop dry. He did not ensure that the ramp was safe in that at the material time there was water remaining on the surface of the ramp. It was wet and slippery. The Plaintiff slipped on the concrete ramp because of its wet surface. The Defendant pleaded contributory evidence. But he did not attend the trial. So he failed to adduce evidence in this respect. I find that the accident happened in the way described by her.
4. The Plaintiff suffered a fracture of the bone in her left wrist. She stayed in hospital from 3 to 7 August 2008 for medical treatment. The she received physiotherapy treatments for 10 odd times. She was granted sick leaves from 3.8.2008 to 19.1.2009. Her left wrist joint will undergo degeneration earlier than the usual expectation. The overall wrist functions will deteriorate gradually and insidiously. This will affect her ability to work.

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

1. She claims a sum of $200,000. In *Tang Bo Ling v. Chan Po trading as Corrytron Cateries* (DCPI 79/2007), the Plaintiff fell and slipped on the floor, injuring her left wrist. She suffered a fracture of the left wrist, her left distal radius and ulnar styloid. She was treated with close reduction and long arm plaster. After 1 day of hospitalization she was discharged. She was given 6 months of sick leaves but she only took 3 months because she did not wish to be absent during the start of the school term in 2003. She suffered a persistent on-and-off pain on the left wrist, numbness, lack of strength and reduced range of movement of her left wrist. The Court took into account the discomfort and disability she suffered, including her loss of enjoyment of sporting activities, and awarded $200,000 for PSLA. For the present case, I adjudge that a sum of $200,000 under this head is reasonable.

Loss of earnings

1. At the time of the accident the Plaintiff’s monthly salary was $3,500. She was off work during sick leave period for 4.5 months. So her loss is $15,750 ($3,500 x 4.5).

The loss of future earnings

1. The Plaintiff was born on 27.1.1963. So she is about to turn 48 years old. She is currently working with the same employer. She intended to work in Hong Kong as a domestic helper until the age of 50. Then she would return to the Philippines. The present employer has 2 children aged 10 and 14. They will grow up, and the need for a domestic servant will decrease. After the accident, the present employer continued to employ her by renewing her employment contract, despite injury left wrist. There is no positive evidence that her employer will not employ her. Within the coming 2 years the children are still young. There is still a continuing demand for her service. So I cannot see any future loss of earnings when she turns 50 years old.
2. She intends to set up a small shop in Philippines, she will require to employ an extra hand in her work, because it will be inconvenient for her to use her left hand. That employee will incur an extra costs of about HK$500 per month. She intends to work until 55. So for 5 years the total extra expenses will be $30,000. I would award a total sum of $30,000.

Pre-trial expenses

1. The following expenses were incurred by the Plaintiff:-

(1) medical expenses $2,160

(2) Travel $228

(3) General travel relating to accident $1,000

(4) Nourishing food $1,000

(5) Care and attention $5,000

(6) Damaged shoes $48

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$9,436

Future medical expenses

1. The Plaintiff condition will deteriorate and she will require further treatment and medication. Under this head I award $3,000.

Total award

1. (1) PSLA $200,000

(2) Loss of earnings $15,750

(3) Loss of future earnings $30,000

(4) Pre-trial expenses $9,436

(5) Future medical expenses $3,000

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Total $258,186

Less employee’s compensation

already received - $80,267

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$177,919

1. I order that the Defendant do pay within 14 days from today, the Plaintiff the sum of $177,919, with interest thereon; from 2.7.2009 to 5.1.2011 at 2% p.a.; interest on $177,919 from 6.1.2011 to satisfaction at judgment rate.

Costs

1. I make an order nisi, to be made absolute in 14 days’ time, that the Defendant do pay costs of this action, to be taxed, if not agreed. The Plaintiff’s own costs be taxed in accordance with Legal Aid Regulations.

( S. Chow )

District Judge

The Plaintiff: represented by Mr. Burke of Messrs. Burke & Company, Solicitors.

The Defendant: absent, unrepresented