#### DCPI 1655/2011

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO 1655 OF 2011

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BETWEEN

WONG LAI MAN Plaintiff

and

EASTERN TERMINAL LIMITED Defendant

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##### Before: Her Honour Judge H C Wong in Court

Date of Hearing: 2-4, 7 January 2013 and 7 February 2013

Date of Judgment: 12 March 2013

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JUDGMENT

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1. The plaintiff was employed by Harvest Express Limited to work as a transportation and delivery worker on 24 August 2009. At about 11:30 am he was delivering a package to the warehouse on 5th floor Hutchison Logistics Centre in Kwai Chung, New Territories, Units 501 and 502 (“the premises”) occupied, controlled and managed by the defendant, when he met with an accident. He arrived at the premises in a lorry owned by his employer driven by a co-worker Mr Lui Sin Yan.
2. The plaintiff, Mr Wong Lai Man (“Mr Wong”), alighted the lorry on the 5th floor and went up to the rooftop guard house of the building to obtain an entry permit into the 5th floor warehouse. Upon obtaining an entry permit and presenting it to the security guard at the 5th floor, the lorry was allowed into the warehouse. Mr Wong presented the delivery document to Unit 502 office where he was instructed by the staff to deliver the package to the tally counter at Unit 501. He then went over to Unit 501 for stamping of the delivery document; after it was stamped at Unit 501 he was told to return to the office of Unit 502 for endorsement. As he was leaving Unit 501 through the loading platform he slipped on a patch of oil and fell to the ground of the loading bay. He sustained injuries to his right shoulder, his head and his right knee. He is claiming damages against the defendant for breach of statutory duty and negligence as the occupier with the control and management of the premises in the present action.
3. The defendant denied the plaintiff was a lawful visitor to Unit 501B of the premises. It claimed that the plaintiff was not invited or permitted by the defendant into Unit 501B. Furthermore, the defendant denied the accident happened at the premises on 24 August 2009 at 11:30 am or that the plaintiff sustained an injury on that day or at all.

*The plaintiff’s evidence*

1. Units 501 and 502 are opposite each other on the 5th floor separated by the driveway, parking spaces and loading bays between the two units. Mr Wong claimed that in order to access Unit 501 from Unit 502, he crossed the driveway, walked up to the loading platform which was 1.5m above the loading bay. As he was passing the loading platform of Unit 501, he noticed there were a number of forklift trucks in operation around the warehouse at the premises. In order to avoid collision with the forklift trucks, he walked along the edge of the loading platform as he was leaving Unit 501 to return to the office of Unit 502. He was approaching the stepladder leading down to the loading bay along the loading platform when he skidded on a patch of slippery stuff and toppled into the loading bay landing on the right side of his body, injuring his right shoulder, the right side of his head and his right knee in the process.
2. Because he and his colleague Mr Lui had to finish the morning’s deliveries before lunch time, they were eager to leave the premises before seeking medical attention. For the same reason, he did not stop and report his injuries at the office of the defendant before he left the premises. He did, however, called his employer on the telephone when they were leaving in the lorry for the next delivery point and told his employer he was injured on the 5th floor of the defendant’s warehouse.
3. He visited the Kwong Wah Hospital Accident & Emergency Department later that day where he was diagnosed to suffer from mild head contusion with mild swelling, right AC joint dislocation, contusion of lateral epicondyle & olecranon process of right elbow with reduced elbow movement, and 1cm right knee laceration.
4. The evidence of Mr Lui Sin Yan, the plaintiff’s co-worker who drove the delivery lorry on the morning of 24 August 2009 to the defendant’s warehouse, supported the evidence of Mr Wong. He said he was at Unit 501 after he took the package to the tally counter of Unit 501 when he heard a scream from Mr Wong. He turned and saw Mr Wong had fallen into the loading bay, at the time he was about 7-8 feet from Mr Wong. He said he went up to see if Mr Wong was alright, he saw at the edge of the loading platform a patch of black liquid in the shape of a man’s footprint on the steel plate covering at the loading platform. He said he believed the black patch of liquid was lubricant oil from a forklift truck. He also said that he saw Mr Wong was injured and bleeding on his right knee, Mr Wong told him his whole right side body and his right shoulder hurt. As they have to complete the registration procedure before they could depart from the defendant’s warehouse, Mr Wong quickly finished the delivery procedure and left the defendant’s warehouse without reporting the accident to the defendant.

