## DCPI 1932/2016

[2021] HKDC 1603

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1932 OF 2016

BETWEEN

HUSSAIN SHAHEEN AKHTAR Plaintiff

and

YUE YI HOLDING SERVICES LIMITED Defendant

trading as YUE YI STEAM LAUNDRY FACTORY

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Before: His Honour Judge MK Liu in Court

Dates of Hearing: 23 to 24 November and 20 December 2021

Date of Judgment: 23 December 2021

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JUDGMENT

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1. In these proceedings, the plaintiff (“P”) claims damages for personal injuries sustained by her in a work accident occurred on 16 December 2013 (“the Accident”). At the time of the Accident, P was employed by the defendant (“D”) as a laundry worker. At that time, P was operating an electronic ironing machine (“the Machine”).
2. Both liability and quantum are in dispute.
3. P was represented by M.C.A. Lai Solicitors LLP at all times in these proceedings until very recently. P was represented by the same firm in the Pre-Trial Review held on 6 September 2021. However, shortly after the Pre-Trial Review, P filed a notice to act in person on 24 September 2021.
4. *P’s CASE*
5. According to P:-
6. On 16 December 2013 at around 8:00 am, she together with some senior female workers were instructed by her direct supervisor Mr Wong to iron various sizes of table cloths on the Machine.
7. At around 10:30 am, while P placed a small table cloth onto the conveyer belt of the Machine, the table cloth got stuck between the roller and the conveyer belt (“the Jammed Cloth Incident”). When she tried to remove the cloth jammed inside the Machine, her left hand was pulled into the roller. Her left hand was trapped between the very hot ironing roller and conveyer belt and hence injured.
8. Whenever a cloth was stuck inside the Machine, workers were required to remove it immediately (“the alleged requirement”). The alleged requirement was not any written or oral instruction given by D to P, but was her understanding through her observation in the course of her work. She saw that other workers were practicing this at work, and Mr Wong never stopped them from doing so. Even Mr Wong himself had done this.
9. D has never instructed P not to remove any cloth stuck inside the Machine.
10. P has not breached any instruction given by D.
11. P also claims that handling the Machine was inherently dangerous, as cloths crumpled and stuck inside the Machine from time to time. Two workers instead of one were therefore required to handle the cloths safely.
12. P is the only witness giving evidence in support of her case.
13. *D’s case*
14. D’s case is that P was assigned with a straightforward task, i.e. placing the clothes to the entrance of the Machine, and the Machine would automatically iron and fold the clothes. The Machine was guarded by a safety cover.
15. There were sufficient warning notices with graphic illustrations posted at various conspicuous locations of the Machine.
16. D has also given standing instructions to all workers that the workers should report any jam of cloth inside the Machine to their immediate supervisor, and that they should not remove the jammed cloth or attempt to do so in any circumstances (“the Standing Instruction”).
17. In respect of the Jammed Cloth Incident, P had reported the matter to her immediate supervisor Madam Chan Pui Ling (“Madam Chan”), and Madam Chan instructed P not to do anything herself (“the Specific Instruction”). However, P ignored the Specific Instruction and opened the safety cover to remove the cloth jammed inside the Machine. P did so without D’s consent or knowledge.
18. In these circumstances, D says that it should not be liable to P in respect of the injuries sustained by P in the Accident.
19. D further says that if D is liable to P, P was wholly contributory negligent, or at least contributory negligent to the extent of at least 50%, in causing the Accident.
20. D further submits that D should not be held liable, as P should be regarded as voluntarily consented to the risk of injury with full knowledge of the nature and extent of risks.
21. D has called two witnesses to give evidence in the trial, i.e. Madam Chan, and Madam Yau Chiu Sheung (“Madam Yau”).
22. *THE PRINCIPLES*
23. In order to succeed in a civil litigation, the plaintiff has to set out his or her case on pleadings with sufficient clarity and to prove the pleaded case with satisfactory evidence.
24. Issues are defined by pleadings. One cannot slip in an unpleaded issue by saying that there is evidence on the issue. That has been made abundantly clear by the Court of Final Appeal in *Kwok Chin Wing v 21 Holdings Ltd* [[1]](#footnote-1), in which Ma CJ said:-

