# DCPI 1706/2005

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 1706 OF 2005

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BETWEEN

## FUNG YUET HING Plaintiff

### and

MOK SUN 1st Defendant

NEW LANTAO BUS COMPANY

(1973) LIMITED 2nd Defendant

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Coram : Her Honour Judge C.B. Chan in Court

Date of Trial : 25th September 2006

Date of Handing down Judgment : 3rd November 2006

JUDGMENT

1. This is an assessment of damages arising from injury sustained by the Plaintiff in a car accident on 26 December 2004. Judgment on liability having been entered on 3 March 2006.
2. The Plaintiff was born on 15 February 1972. At the time of the accident she was 32 years old. She was a merchandiser before the accident earning about $13,300 per month and also earned overtime pay.
3. The accident happened at 6:45 p.m. when the bus she was a passenger was travelling along Tung Chung Road. She experienced the sudden braking of the bus and she felt a strong collision. That was when she suffered the whiplash. Her head was thrown forward and hit the back of her preceding seat and then thrown backward and hit her own seat. After the accident, the Plaintiff immediately felt pain to her forehead, face, neck and occiput. She also bled at near her left eye. She attended the Accident & Emergency Department of Princess Margaret Hospital (“PMH”) for treatment.
4. The medical report of the Accident and Emergency Department of PMH stated that there was no loss of consciousness or vomiting. She was able to walk by herself. On examination, she was alert. There was tenderness over forehead, face, left neck and occiput. There was abrasion over left forehead, left face. The Plaintiff states that two stitches were done on the left eyebrow and she was given a soft neck collar. According to the medical report, the power of her four limbs was normal. Other examination was unremarkable. She was followed up on 31 Dec 2004, 5 Jan 2005, 19 Jan 2005 and 2 Feb 2005. The pain was improved and range of movement was increased. She was granted sick leave from 26 Dec 2004 to 13 Feb 2005. The Plaintiff immediately returned to work after her sick leave expired.
5. She was referred to the Physiotherapy Department of PMH and attended treatment for whiplash injury to the neck. She attended physiotherapy 8 times in January and twice in February with the last treatment on 12 Feb 2005.
6. She also had Chinese-style manipulative therapy for her neck for 3 to 4 months. MRI of the brain and cervical spine was performed at St. Teresa’s Hospital, on 10 January 2005. It showed normal findings.

Her Complaints

1. The Plaintiff states that despite of the fact that more than one year has elapsed since the accident, she still suffers from:

(a) Persistent pain at neck which is aggravated during prolonged sitting and change of weather;

(b) Feeling tired easily at her neck and the range of motion of her neck is reduced;

(c) Swelling and pain at her lower back after prolonged sitting;

(d) Occasional numbness at her face;

(e) 2 scars are visible namely near her left eye of length of 1 cm.;

(f) Occasional headache, insomnia and memory is badly affected;

(g) Feeling nervous when taking buses again, particularly New Lantau Buses;

(h) Feeling tenderness at her left lower leg;

(i) Unable to sit, stand or walk for prolonged period of time, and

(j) Sleeping has been affected and sleeping posture is restricted.

1. She complains that she has to take analgesic to relieve her headache and the pain at her neck and back when the pain becomes unbearable. She cannot lift heavy objects. She no longer participates in Yoga activities, play badminton or squash now due to her injuries.
2. The Plaintiff was examined jointly by her’s and the Defendants’ medical expert. Dr. Richard Poon is the Plaintiff’s expert and Dr. David Cheng is the Defendants’ expert. They noted that the Plaintiff sustained the following injuries as a result of the accident: -

(i) Mild whiplash injury to the neck; soft tissue sprain in the neck;

(ii) Contusion of forehead and face;

(iii) Possible contusion of the anterior left shin.

1. They also noted:

(a) The Plaintiff complains of mild pain in the occiput and upper back with mild neck and left para cervical tenderness, and discomfort and mild pain on neck extension.

(b) The residual neck problems are mild, the Plaintiff was advised to practice regular neck and postural exercises and pay attention to the care of her neck at work and at leisure.

(c) The residual neck symptoms are at most a distraction and will not compromise her ability to carry out the duties of her pre-accident job as a merchandiser.

