# DCPI 1982/2016

[2018] HKDC 1203

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 1982 OF 2016

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BETWEEN

LAU TAT WING Plaintiff

and

LO OI MING 1st Defendant

KONG WAI KEUNG 2nd Defendant

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##### Before: Deputy District Judge Christopher Chain in Court

Dates of Hearing: 19-20 June 2018 and 5 July 2018

Date of Judgment: 12 October 2018

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## JUDGMENT

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*A. INTRODUCTION*

1. On 10 December 2013 at about 12:59pm the 1st Defendant (“D1”), driver of the private car vehicle registration no. HV 748 (the “Car”), reversed out of a yellow hatched area at a public meter car park located at Fung Yau Street North (the “Car Park”).
2. The Plaintiff (“P”) was a pedestrian in the Car Park.
3. The 2nd Defendant (“D2”) is the husband of D1 and the owner of the Car, who was neither in the Car nor in the Car Park at the material time.
4. In gist, in the present proceedings:-
5. P alleges that he was hit by the Car due to D1 negligently reversing the Car without keeping a proper lookout and at excessive speed (the “Alleged Collision”), and therefore claims damages against D1.
6. D1 denies that she was negligent. D1’s version of events is that she reversed the Car out of the yellow hatched area of the Car Park at a safe and reasonable speed, whilst keeping a proper lookout throughout. She never saw P and denies hitting P with the Car. She stopped the Car when she heard a sound of something striking the Car – she does not know what this is but speculates P had deliberately struck the Car with his hand.
7. Alternatively, D1 asserts that, if (which is denied) she did negligently hit P whilst reversing the Car, P was contributorily negligent. P denies any contributory negligence on his part.
8. P also claims damages against D2 on the basis of D2 being vicariously liable for the Alleged Collision due to *inter alia* D2 being the owner the Car. D2 denies any vicarious liability.
9. The damages claimed by P against D1 and/or D2 are HK$174,800, which D1 and D2 contest.
10. Separate from these civil proceedings, D2 was charged with the offence of careless driving for the Alleged Collision in criminal proceedings TMS 7692/2014. After a trial held on 4 September 2014 in the Tuen Mun Magistracy, in which D2 acted in person, D2 was acquitted. A transcript of the criminal trial was placed before this Court by the parties (the “Magistracy Transcript”).
11. At trial, P and D1 gave oral evidence. In assessing the credibility and weight of P and D1’s evidence, I take into account (1) inherent probabilities; (2) internal consistencies; (3) consistency with undisputed contemporaneous documents, events, or circumstances; and (4) that if a witness is found to be untruthful or unreliable on one matter, that may affect his credibility and reliability in other matters. This approach is well-established, as set out for example in *Lee Fu Wing v**Yan Po Ting Paul* [2009] 5 HKLRD 513 at 524, §53 per DHCJ Au (as he then was) and *Big Island Construction (HK) Ltd v Wu Yi Development Co Ltd* (Unreported, HCA 1957/2005, 714/2007, 886/2007, 1364/2008, 28 July 2011) at §§23-25 per Poon J (as he then was).
12. By a consent order made by Master J Chow on 28 February 2017, the parties agreed not to adduce any expert evidence as to liability and quantum.
13. Before closing submissions, the parties submitted to this Court an agreed updated sketch plan of the Car Park (based on earlier versions which were referred to at trial), which is annexed to this judgment (the “Sketch Plan”). In the course of preparing this judgment, I have made additional markings on the Sketch Plan which will be explained hereinbelow.
14. In this judgment, I will first summarize the respective cases of the parties, before going on to set out my analysis, findings, and conclusions.