“21. It should by now really be quite unnecessary to issue yet another reminder on the rationale behind pleadings. The basic objective is fairly and precisely to inform the other party or parties in the litigation of the stance of the pleading party (in other words, that party’s case) so that proper preparation is made possible, and to ensure that time and effort are not expended unnecessarily on other issues: *Wing Hang Bank Ltd v Crystal Jet International Ltd* [2005] 2 HKLRD 795, 799 [6(1)]. It is the pleadings that will define the issues in a trial and dictate the course of proceedings both before and at trial. Where witnesses are involved, it will be the pleaded issues that define the scope of the evidence, and not the other way round. In other words, it will not be acceptable for unpleaded issues to be raised out of the evidence which is to be or has been adduced. As the Court of Appeal remarked in *Wing Hang Bank Ltd v Crystal Jet International Ltd* at 799 [6(2)]:

(2) In a trial, particularly where evidence is given by witnesses, it becomes extremely important that each side knows exactly what are the live issues. Where issues are sought to be introduced that have not been adequately or properly pleaded, amendments must be sought unless the consent of the other party or parties has been obtained. It will simply not do for unpleaded issues to be ‘slipped in’ when evidence is being given in the hope that the other side is not sufficiently alert to object.

22. … one does not sift through the evidence adduced in a trial in the hope that something was said that can conceivably found a cause of action. Issues, I would reiterate, must be properly pleaded unless for some reason the pleadings have assumed a less significant role in the proceedings.”

1. Apart from setting out a clear case on pleadings, the plaintiff also bears the burden to adduce satisfactory evidence to prove his pleaded case. He who asserts must prove[[2]](#footnote-2). In *Wat Kwing Lok v The Kowloon Motor Bus Company (1933) Ltd*[[3]](#footnote-3), Sakhrani ‍J said at [17]:-

“ The mere fact of the occurrence of the accident is not sufficient to give rise to a presumption of negligence on the part of the defendant. The burden of proof is on the plaintiff to show on a balance of probabilities that there has occurred an event which is unusual and which, in the absence of explanation, is more consistent with fault on the part of the defendant than the absence of fault. If, and only if, the plaintiff proves that the unusual event is more consistent with fault on the part of the defendant than the absence of fault, the evidential burden then shifts to the defendant to show, on a balance of probabilities, that the accident happened without negligence on its part.”

1. It is often argued in personal injuries cases that employers have failed to provide safe systems of work to their employees. Whether a particular employer has the duty to do so depends upon the facts of that particular case, including the task required to be performed by the employee is a simple one or not. In respect of simple tasks, it would be reasonable for the employer to expect that the employee would exercise common sense to perform the task without the need for the employer to give specific instruction or advice how the task should be performed.[[4]](#footnote-4)
2. As to assessing the credibility and reliability of witnesses, a succinct summary of the guiding principles can be found in *Lee ‍Fu Wing ‍v Yau ‍Po Ting Paul*[[5]](#footnote-5), in which DHCJ Au (as he then was) said:-

“53. In assessing the credibility of a party’s case on a particular issue, I accept the submissions of [counsel] that the Court should take into considerations the following: -

(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.

(4) The demeanour of the witnesses.”

1. *THE EVIDENCE*
2. P, Madam Chan and Madam Yau have given live evidence in the trial. Apart from the evidence from these witnesses, by a consent order dated 30 November 2020, the Joint Orthopaedic Report by Dr Wong Chin Hong (“Dr CH Wong”, appointed by P) and Dr Wong See Hoi (“Dr SH Wong”, appointed by D) dated 9 March 2020 (“the Joint Report”) has been adduced as evidence in the trial without calling the makers thereof. The two medical experts have performed a joint examination on P on 29 October 2019 (“the Joint Examination”).