*The defence case on liability*

1. The defendant’s witness was Mr Law Kam Chiu, Benny who is the senior manager of the Warehouse and Distribution Department Customer Service Section of the defendant. Mr Law admitted that Units 501 and 502 of the premises were occupied by and under the control and management of the defendant. He further admitted that the warehouse is and was used by the Eastern Worldwide Co Ltd which is a related company to the defendant.
2. It is Mr Law’s evidence that the proper access from Unit 502B to 501B is through the pathway located on the left of Unit 501B directly opposite the office and registration window next to Unit 502B (“see the plan on p 331 of bundle A”). He said it was improper for Mr Wong to have gone up the small stepladder at the loading bay onto the loading platform of Unit 501 and returned to the registration office next to 502B through the same stepladder from the loading platform at 501B. Furthermore, as the goods/cargo collection point (“tally counter”) at 501A is at the back of the loading platform, Mr Wong should not have gone through the loading platform of Unit 501B which is restricted and private, he should have gone through the back of the loading platform. He further claimed Eastern Worldwide Ltd had posted two notices at the front of the office at Unit 502B informing visitors and delivery workers the procedure for entry to the warehouse and guidelines for cargo collection and pick-up. He pointed out that under the guideline, steps 2 and 7 specified the cargo deliverer or collector must present the delivery documents for entry into the warehouse, and unless accompanied by the manager or with his permission, no visitors are allowed into the restricted area.
3. Mr Law admitted there were nine forklift trucks at the defendant’s warehouse, three were used at the loading bay area while the other six were used inside the warehouse at Units 501A & B and 502A & B. These forklift trucks were electric or gas operated. There was no kitchen at the warehouse and cooking is restrictly forbidden. Unit 501B was a warehouse for consumer products such as electronic goods, furthermore, the Hutchison Logistics Centre Management Office prohibited wet floors inside the warehouse. That the defendant’s management demanded good organisation, discipline and cleanliness from its staff, therefore, even if there were oil stains on the floor of the warehouse, the defendant’s staff would have cleaned the oil stains immediately. Furthermore, the manager and the supervisor of the defendant would inspect the working area of the warehouse twice a day, in the morning and the afternoon. Should they discover oil patches on the floor, they would have reported the incident in their inspection record.
4. Mr Law claimed that after the defendant was informed of the alleged accident, he found no record of oil patches on the floor of the warehouse in the inspection book. Because the defendant was not informed of the accident until 31 December 2009 by the staff of Labour Department, almost four months after the alleged accident, the close circuit television record of 24 August 2009 at the warehouse had already been deleted. There was also no written report of the incident on 24 August 2009 by the defendant, neither was there any record at the Hutchison Logistics Centre Management Office or the Security Office of the alleged accident. Mr Law also said that Eastern Warehouse Co Ltd engaged the cleaning service of ISS Hong Kong Services Ltd to regularly clean the warehouse and the defendant had also employed a cleaner to clean the warehouse daily. However, neither the staff of ISS Hong Kong Services Ltd nor the cleaner Madam Ng reported to the defendant of any oil patches found at the loading platform on the day of the accident. On the aforesaid basis, the defendant denies the accident occurred at the premises on 24 August 2009.