# Pain Suffering & Loss of Amenities

1. In relation to the present condition of the Plaintiff, and her complaints, I accept the medical evidence of the two experts as regards her condition as referred to above. I find that all of the symptoms complained of by the Plaintiff are only very mild in degree and as regards the inability to sit, walk or stand for long, that must be an exaggeration.
2. It is to be noted that the Plaintiff’s complaints of scars near her left eye and forehead are not noticeable by me when she stood in front of the bench at about 4 feet distance from me and I looked intently at her “scars”. I do not find such scars to be at all noticeable. It appears to me that the Plaintiff has overstated her case in relation to her symptoms. However I find that the two medical experts’ assessment of her condition as referred to above having been accepted by me is the basis for my assessment herein.
3. In relation to her lower back problems, she has been tested by Dr. Poon and Dr. Cheng’s with “*no lower back signs*”.
4. The Plaintiff’s complaint of inability to lift heavy objects was ruled out by tests performed by the two experts with a finding of “*no upper limb weakness*”.
5. All other complaints of the Plaintiff were not recorded in the experts reports as having been complaints of the Plaintiff. They could not have been serious since these were not so recorded.
6. The Plaintiff’s medical expert assessed the Plaintiff to suffer 3% permanent impairment. The Defendants’ medical expert assessed the Plaintiff not to have any permanent impairment from the accident. I accept the finding of the Defendants’ medical expert.
7. In relation to the following cases referred to by the Plaintiff’s Counsel, I am of the view that the conditions of the Plaintiff in those cases were more serious than that of the Plaintiff herein.
8. In *Limbu Ramesh v Chu Fung Man* (28 April 2006, HCPI 1192 of 2005, the Plaintiff was struck on his head by an object on the side of the road knocking him unconscious for about 2 hours. He had intermittent sick leave for 95 days. He suffered from post-concussional syndrome with some symptoms of headache and dizziness in relation to the head trauma. He suffered soft tissue injuries. As a result, there is loss of lordotic curvature of his cervical spine. There is mild pain in his neck, which is persisting, and there is limit to elevation of his head through pain. The award for PSLA was $250,000.
9. In *Hung Sin Kun v Yeung Chi Ming & Anor* (12 May 2006, DCPI 1388 of 2003). In this case, the Plaintiff suffered a minor head injury associated with a significant period of post-traumatic amnesia. He suffered syncope attack thereafter. He had continuous and numerous attacks of blackout and fainting spell since the accident. The Judge awarded PSLA of $180,000 but made a deduction of $30,000 as an allowance for a possible contributing factor of the pre-existing sinus bradycardia of the Plaintiff being a possible contributory cause of the blackouts.
10. In *Leung Siu Ping v Mak Sin Yee & Another* [2002] 3 HKLRD A16 (HCPI No. 195 of 2000, 14 February 2001, Suffiad J) the Plaintiff suffered a whiplash injury with a deep lacerated wound over her right forehead and two small lacerated wounds over her mid-forehead. She also had a swollen right eye and inability to open her eyelids due to periobital haematoma. She suffered residual neck pain and muscle spasm from the whiplash injury. She was treated in hospital for 7 days and subsequently underwent chiropractic treatment. She suffers from occasional neck and shoulder pain, headache, and dizziness. The permanent impairment due to the neck was assessed at 5%. She was awarded $200,000 for PSLA. The injuries and suffering in this case is again more serious than the present case.
11. The Defendants’ Counsel referred to two cases, namely *Chiu Wing Sze Karby v Chan Ying Wai & Another* HCPI 1616 of 1999, unreported, Deputy Judge Muttrie. Although the injuries suffered by the Plaintiff in the case referred to is far more serious than that of the Plaintiff in the present case, and the award was only $100,000, yet the award was made in Mar 2001. The second case referred to by the Defendants’ Counsel is *Chan Siu Youn v Ng Kam Man & Others*, HCPI 533 of 1999. An award was made of $100,000, where the Plaintiff attended physiotherapy for three months, with follow-up for more than 1 year and yet the neck pain did not subside. Again the award was made in July 2001.
12. Having regard to the aforesaid, I find that an appropriate award for the Plaintiff in this case is $160,000.