*D1. P*

1. Having seen and heard P’s evidence, I am of the view that P is evasive and her evidence is far from clear on some crucial issues. Her evidence on some essential matters cannot be true. She has also exaggerated her injuries. Her evidence as a whole cannot be regarded as reliable.
2. P was born in Pakistan in 1961. She is a native Punjabi and Urdu speaker. She finished higher secondary school education in her home country. She came to Hong Kong in 1986 and has been living in Hong Kong since then. She claims that she can understand and speak very little English and Cantonese.
3. The alleged requirement is a main plank in P’s case. However, as to the alleged requirement, P’s evidence is vague and unclear. P only mentioned something which might be relevant to the alleged requirement in [6] of her witness statement dated 20 December 2019. In that paragraph, P said:-

“At around 8:00 am on 16 December 2013, I reported to work at the Place of the Accident as usual. After that Mr. Wong instructed me and three senior female workers to iron various sizes of table cloths (“the Cloths”) on the Machine (“the Task”). The workers were required to put the Cloths onto the running conveyer belt (“the conveyer Belt”) of the Machine which keep rolling for ironing the Cloths. Accordingly, when the Cloths get stuck between the conveyer Belt and the Machine, the workers had to remove it immediately. The technicians were called to fix the Machine when the Machine was out of order and/or for the routine maintenance works. Accordingly, on the day of the accident, in the process of ironing the Cloths, at around 10:30 am, while I placed a small Cloth onto the conveyer Belt, the Cloth got stuck between the conveyer Belt and the Machine and when I attempted to remove it, my left hand was crushed between the conveyer Belt and the Machine (“the Accident”). As a result of the Accident, I sustained serious crush and electric burn injury to my left palm, fingers including left thumb. When my left hand was crushed, I yelled for help and upon hearing me, one of the co-workers switched off the Machine and I removed my hand from the Machine.”