*Findings on liability*

1. Based on the Kwong Wah Hospital Accident and Emergency Department record of Mr Wong’s visit on 24 August 2009, the time of his hospital visit was 19:06 hours on 24 August 2009. The history and the examination recorded by the doctor at the hospital was “fell from height approximately 1.5m, landed on right shoulder, head contusion, no dizziness, mild pain on contusion site” (p208 – 209 of bundle A). The medical report of Dr Ng Hing Yin of the Accident and Emergency Department of Kwok Wah Hospital dated 9 December 2009 is consistent with the hospital record on the history of the accident. The medical report of Mr Yip Siu Leung of the Orthopaedics and Traumatology Department of the Kwong Wah Hospital dated 30 November 2009 is also consistent (p 171 and 174 of bundle A).
2. According to the accident report of the Occupational Safety Officer Mr Chau Ka Chun dated 2 February 2010, Mr Wong reported the accident to the Labour Department on 18 September 2009, the accident date given was 24 August 2009 (p165 to 167 of bundle A). In the form 2 filed by Mr Wong’s employer Harvest Express Ltd under column D, it stated the date of accident was 24 August 2009 at 4 pm, the cause of accident was “stepped on oil patch, fell from loading platform, injured right hand and shoulder” (p347 to 351 of bundle A)
3. In the accident report, the occupational safety officer stated after an investigation conducted on 23 December and 31 December 2009 and 27 January 2010, the accident happened at about 11:30 am of 24 August 2009 at Unit 502 of the 5th floor Hutchison Logistics Centre in Kwai Chung. He also confirmed the evidence given by Mr Wong on the accident that Mr Wong had on his way to Unit 501 stepped on an oil stain and lost his balance. That as a result of his fall from the loading bay at Unit 501 to the loading bay area, his right shoulder hit the ground and became dislocated (p165 of bundle A).
4. Mr Chau’s observation in the report at para 3.1 was:-

“The I/P revealed that he was in a rush for running to the office so he was not aware that there was an oil stain left on the loading bay. The I/P stepped on the oil stain and thus lost balance. According to the I/P, the oil stain was about 70 mm in diameter. The I/P, on the spot, had reported the accident to his employer but he failed to inform to the occupier of the accident scene.”