*B. THE RESPECTIVE CASES OF THE PARTIES*

*B1. The Sketch Plan*

1. As the saying goes, “a picture is worth a thousand words”. The respective versions of events of P and D1 can be best illustrated with reference to the Sketch Plan annexed to this judgment.
2. I bear in mind that the Sketch Plan is only an agreed approximation of the layout of the Car Park and not a precise to scale drawing. Any references to directions herein (up, down, left, right etc.) should be interpreted corresponding to the Sketch Plan in landscape orientation.
3. I refer to the Sketch Plan, and note that the following matters are undisputed by the parties:-
4. The sidewalks for pedestrian use are labelled “行人路”.
5. The metered car park spaces are labelled “咪錶車位”.
6. The black arrows depict the direction of traffic along the road.
7. There are railings along the back of the metered car park spaces along the outside of the Car Park, separating them from the adjacent sidewalks.
8. The yellow hatched area, labelled “黃格”, is approximately 3 car widths wide. I have highlighted the yellow hatched area on the Sketch Plan in yellow for easier reading.
9. Right above the yellow hatched area is a gap in the railings. The circles above the yellow hatched area represent concrete bollards. Pedestrians can access the sidewalk from the Car Park, and vice versa, through this gap (the “Sidewalk Access”).
10. There are several metered car park spaces in the middle of the Car Park. The long and thin rectangular strip directly above those car park spaces is a narrow pedestrian walkway.
11. The horizontal boxes above the narrow pedestrian walkway are unofficial car park spaces, where cars would be parked if the Car Park was particularly full.
12. There is a real estate agency “富來物業” across the sidewalk from the yellow hatched area. The real estate agency is part of a larger building, which was scaffolded and under external renovation works at the time. I have drawn onto and marked on the Sketch Plan this “Scaffolded Building”.
13. I have also drawn onto the Sketch Plan the following:-
14. A blue rectangle, representing the approximate location of where the Car was parked in the middle of the yellow hatched area prior to the Alleged Collision.
15. A blue arrow, representing the approximate route taken by the Car when D1 reversed to the left.
16. A black “X”, marking the approximate location of where the Alleged Collision occurred.
17. A red arrow, depicting P’s route of travel (i.e. before the black “X”) and intended route of travel that was disrupted by the Alleged Collision (i.e. after the black “X”)

*B2. P’s Case on Liability and Quantum*

1. P explained his intended route of travel across the Car Park, as depicted by the red arrow on the Sketch Plan, as follows:-
2. Prior to the Alleged Collision, P was on the side of Fung Yau Street North opposite the Car Park.
3. P crossed Fung Yau Street North and entered the Car Park at approximately around the vehicle entrance/exit area (i.e. the beginning of the red arrow).
4. P’s destination was the opposite corner of the Car Park from where he entered, which was a path leading to a bus stop from which P could catch a bus to return home. To get to that destination, P intended to leave the Car Park via the Sidewalk Access above the yellow hatched area.
5. Upon entering the Car Park, as seen by the red arrow, P did not walk on the sidewalk on the outside of the Car Park, nor did he walk on or along the narrow pedestrian walkway in the middle of the Car Park.
6. Rather, P walked along the middle of the road, about 2 to 3 meters distance away from the stationary cars parked in the metered parking spaces.
7. According to P’s recollection:-
   1. The metered parking spaces to the left and right of the yellow hatched area were all occupied by parked cars.
   2. The yellow hatched area to the left of the Car was occupied by another parked car.
   3. The yellow hatched area to the right of the Car was an open space (the “Open Space”).
8. As shown by the red arrow, P’s intended route was to walk to the very end of the yellow hatched area, then turn upwards towards the sidewalk and pass through the gap between two parked cars (i.e. one parked in the metered parking space to the left of the yellow hatched area, the other in the yellow hatched area to the left of the Car) (the “Narrow Gap”).
9. P was questioned heavily as to why he chose to walk along the middle of the road, instead of walking on the sidewalk. He explained as follows:-
10. The route he chose was for speed and convenience.
11. He felt it was safe to walk in the middle of the road as there was very little traffic in the Car Park at the time.
12. Due to the renovation works being conducted on the Scaffolded Building, there were construction materials obstructing about 1 meter of the sidewalk immediately outside the Scaffolded Building – though P conceded that the obstruction did not make the sidewalk impassable.
13. Further, there was falling debris from the Scaffolded Building, which P had noticed on previous occasions of visiting the Car Park (which he did so frequently). In P’s opinion, it was therefore unsafe and dangerous to walk along the sidewalk next to the Scaffolded Building.
14. As for P’s case on the Alleged Collision and the immediate aftermath:-
15. As P walked along the middle of the road, he paid attention as to whether the cars parked in the adjacent metered parking spaces were exiting, including D1’s Car parked in the middle of the yellow hatched area.
16. P looked out for brake lights and reverse lights, and listened for engine sounds or engine starting sounds. All along, he did not see any such lights or hear any such engine sounds, including when he walked past the Car.
17. The Alleged Collision occurred about 2 to 3 seconds after P had walked past where the Car was parked in the middle of the yellow hatched area. P was suddenly hit from behind by the Car quickly reversing at a fast speed. The Car impacted P in the right upper arm area, near the elbow. He stumbled forward 3 to 4 feet but managed to maintain balance. His right arm immediately felt numb and painful.
18. P, angry at being hit, then went up to the driver side window of the Car, when he saw D1 for the first time. He saw that D1 had a dog on her lap and a mobile phone in her hand. D1 refused to get out of the Car, she only rolled down the window and mumbled her apologies.
19. The police and an ambulance were called by P. It was only after the police had arrived that D1 got out of the Car. P was examined by paramedics, and refused to go with the ambulance to a hospital for immediate treatment, as he had to urgently return home to send out a work quotation (for his audiovisual business). He attended the hospital by himself later that day.
20. Finally, P’s case on quantum is as follows:-
21. P’s claim of HK$174,800 consists of HK$170,000 claimed for pain, suffering, and loss of amenities (“PSLA”), HK$4,000 as damages for tonic food, and HK$800 as damages for medical and travelling expenses.
22. P received medical treatment at the Accident and Emergency Department (“A&E”) of Pok Oi Hospital (the “Hospital”) on 3 occasions, obtaining sick leave from 10 December 2013 to 20 December 2013. According to the Hospital’s records:-
    1. On 10 December 2013, the day of the Alleged Collision, P visited the A&E department of the Hospital and was provisionally diagnosed with a sprained neck.
    2. On 13 December 2013, P visited the A&E department of the Hospital and was provisionally diagnosed with an injury to the right upper limb.
    3. On 18 December 2013, P visited the A&E department of the Hospital and was provisionally diagnosed with right hand pain.
23. P further explained that he did not undergo any physiotherapy treatment but went to see a Chinese doctor several times for bone-setting treatment (跌打).
24. To support his PSLA claim, P alleges that up to present day, he still suffers from the following symptoms (the “Alleged Symptoms”):-
25. Intermittent needle prick sensations to his neck and right hand, especially upon exertion;
26. Occasional neck pain and soreness, with intermittent pain radiating to his upper limbs causing numbness;
27. Such pain symptoms required intake of analgesics and caused difficulty in sleeping, and were aggravated during cold or bad weather;
28. Experiencing easy fatigue and inability to move heavy objects; and
29. Limited range of body movements.