1. In my view, [6] of P’s witness statement is vague and cannot be satisfactory evidence in support of the alleged requirement raised by P in her pleadings.
2. A fair reading of [6] of P’s witness statement is that P is talking about what happened on 16 December 2013 in that paragraph. She is not saying anything which was the general practice in D. P certainly has not said that *whenever* a cloth was stuck inside the Machine, the alleged requirement would apply.
3. In [6] of her witness statement, P did not say that when the workers were removing the cloth from the Machine, Mr Wong saw this and did not stop the workers from doing so.
4. Further, P did not say that Mr Wong himself had made any attempt to remove any cloth stuck inside the Machine.
5. Under cross-examination, P was asked why she did not switch off the Machine before removing the cloth stuck therein. I am of the view that the answers given by P are not true.
6. In her pleadings, P claimed that in accordance with the alleged requirement, *whenever* a cloth was stuck inside the Machine, the workers were required to remove it *immediately* (“the 1st Version”).
7. Under cross-examination, P was asked why she did not switch off the Machine before removing the cloth stuck inside the Machine. P said that when a small piece of cloth was stuck inside the Machine, the workers would not switch off the Machine and would directly remove the cloth from the Machine. However, when a large piece of cloth was stuck inside the Machine, the workers would switch off the Machine first, and then remove the cloth from the Machine. According to this answer, the practice would be as follows (“the 2nd Version”):
8. if the cloth jammed inside the Machine was a small piece, the workers would immediately remove the cloth from the Machine;
9. if the cloth jammed inside the Machine was a large piece, the workers would not immediately remove the cloth from the Machine, but would switch off the Machine first.
10. Under cross-examination, P said that she did not report the Jammed Cloth Incident to anyone. P claimed that the workers had to work quickly and were not required to report similar incidents to their supervisor. The workers would only need to report the matter if the cloth stuck inside the Machine was 6-7 feet long. So according to P, if the cloth stuck inside the Machine was 6-7 feet long, apart from switching off the Machine, the workers would also need to report the matter to their supervisor and stop the Machine. This is the 3rd Version told by P.
11. Both the 2nd Version and the 3rd Version have not been pleaded by P or mentioned by P in her witness statement. These versions are materially different from the 1st Version raised by P in her pleadings. In my view, apart from not having given clear evidence in support of the 1st Version, P has also made up the 2nd Version and the 3rd Version under cross-examination. By making up the 2nd Version and the 3rd Version, P was trying to find an excuse justifying why she did not switch off the Machine before removing the cloth stuck inside the Machine.
12. P denied that D had given the Standing Instruction to the workers. I am of the view that the denial is untrue. It is P’s pleaded case that when the Machine was out of order, the qualified technicians would be called to fix the problems[[6]](#footnote-6). Thus, it is an undisputed fact that there were some qualified technicians, who would be responsible for solving the operational problems of the Machine. It is inherently probable that D would require the workers to report any jam of cloth inside the Machine to their immediate supervisor, and the supervisor would ask the technicians to handle the problems. It is more probable than not that D would have given the Standing Instructions to the workers.
13. P also denied that Madam Chan had given the Specific Instruction to her. P claimed that in any event, she could not understand instructions given to her in Cantonese. In my view, P’s evidence on these matters is untrue.
14. P came to Hong Kong in 1986 and has been living in Hong Kong since that time.
15. When being asked her way of communication with Mr Wong, P said that Mr Wong had never talked to her and would only use gestures to give instructions to her. P also claimed that she need translation from other Pakistan workers in order to understand Mr Wong’s oral instructions to the workers.
16. However, at a later stage of her evidence, P admitted that she could communicate with Madam Chan in Cantonese while there were working together.
17. By 2013, P has been living in Hong Kong for 27 years. She admitted that she would be able to communicate with Madam Chan in Cantonese. In these circumstances, it is inherently improbable that she could not understand any oral instruction given by Mr Wong in Cantonese and would need translation from other Pakistan workers. It is also inherently improbable that Mr Wong would give instruction to P by using gestures only.
18. P agreed that she worked together with Madam Chan and they were working side by side. P also agreed that Madam Chan was her superior and P had to follow Madam Chan’s instructions. In the circumstances, it is more probable than not that when P discovered the Jammed Cloth Incident, she would report the matter to Madam Chan.
19. P claimed that she did not report the matter to Madam Chan, and P offered the 3rd Version as an explanation. P said that the cloth stuck inside the Machine was a small piece, so reporting would not be necessary. For the reasons set out in [25] in the above, I am of the view that the 3rd Version is not true.
20. Having heard the report from P, naturally Madam Chan would give P a response. Given that these were qualified technicians responsible for handling operational problems of the Machine, it is inherently probable that Madam Chan would have given the Specific Instruction to P. For the reasons set out in the above, I am of the view that P would be able to understand the Specific Instruction.
21. Further, as submitted by counsel for D, I agree that P has exaggerated her injuries. As assessed by the physiotherapist and occupational therapist in June 2014, P’s left hand grip power was 7 kg and 12 kg respectively. However, in the Joint Examination held on 29 October 2019 (i.e. some 5 years later), P’s left hand grip power was reduced significantly to 4 kg only when there was no objective sign like muscle wasting to support her significant weakness in range of movement test and grip test in the Joint Examination. No explanation has been offered by P on the significant reduction of her left hand grip power in the Joint Examination.
22. P was cross-examined about her lack of attempt in finding jobs at any time after the expiry of the sick leave period on 8 June 2015. P claimed that she was unable to work as she was in pain and had to visit hospitals for physiotherapy and massage. Her evidence is contradicted by the medical records and the receipts produced in these proceedings.
23. Both Dr CH Wong and Dr SH Wong are of the view that the sick leave period up to 8 June 2015 is reasonable.
24. As set out in the Joint Report, the latest follow-up for physiotherapy was on 27 March 2017. As per the medical report issued by Tuen Mun Hospital dated 13 July 2017, P was considered to have achieved maximal medical improvement in the latest follow-up on 27 March 2017.
25. Both medical experts are of the opinion that P has reached the maximal medical improvement, and no further medical or surgical intervention is recommended. Both experts are also of the view that she was able to work after the expiry of the sick leave period, although they have different views on the percentage of reduction of working capacity of P.
26. The last receipt showing medical expenses is dated 27 March 2017.
27. The documentary evidence shows that after 27 March 2017, P did not receive any treatment as a result of the injuries sustained by her in the Accident. By that time, she has already received maximal medical improvements.
28. It is recorded in the Joint Report that at the time of the Joint Examination, P walked with a frame. P started to use the frame to prevent fall after she fell from stairs in April 2019. The fact that P would need to walk with a frame is unrelated to the Accident.
29. In view of the documentary evidence, P’s contention about the intensity of pain that requires constant medication and prevents her from finding any job at any time after the expiry of the sick leave period on 8 June 2015 cannot be true.
30. Under cross-examination, P was asked that she had failed to tell the two medical experts a pre-accident injury sustained by her (“the Previous Injury”), and she misrepresented to the two medical experts that she had good past-health and had no previous major hand injury. Facing the challenge, P has tried to give some answers. In my judgment, the answers given by P are clearly untrue.
31. In a medical report dated 16 June 2017 issued by the Tuen Mun Hospital, it is recorded in the said report that P attended 8 sessions of physiotherapy from 19 April 2013 to 4 July 2013 because of an injury. When P was referred to this medical report, initially P said that she could not remember. However, at a later time, P said that she could remember and said that the injury at that time was an injury at the toe.
32. This answer is untrue. As recorded in the medical report:

“Initial Clinical Findings (19 Apr 2013)

1. Patient’s Complaints
2. [P] complained of constant pain over **her bilateral thumb** with Numeric Pain Rating Scale (NPRS) of 8 out of 10 during movement and NPRS 3 out of 10 at rest.
3. She reported the pain was provoked when bending her **thumbs**.
4. Objective Findings

1. Range of movement (ROM) of her metacarpophalangeal joints of both thumbs where 0 degree in extension with pain and 20 degrees in flexion with pain. ROM of her interphalangeal joints of **both thumbs** was 0 degree in extension with pain and 20 degree in flexion with pain.” (Emphases added)

1. It is inherently improbable that P could not remember the Previous Injury, for there was significant pain suffered by her (NPRS 8 out of 10), and she received 8 sessions of physiotherapy over 3 months from 19 April 2013 to 4 July 2013 (i.e. just a few months before the Accident). Importantly, as recorded in the medical report, the Previous Injury was in relation to her thumbs not her toe.
2. In my judgment, P’s evidence is untrue and unreliable on various material aspects. Save and except the parts which are consistent with D’s case, I refuse to accept P’s evidence.

*D2. Madam Chan*

1. Madam Chan mentioned the following in her evidence:-
2. Madam Chan started to work in D as a supervisor in 2012. In 2013, she was P’s supervisor.
3. P could speak basic Cantonese. Madam Chan could communicate with P in Cantonese at work.
4. All the workers in Madam Chan’s team (including P), when they first joined D, Madam Chan would tell them their duties, and would give them the Standing Instruction.
5. On 16 December 2013, P was responsible for placing cloths on the conveyer belt of the Machine. At about 10:00 am, P reported to Madam Chan that a piece of cloth was jammed inside the Machine. Madam Chan saw that the Machine was operating. She gave the Specific Instruction to P and then left the scene for a few minutes. After returning to the scene, she saw that P had suffered injuries at her left hand. P told Madam Chan that P had opened the safety cover to try to remove the cloth, and injured the left hand.
6. While P was working in D, save and except the Jammed Cloth Incident, no cloth had ever been jammed in the Machine. Also, while P was working in D, Madam Chan had not seen any workers other than the qualified technicians to handle the removal of jammed cloths inside any machine.
7. There were notices with graphic illustrations posted on the Machines, reminding the workers not to place their hands inside the Machine.
8. I am of the view that Madam Chan’s evidence remains unshaken after the cross-examination. Subject to the matter set out in [34] below, I accept Madam Chan’s evidence.
9. As to the notices mentioned by Madam Chan in her evidence, Madam Chan has not given clear evidence as to when the notices were posted on the Machine. That being the case, I cannot be sure that those notices were already posted on the Machine before 16 December 2013.

*D3. Madam Yau*

1. Madam Yau mentioned the following in her evidence:-
2. At the time of the Accident, Madam Yau was the General Manager of D.
3. Apart from Chinese workers, there were also Pakistani workers in D. All the directors and management staff of D were Chinese, and they would use Cantonese and English to communicate with the workers. Non-Chinese would only be employed by D if they could speak basic Cantonese or English.
4. P started to work for D in July 2013 but left the employment in November 2013. However, P was re-employed by D on 8 December 2013. P’s basic monthly salary was HK$6,552, and her monthly diligence allowance was HK$500.
5. From 2013 to 2015, D was in need of finding more employees.
6. Had P sought employment from D or its associated company (Madam Yau was the shareholder and the director of the associated company) after recovery, D or its associated company would certainly be willing to employ P by paying her not less than HK$7,000 per month and would arrange P to do some suitable works, i.e. works not involving operating any machine or lifting heavy objects.
7. Madam Yau’s evidence has not been challenged by P. I accept Madam Yau’s evidence.