1. In the same report under para 3.2, Mr Chau reported that the defendant informed him the premises was regularly inspected and the condition of the working environment would be monitored via the CCTVs installed at the warehouse. The defendant had also engaged a cleaning worker and a contractor to clean the workplace and there was no report of the accident or that anyone had found an oil patch at the workplace or witnessed the accident.
2. After hearing the evidence of Mr Wong, Mr Lui and the defendant’s senior manager Mr Law, taking into consideration the accident report, the Kwong Wah Hospital Accident and Emergency Department records and the medical reports prepared by the doctors at the Kwong Wah Hospital, I accept Mr Wong’s evidence that he did fall from the loading platform into the loading bay at the defendant’s warehouse at around 11:30 am on 24 August 2009. Mr Wong was consistent in describing the accident to the doctors at Kwong Wah Hospital and the occupational safety officer at the Labour Department. His evidence had the support of Mr Lui who saw the patch of oil stain shaped like a footprint at the edge of the loading platform. I also accept Mr Wong’s evidence that because he was in a hurry to finish the morning’s delivery, he and Mr Lui had failed to report the accident to the defendant’s staff or the security office of the Hutchison Logistics Centre before they left the premises. I further accept that there were many forklift trucks operating in the defendant’s busy warehouse. It is quite possible that one of the forklift trucks operating on the loading platform close to the edge of the platform had leaked lubricant oil on the steel plate that covered the top of the loading platform.
3. As to the evidence of Mr Law that Mr Wong failed to use the proper route to access the tally counter behind Unit 501A referring to the defendant’s notices to cargo deliverers and collectors, I find the guideline for cargo collection and pick-up of Eastern Worldwide Co Ltd had only set out the steps for lorries to gain entry into the warehouse, where they should park and where the agent should hand in the relevant documents for registration and the cargo to be deposited at the tally counter situated behind the loading platform at Units 502A and 502B (guideline 8 at p93of bundle A). The guideline also stated that the documents should be returned to the registration counter for further confirmation and stamping after delivery and the documents would then be stamped with the company stamp and signed by the authorised person before the lorry is allowed to leave the parking zone.
4. Under rules 2 and 7 referred to by Mr Law (p95 of bundle A), rule 2 stated “the forwarder must show the official document and get consent from the company prior to direct accessibility”. Rule 7 stated “no one can access the storage area or specific zone unless the one (*sic*) is accompanied by authorized person.” I notice that there are no sketch plan attached to these guidelines and the rules to indicate the “restricted” area that agents or servants of a cargo forwarder are not allowed access. I find the main purpose of the guideline was to inform the deliverer or collector of cargo the procedure to follow for registration and delivery or collection of cargo.
5. I have been shown photographs of the warehouse and the so-called ‘pathway’ for access Mr Law referred to. Even on the photographs taken by the defendant, the pathway was blocked by large pieces of cargo piled up at the location next to the ‘access pathway’. According to Mr Law, in order to go through the said pathway, one is required to walk down from the Unit 502 registration office through a narrow ramp into the open vehicle access area, cross over and go up another ramp in order to reach Unit 501B, then the collector or the deliverer would have to turn left and walked behind the loading platforms to access the ‘tally counter’ at the back of Unit 501A. Because there was no clear signage directing visitors to the pathway at the warehouse and the fact that the ramp pathways with low railing installed to prevent wheels falling off the ramps, it is obvious they were intended for forklift trucks and trollies to go from the carpark and driveway into the main warehouse. Furthermore, the manner of access described by Mr Law does not seem to be the most obvious route for pedestrians or couriers on their first visit to the warehouse. It is particularly so when the warehouse was not busy and the parking bays were empty of vehicles such as the time of the accident. According to Mr Wong, the three loading bays at Unit 501B were empty at the time when he walked across from the office at Unit 502B to 501B and on his return. It is therefore to be expected that anyone making a delivery at the defendant’s warehouse would take the most obvious, brightly lit and direct route if he was asked to process the registration and present documents to the registration office at Unit 502B, and return after delivering the cargo to 501A through the small stepladder at the loading bay up to the loading platform.
6. Step 8 of the guideline stated that the cargo must be handed to the tally counter situated at Unit 502A and 502B. The sketch plan of the defendant’s warehouse at p331 of bundle A showed the tally counter of the warehouse was situated at Unit 501A, if Mr Wong had followed the steps on the guidelines, he would have to make a delivery to the tally counter at Unit 502A and 502B which is not marked on the plan at p 331. Mr Law’s evidence is clearly inconsistent with the defendant company’s written guidelines.
7. I am satisfied Mr Wong was a lawful visitor to the warehouse. He had registered at the rooftop security office before returning to the 5th floor to hand in the entry permit for the lorry to gain entry to the warehouse. Then he took the delivery document to the defendant’s office next to Unit 502B before proceeding to the tally counter at Unit 501A where he obtained a stamp for the receipt for the package and returned the receipt to the registration office at 502B for further endorsement. In the process, he stepped on a patch of oil on the platform and fell. The defendant accused Mr Wong of running before he fell into the loading bay. I accept that he was walking quickly or briskly because he and Mr Lui had other deliveries to make before lunch time. However, if not for the patch of oil on the loading platform and if not for the forklift trucks moving on the loading platform, Mr Wong would not have to walk along the edge of the loading platform to avoid colliding with the forklift trucks. It follows that he would not have stepped on the patch of oil and fell into the loading bay.
8. The defence relied on the case of *Cheung Wai Mei v the Excelsior Hotel (Hong Kong) Ltd* *trading as The Excelsior* CACV 38 of 2000 (unreported). The plaintiff in that case slipped and fell on the side entrance to the hotel. Mr Justice Mayo, Acting CJHC said:-

“At this stage it would seem to be helpful to consider what the defendant needs to establish to prove that it has sufficiently discharged its duty of care. This can conveniently be divided into two separate parts.

The first is what reasonable steps have to be taken to ensure that the floor and steps are in a safe condition

…….

The other limb of the case relates to the measures taken by the defendant to effectively deal with cleaning up after something has been deposited on the floor.”

Roger VP said in the same case:-

“It seems to me that the plaintiff is attempting to put far too high an onus on the defendant not merely to remove any spillages if and when they occur but in terms of stationing people, presumably at all corners of the hotel, at all times, to guard against spillages. The evidence was that there was at least one cleaner on duty that night. In my view that would have been sufficient.”