# Pre- Trial Loss of Earning & MPF

1. This is now agreed at $8,262.

# Loss of Earning Capacity

1. It the Plaintiff’s case that she could not do some of the duties of her work as a Merchandiser where she has to pack parcels of samples to send to customers. She has to rely on her colleague. She could also not work on the computer for too long. She does less overtime work. As a Merchandiser, she has to work overtime to connect to the office in the USA in order to compete for orders. The USA office would be dealing with other offices at this time and she would lose out if she could not connect with them. On the other hand, it seems that since the accident, the Plaintiff has had several rises in salary and she has not suffered too much as far as her salary is concerned except the initial few months after the accident.
2. The Defendants’ Counsel refers me to a passage in *Moeliker v A Reyrolle and Co Ltd* (1977) 1 All ER 9 as follows:

“…Where a plaintiff is in work at the date of the trial, the first question on this head of damage is :what is the risk that he will, at some time before the end of his working life, lose that job and be thrown on the labour market? I think the question is whether this is a “substantial” risk or is it a “speculative” or “fanciful” risk (see *David v Taylor*, per Lord Reid and Lord Simon of Glaisdale). *Scarman LJ in Smith v Manchester Corpn* referred to a “real” risk, which I think is the same test. In deciding this question all sorts of factors will have to be taken into account, varying almost infinitely with the facts of particular cases. For example, the nature and prospects of the employers’ business; the plaintiff’s age, and qualifications; his length of service; his remaining length of working life; the nature of his disabilities; and any undertaking or statement of intention by his employers as to his future employment. If the court comes to the conclusion that there is no “substantial” or “real” risk of the plaintiff’s losing his present job in the rest of his working life, no damages will be recoverable under this head.”

1. In view of the aforesaid, it seems that there is no “substantial” or “real” risk of the Plaintiff losing her present job or being unable to fulfil the duties of her present job as could be seen by the increases in salary and the excellent appraisal of her employers as regards the Plaintiff’s work performance as stated by her in her oral evidence. I am not able to award any sum under this head.

# Pre-Trial Expenses

1. The Plaintiff has incurred the necessary medical expenses for treatment at the A&E Department of PMH in the sum of $340 for Physiotherapy at PMH in the sum of $640 and drug Charge at $110. This totals the sum of $1,090.
2. She is also claiming for the fee for Chinese manipulative therapy at $600 per session in the total sum of $7,800. However she could provide no receipts for this. I am only able to award a nominal sum of $1,800 for this.

# Travelling Expenses

1. The Plaintiff could provide no receipts for this. I accept that she must have travelled by taxi and minibus to PMH for treatment and I award her $1,170 but I do not award her any travelling expenses for treatment by the Chinese manipulative therapist.

# Tonic Food

1. Again there are no receipts for this. I award a nominal sum in the sum of $2,000 for this.

# Future Medical Expenses

1. The Plaintiff relies on both medical experts’ opinion that full recovery of the Plaintiff’s neck symptoms and shin tenderness is unlikely and on that basis seeks a sum for the purchase of Salonsip and Hirodoid, which the Plaintiff uses. However there is no medical support that such are useful and is to be used by the Plaintiff.
2. I do not allow this. I also do not allow the claim of a further sum for the Plaintiff to attend treatment by the Chinese manipulative therapist there being no medical support that she needs that.
3. I assess total damages in the sum of $160,000 + $8,262 + $1,090 + $1,800 + $1,170 + $2,000 = $174,322.
4. Final Judgment for the Plaintiff against the 1st and 2nd Defendants in the sum of $174,322.00 together with interest at 2% on $160,000 from date of service of the Writ to date of judgment and on $6,060 at half judgment rate from date of Writ to date of Judgment and on the Judgment sum at judgment rate from date of Judgment until payment. I make an order nisi that the 1st and 2nd Defendants do pay the Plaintiff the costs of the assessment to be taxed if not agreed with Certificate for Counsel.

C. B. Chan

District Judge

Representation:

Mr. Andy Hung instructed by Messrs. Au Yueng, Cheng, Ho & Tin for the Plaintiff.

Miss Winnie Chan instructed by Messrs. Tang, Wong & Cheung for the 1st and 2nd Defendants.