*E. LIABILITY*

1. Based upon the evidence accepted by this court, I find that:-
2. P could speak basic Cantonese and she was able to use Cantonese to communicate with her colleagues in D, including Madam Chan.
3. When P started to work for D in July 2013, Madam Chan on behalf of D gave the Standing Instruction to P in Cantonese. P was capable of understanding the Standing Instruction.
4. On 16 December 2013, P was responsible for placing the cloths on the conveyer belt of the Machine. That was a simple task and could be done by one worker. It would be reasonable for D to expect that P would exercise common sense to perform the task without the need for D to give specific instruction or advice how the task should be performed.
5. The Jammed Cloth Incident occurred at about 10:00 am on 16 December 2013. P reported the matter to Madam Chan. Madam Chan gave the Specific Instruction to P in Cantonese. P was capable of understanding the Specific Instruction.
6. D employed some qualified technicians to handle problems concerning the Machine and other machines. D’s practice was that whenever a cloth was jammed inside a machine, the problem should be handled by the qualified technicians. This practice was known to P.
7. In breach of the Standing Instruction and the Specific Instruction, P opened the safety cover of the Machine and tried to remove the cloth jammed inside the Machine. In doing so, P injured her left hand.
8. In my judgment, D is not liable to P in respect of the injuries sustained by P in the Accident. D has developed a practice that problems of the machines inside D, including the problems of the Machine, would be handled by qualified technicians. This practice was known to P. The Machine was protected by a safety cover. D has also given the Standing Instruction and the Specific Instruction to P. In these circumstances, in respect of the Accident, D cannot be said as having any negligence or having breached any duty owed to P. In my view, P is the one solely responsible for the Accident. The Accident is caused by P’s failure to adhere to the practice known to her (i.e. the problem of having a cloth jammed inside the Machine should only be handled by the qualified technicians inside D), P’s failure to follow the Standing Instruction and the Specific Instruction given to her, and P’s act of opening the safety cover of the Machine without D’s permission.
9. I rule against P on liability. P’s claim therefore must be dismissed.

*F. QUANTUM*

1. For the sake of completeness, I would set out my opinion on quantum in the paragraphs below.
2. P was born in 1961. At the time of the Accident, she was 52 years old. At the time of the trial, she is 60. P is right-hand dominant and not active in sports.