1. The 2nd case referred to me by the defence is *Ward v Tesco Stores Ltd* [1976] 1 WLR 810 where the plaintiff who was a patron of a supermarket run by the defendant trod on yogurt spilt on the floor when shopping at the supermarket. There was no evidence of how long the spillage was on the floor before she slipped on it but several weeks after the accident she revisited the supermarket and found some orange squash had remained on the floor for 15 minutes before it was cleaned up. The defendant claimed that it had a system whereby the floor was cleaned five to six times a day and that spillage occurred ten times a week. That when there was a spillage, a member of the staff had to stay by it until someone came to mop it up. The Court of Appeal upheld the judge’s ruling that the plaintiff made out a *prima facie* case of negligence.
2. In the present case, I find the defendant responsible for the oil patch that could have been left by any one of its nine forklift trucks operating in the warehouse. The warehouse was 110,000 sq ft in size, the warehouse manager, supervisor and the cleaner were not expected to clean and inspect the area more than twice a day. Other than staff working inside the warehouse, there were also delivery workers or collectors of cargo coming in and out of the premises, it would be negligent not to make sure the warehouse is clean at all times with frequent inspections during the day, particularly at the loading bays and the loading platforms of the warehouse where forklift trucks operated.
3. On the other hand, in Mr Wong’s statement to the Labour Department, he mentioned he was running to and fro between Units 501 and 502 to submit the delivery papers and receipt before he fell from the loading platform into the loading bay. On the statement of 14 January 2010 to the Labour Department, Mr Wong used the word “跑” meaning ‘run’ when he described his bringing the delivery document to the office at Unit 502 and the tally counter at Unit 501. He also said when answering a question from the occupational safety officer that he was in a hurry and he ran to the office of Unit 502 and slipped because he did not pay attention to the oil stain on the loading platform (p313 to 314 of bundle A). Although Mr Wong did explain in court that when he told his story to Mr Chau, the occupational safety officer, he wrongly used the word “跑”, he said in fact he meant he was walking briskly.
4. Based on his statement to the occupational safety officer, even though he explained at the trial he meant he was walking briskly, he admitted he was in a hurry and he did not keep a proper lookout for the greasy patch on the loading platform. I find he did contribute partly to the accident to the extent of 15%.

*Quantum*

1. According to the joint medical report of Dr Chun Siu Yeung and Dr Johnson CK Lam of 3 January 2012. They agreed that Mr Wong suffered the following injuries:-

“(i) mild head contusion with mild swelling;

(iv) right AC joint dislocation;

(v) contusion of lateral epicondyle & olecranon process of right elbow with reduced elbow movement;

(ii) right knee 1cm laceration.”

1. Both experts agreed that the injuries were consistent with a fall from height within one to two feet and that the treatment given by the Hospital Authority doctors were appropriate. They further confirmed that at their joint examination, Mr Wong complained of right shoulder soreness and weakness and physical examination of Mr Wong reviewed local tenderness consistent with residual subluxation. Both doctors agreed that there were mild reduction of shoulder muscle power and mild reduction of right shoulder active motions. In Dr Chun’s opinion, the physical examination showed tenderness at the right AC joint had reduced and he found no dislocation, while Dr Lam opined that as with most patient suffering from AC joint Type III dislocation, after recovery, the AC joint was still subluxed, but not totally dislocated at the time of the assessment. They agreed that Mr Wong’s present symptoms and findings were compatible with residue of AC joint dislocation with reduction/partial reduction of joint achieved. Both agreed that Mr Wong’s condition had reached maximal medical improvement and no further active treatment is required.
2. In Dr Johnson Lam’s opinion, despite Mr Wong’s satisfactory functional result and good prognosis, some residual pain, weakness, stiffness, and reduced endurance (eg especially in overhead activities of a high demand) is expected. In Dr Chun’s opinion. no matter how serious the initial injury Dr Lam referred to, the radiological evidence suggested the subluxation is minimal and Mr Wong had well recovered from the AC joint dislocation. In his opinion, Mr Wong is independent with his activities of daily living and is able to return to work as a transportation worker though there may be mild reduction of work efficiency. Dr Chun assessed Mr Wong’s impairment of the upper extremity due to the residue of the AC joint dislocation to be 3% impairment which is equivalent to 2% impairment of the whole person, he assessed the loss of earning capacity 2%. While Dr Lam took into account Mr Wong’s claim that he is no longer able to carry heavy goods on his back, or to stack up goods in the warehouse repeatedly, considered Mr Wong should be able to return to his pre-accident job with mild to moderate reduction in work capacity if he is allowed more short breaks for rest after prolonged heavy work. According to Dr Lam, with the residual subluxation, pain, weakness, stiffness and reduced endurance, involving his dominant right arm, Mr Wong’s loss of earning capacity is 8%.
3. The Employees Compensation (Ordinary Assessment) Board issued a certificate under Form 7 on 26 May 2010 and confirmed Mr Wong suffered from right shoulder injury resulting in right shoulder pain, weakness and stiffness. It further confirmed that Mr Wong’s absence from duty necessary as a result of the injury to be from 24 August 2009 to 21 February 2010 and his loss of earning capacity permanently caused by the injury to be 5% (p354 of bundle A).