*F1. Expert Evidence*

1. Both Dr CH Wong and Dr SH Wong agreed on the followings:-
2. P suffered from tissue loss over her left thumb, middle finger and ring finger during the Accident. There were burn wounds (5 cm scar on left thumb, 1 cm scar on left middle finger, 6.5 cm scar on left ring finger, 1 cm scar on left little finger). P did not suffer from any bone fracture or lesion.
3. P has reached the maximal medical improvement, and no further medical or surgical intervention is recommended.
4. The sick leave granted to P up to 8 June 2015 is reasonable.
5. At the Joint Examination, P’s left hand grip power was only 4kg and the range of movement of her fingers was reduced when compared with the previous physiotherapy records. Dr SH Wong commented that P has magnified her symptoms with submaximal effort in the joint examination. As assessed by the physiotherapist and occupational therapist in June 2014, P’s left hand grip power was 7 kg and 12 kg respectively. There was no objective sign like muscle wasting to support her significant weakness in range of movement test and grip test the joint examination. As such, Dr SH Wong considers it more appropriate to refer to the latest physiotherapy records on 12 June 2014. Despite P complained that she could not bend her thumb, left middle/ring/little fingers, Dr SH Wong opines that P has demonstrated nearly full range of movement for CMC joint of left thumb as well as the metacarpophalangeal joint of left middle/ring/little fingers.
6. In my view, Dr SH Wong’s opinion is well reasoned. I accept his opinion.
7. As to working capacity and prognosis:-
8. Dr CH Wong opines that P is unable to return to her previous job as an ironing machine operator. As an alternative, P could switch to jobs which do no demand agility and exertion with her left hand, such as security watchperson, carpark attendant or petty-office helper.
9. Dr SH Wong opines that the documented stiffness may affect the dexterity of her left hand. However, as P is right hand dominant, the intermittent pain and stiffness causes less impact on her. P is able to resume her pre-injury occupation with mild reduced efficiency and capacity, chiefly in prolonged fitting of clothes onto the machine.
10. Dr CH Wong assessed P’s impairment and loss of earning capacity at 24%.
11. Dr SH Wong however assessed P’s impairment at 9-10% and loss of earning capacity at 9-9.5%.
12. With respect to the two experts, where their opinions differ, I prefer Dr SH Wong’s opinion to Dr CH Wong’s opinion.
13. Having considered the Joint Report, Dr SH Wong’s opinion is well-supported by physiotherapy and occupational therapy reports.
14. In assessing the loss of earning capacity, Dr CH Wong did not give any reason in support of his assessment. On the other hand, Dr SH Wong has given reasons in support of his assessment, including calculations with reference to relevant academic materials.
15. As to why P would not be able to return to her pre-accident occupation, the only reason given by Dr CH Wong is because the scarring and stiffness would not disappear. It is difficult to see how the scars and stiffness would prevent P from returning to her pre-accident occupation at all, bearing in mind that P is right-hand dominant.
16. In assessing P’s working capacity, Dr SH Wong has taken into account the slightly reduced efficiency and the fact that P being right-hand dominant.
17. In my view, Dr SH Wong’s analysis is more comprehensive and is well reasoned. Whenever there is conflicts between Dr SH Wong’s opinion and Dr CH Wong’s opinion, the former is more reliable. I attach full weight to Dr SH Wong’s opinion.
18. Even on Dr CH Wong’s evidence, P would be able to work as security watchperson, carpark attendant or petty-office helper. The Wages Statistics of Personal Injury Tables Hong Kong 2019 show that the monthly salaries of cashier, security guard and messenger/office assistant exceed HK$10,000 since 2015 (i.e., after the expiry of P’s sick leave period).
19. The opinions expressed by the two medical experts in the Joint Report should be read subject to a caveat. At the time of the Joint Examination, the two medical experts were told by P that P had good past-health and had no previous major hand injury. As set out in the above, this is a misrepresentation. In fact, just a few months before the Accident, P was having severe pain at her thumbs due to the Previous Injury and was receiving physiotherapy. It is likely that had the truth been revealed to the two experts, they would have had given different assessments in the Joint Report.

*F2. PSLA*

1. On PSLA, counsel for D has referred me to some cases. In my view, the following cases would shed light on the proper award under this head:-
2. *Zhang Hongli v Wong Kam Fuk*[[7]](#footnote-7):

The plaintiff’s left little finger was crushed by construction waste. Part of the left little finger was amputated, exposing the distal phalanx of the left little finger. There was also hypersensitivity on her left little finger. She was granted 7.5-month sick leave. The expert agreed that it was difficult for her to return to her pre-accident job. Damages for PSLA were assessed at HK$120,000.

1. *Rai Tej Kumar v Fulcrum Engineering & Construction Ltd[[8]](#footnote-8)*:

The plaintiff was a general labourer working at a vessel. His left hand was injured by a fallen steel sheet. There was contusion injury to his left middle and ring fingers with un-displaced fracture at the tuft of the left ring finger. There was a deceased sensation of 30% - 40% over the distal interphalangeal area volar and dorsum of middle and ring fingers and a mild decrease in left hand grip power. There was also surgical scar over his thigh. X-ray showed no bony lesion, and that the facture was well-healed. The plaintiff has reached maximum recovery after the lapse of 1.5 year after the accident. PSLA was assessed at HK$85,000.

1. *Yeung Kiu Ying v Fairwood Fast Food Ltd[[9]](#footnote-9)*:

The plaintiff’s right thumb was hit by falling food trays which were stacked up to a height to around 3 feet on the table. She suffered from right thumb sprain, pain and swelling. There was pre-existing right trigger thumb. She could not flex her thumb, and an operation was needed to release her right trigger finger. She suffered from mild residual pain and stiffness over right thumb and mild tenderness over the metacarpophalangeal joint. PSLA was assessed at HK$42,000.

1. P claims for HK$200,000 for PSLA, while D says that the PSLA award should not exceed HK$120,000. In my view, in the present case, there was no bone fracture and no amputation. P is right-hand dominant and not active in sports. Only her left hand was injured in the Accident. Further, P suffered serious pain at her thumbs just a few months before the Accident. The pre-accident conditions of her thumbs should be taken into account in assessing the PSLA. Taking all the aforesaid and the inflation factor into account, I am of the view that the PSLA award should be HK$70,000.

*F3. Pre-trial loss of earnings*

1. P was employed by D since 1 July 2013.
2. As shown in the IRD Employer’s Return Form for the period between 1 April 2013 and 31 March 2014 (total: HK$58,212) and P’s Payment Roll between December 2013 to March 2014 (total: HK$25,416), P’s monthly salary should be HK$6,559.28. Although a MPF account has been set up for P, no contribution was necessary due to the low salaries.
3. It is not in dispute that the sick leave granted to P up to 8 June 2015 is reasonable. Therefore, I agree with D that the damages for pre-trial loss of earnings should be HK$100,307.
4. I also agree with D that after the expiry of sick leave, any loss of earnings suffered by P is caused by P’s own choice of not returning to work as a laundry worker, or not seeking any other alternative employment such as a security watchperson, a carpark attendant or a petty-office helper with similar or even higher salaries. In the circumstances, P is not entitled to any further loss of earnings after the expiry of her sick leave.

*F4. Future loss of earnings*

1. Dr SH Wong’s opinion is that P can return to her pre-accident job. Even according to Dr CH Wong’s opinion, P is able to seek other employments. D has produced evidence to show that the incomes from these other employments would not be less than the incomes from her pre-accident job. In these circumstances, no award should be made under this head.

*F5. Loss of earning capacity*

1. For the reasons set out in [55] above, P should not be regarded as having suffered any loss of earning capacity. I refuse to make any award under this head.

*F6. Special damages*

1. I would allow HK$7,000 under this head:-
2. As to P’s claim of HK$3,000 and HK$2,000 as the medical expenses and travelling expenses, these items are supported by the relevant receipts produced by P. There is no dispute regarding these items.
3. As to P’s claim of HK$2,000 on nourishing and tonic food, this is objected by D as P has not produced documentary proof in support of this claim. However, notwithstanding the lack of documentary proof, a nominal sum for nourishing and tonic food can still be allowed.[[10]](#footnote-10) I would allow the amount claimed by P.

*F7. Employees’ compensation*

1. P has received employees’ compensation in the sum of HK$178,000. This should be deducted from the total of the damages.

*F8. Summary on quantum*

1. For the reasons above, even if P succeeds on liability, there would still be no award to P.

PSLA HK$70,000

Pre-trial loss of earnings HK$100,307

Future loss of earnings Nil

Loss of earning capacity Nil

Special damages HK$7,000

Less: Employee’s compensation (HK$178,000)

received by P

Total Nil

*G. DISPOSITION*

1. I dismiss P’s claim.
2. There be a costs order *nisi* that costs of these proceedings (including all costs reserved, if any) be to D, with a certificate for counsel, to be taxed if not agreed. In view of the coming Christmas and New Year holidays, I would allow any application for varying the costs order *nisi* to be made within 21 days. Unless such an application is made by any party within 21 days from the date of this judgment, the costs order *nisi* would become absolute.
3. Lastly, it remains for me to thank counsel for the assistance rendered to the court.

( MK Liu )

District Judge

The plaintiff appeared in person

Ms Gigi Ho, instructed by Katherine Y.W. Or & Co., for the defendant

1. (2013) 16 HKCFAR 663 [↑](#footnote-ref-1)
2. *Phipson on Evidence* (19th Edition), §6-04 [↑](#footnote-ref-2)
3. HCPI 936/2005, 20 November 2007, [17] [↑](#footnote-ref-3)
4. *Fong Yuet Ha v Success Employment Services Ltd* (CACV 100/2012, 28 December 2012), per Kwan JA (as she then was) at [17] to [21]. [↑](#footnote-ref-4)
5. [2009] 5 HKLRD 513 [↑](#footnote-ref-5)
6. P’s Reply, [5] [↑](#footnote-ref-6)
7. DCPI 1571/2015, 21 March 2018 [↑](#footnote-ref-7)
8. HCPI 1151/2018, 21 August 2020 [↑](#footnote-ref-8)
9. DCPI 2016/2015, 23 January 2020 [↑](#footnote-ref-9)
10. *Yu Ki v Chin Kit Lam & Another* [1981] HKLR 419 [↑](#footnote-ref-10)