*Pain, Suffering and Loss of Amenities*

1. Mr Wong claimed to be suffering from residual pain on the right shoulder for two years since the accident, he is not able to raise and rotate his right hand making daily activities inconvenient, he has difficulty in lifting heavy objects which affected his job prospects. He also said that he cannot now return to work as a transportation or delivery worker because of the weakness of his right shoulder and arm. He further said that there is difficulties for him to work as a cook which was his former occupation before he became a delivery worker because he could not hold a wok for a prolonged period of time due to the weakness of his right arm. He found a job as an assistant cook working at the chopping board at the time of the trial at the salary of $12,000 per month.
2. Mr Kwok, counsel for the plaintiff, relied on a number of authorities in support of the plaintiff’s claim for $300,000 under PSLA. They included the case of *Chan Lai Po v Au Wai Kit* DCPI 798 of 2008 (date of judgment 13 August 2009) where HH Judge M Chan awarded the sum of $500,000 to the 49 years old plaintiff who suffered from dislocation of the AC joint, tenderness at her left shoulder and left hip, fracture of the left fibula, ptosis and phthalmoplegia of the left eye and injury to the left partieal region of her scalp. Even though the two medical experts assessed Madam Chan’s permanent impairment of the whole person to be 5% and 3%, the court considered that Madam Chan who suffered from left traumatic 3rd nerve palsy because of the accident, based solely on the condition of her eye, the level of permanent impairment of the whole person was 34%.
3. The 2nd case referred to me is the case *Yiu Yuet Chi v Yick Kai Cheung & Anor* HCPI 291 of 2006 (date of judgment 2 January 2008 of Deputy High Court Judge Longley). The plaintiff suffered from fracture of her right 2nd and 3rd ribs, cerebral contusion with oedema, right orbital wall fracture with oribital emphysema and dislocation of her right AC joint and multiple foreign bodies in the eye ball. The court awarded $350,000 under this head.
4. In the case of *Lee Lung Wah and Ors v Lau Kam Chun and Anor* HCPI 1534 of 2000 (date of judgment 7 February 2003 judgment of Deputy High Court Judge D Pang). The plaintiff was awarded the sum of $500,000 under this head for his head injury, dislocation of the right AC joint and visual impairment while the upper extremity impairment of loss of right shoulder movement was 10% and the upper extremity impairment of loss of right hand grip power was 20%.
5. Defence counsel, Mr Lau, relied on the case of *Ng Ming Wa v Chan Lai Mei & Anor* DCPI 98 of 2000 where the plaintiff who suffered from a fracture clavicle was assessed to suffer from 1% impairment of the whole person. The court awarded $50,000 under PSLA. While in the case of *Lau Kwok Chiu v Senfield Limited trading as Tsui Wah Restaurant* HCPI 245 of 2006 (judgment date 8 March 2007 of Barnes J). The plaintiff who suffered from dislocation of right shoulder and fracture of right shoulder joint was awarded $200,000 damages under this head.
6. In the case of *Or Chun Kwong v Fu Sau Lun Jason & Ors* HCPI 384 of 2005 (date of judgment 8 December 2006 Master J Wong). The Master awarded the sum of $200,000 under PSLA to the plaintiff who suffered from right shoulder AC joint subluxation and suffered from 3-4% impairment of the whole person assessed by the two medical experts.
7. Taking into consideration the pain and suffering and the duration of the residual pain and discomfort suffered by Mr Wong, the loss of amenities, and the medical assessment board’s assessment of Mr Wong’s loss of earning capacity due to the injury was 5% against Dr Chun and Dr Lam’s 2% and 8%, I considered an awarded of $200,000 a suitable award under this head.

*Loss of earnings*

1. I accept Mr Wong was eager to return to work after the initial period of sick leave of six months, but found after he tried to resume work as a transportation worker, he was unable to carry heavy weight for a prolonged period. He claimed that soon after the expiry of his sick leave after his resumption of work, he was sacked by his employer Harvest Express Limited. It was not until three months later that he found a job as an assistant cook based on his previous experience at a Tuen Mun restaurant. However, because he was not able to use his right hand to hold the wok due to the pain on his right shoulder, he could not take up more important duties and had to quit. In March 2012, he found a new job as the chopping board chef at a Kowloon City restaurant at a monthly salary of $12,000. If not for the right shoulder injury, he said he would have been working as a chef at a higher salary.

*Pre-trial loss of earnings*

1. Mr Wong claimed he made a sum of $4,100 between his resumption of work in early 2010 to October 2010. However, according to Mr Wong’s evidence set out in his supplementary witness statement para 3, he said three months after he was sacked by Harvest Express Limited he was hired as an assistant cook in Tuen Mun where he worked until March 2012. According to the Medical Assessment Board certificate, it assessed Mr Wong’s leave of absence on sick leave to be between 24 August 2009 and 21 February 2010. There was medical evidence produced showing Mr Wong had a medical problem involving his right wrist in July 2010 unrelated to the accident, the sick leave in July to August 2010 was not caused by injuries at the accident on 24 August 2009. It seems he found a job working as a cook some time in May or June 2010 but had stopped working because of his right wrist problem. Therefore, rather than a loss of earnings of $8,000 per month for 14 months, the sick leave for his right wrist cannot be taken into account. Consequently, his loss of earnings should be between 24 August 2009 and around 23 May 2010, a total of 9 months:

$8,000 x 9 = $72,000

with MPF 5% $72,000 x 1.05 = $75,600

1. Mr Wong said he was making a monthly salary of $8,000 working 4 days a week while he was an assistant cook at東城酒家 in Tuen Mun. He kept this job until March 2012 until he found a job at the Kowloon City restaurant at $12,000 a month working at the chopping board which is substantially more than his earnings at the time of the accident as a delivery worker.
2. He also said he made $4,100 during the period before he found employment as an assistant cook at the Tuen Mun restaurant, therefore the total sum of pre-trial loss of earning is:-

$75,600 – 4,100 = $71,500

*Loss of earning capacity*

1. On the basis that Mr Wong suffered from residual pain on shoulder, I assess a loss of earning capacity equivalent to 6 months of loss of monthly earnings at $8,000. The sum comes to $48,000.
2. The reason I find 6 months is appropriate to cover the loss of earning capacity is because Mr Wong is a hard working and resourceful person, it only took him about 3-4 months after the expiry of sick leave to find a job as a cook. I assess it will take him around 6 months to find and be trained for new employment in future.

*Special Damages*

1. I accept the sum Mr Wong claimed for travelling expenses to the hospital for following up medical and physiotherapy treatments and the tonic food at a sum of $5,773.50.

*Summary*

1. PSLA $200,000.00

Pre-trial loss of earnings 71,500.00

Loss of earning capacity 48,000.00

Special damages 5,773.50

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325,273.50

Less 15% contributory negligence 48,791.02

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Total 276,482.48

*Interests*

1. Interests on special damages at ½ judgment rate from the date of accident to the date of judgment. Interests on general damages at 2% per annum from date of writ to the date of judgment, thereafter at judgment rate.

*Costs*

1. Costs to follow the event to be borne by the defendant, to be taxed if not agreed, with certificate for counsel. The Plaintiff’s own costs to be taxed in accordance with the Legal Aid Regulations.

# ( H C Wong )

# District Judge

Mr Kwok Tin Sui, Tim, instructed by Yeong & Co, assigned by the Director of Legal Aid, for the plaintiff

Mr Rayomd Lau, instructed by Tsui & Co, for the defendant