*B3. D1’s Case on Liability and Quantum*

1. D1’s version of events is as follows:-
2. At the time, D1 had been taking care of her friend’s dog, whilst her friend was out of town. The day before the Alleged Collision, the dog suffered an injury.
3. On the day of the Alleged Collision, 10 December 2013, D1 drove the Car to the Car Park in order to take the dog to visit a nearby veterinarian clinic (the “Vet Clinic”).
4. As the Car Park was quite full that day, D1 first parked the Car temporarily in the middle of the yellow hatched area, knowing that it was not a proper parking space. She then got out, exited the Car Park through the Sidewalk Access above the yellow hatched area, walked to the nearby Vet Clinic, and dropped the dog off there.
5. D1 then returned to the Car, with the intention of finding a proper parking space in the Car Park to park the Car, then returning to the Vet Clinic.
6. Before D1 reversed the Car out of the yellow hatched area, she took her time to carefully check the mirrors, as well as turning her head to carefully check the rear and sides of the Car. She then reversed the Car slowly, at a speed below 5 km/h, whilst keeping a lookout on the Car’s surroundings and keeping her foot on the brake pedal.
7. Seconds later, after the Car had reversed about 5 to 6 feet, she suddenly heard a sound of something striking the rear of the Car. She stopped the Car immediately. She did not see what caused the striking sound but speculates that P had come up to the Car and struck it with his hand.
8. As D1 got out the car, P came up to her shouting loudly, claiming that D1 had hit him with the Car. D1, seeing that P appeared uninjured and frightened by P’s demeanor, responded to P by asking what he wanted (“咁你想點?”). P then called the police and requested an ambulance.
9. D1 denies that she was talking on the phone when she was reversing the Car. After she got out of the Car and was shouted at by P, she did return to the Car to use her mobile phone to call her husband D2.
10. As to quantum, D1 challenges P’s case on quantum but does not put forward any positive case of her own.

*C. ANALYSIS, FINDINGS, AND CONCLUSIONS*

*C1. Findings of fact & credibility*

1. I have considered the totality of all of the evidence before me, and as part of that overall consideration taken into account the respective demeanors of P and D1 in giving evidence.
2. I find D1 to be a credible witness and I accept her testimony as truthful and reliable. In particular:-
3. D1 was unshaken in cross-examination, and directly answered all questions asked of her. She was open and frank as to what she did and did not know. For example, she unhesitatingly and immediately accepted that her conclusion that P had deliberately struck the Car was her own speculation and inference from the circumstances, and that she did not actually see P do so.
4. D1’s version of events is inherently plausible and has been materially consistent from day one. Her testimony before me was largely consistent with her earlier testimony in criminal proceedings as recorded in the Magistracy Transcript.
5. D1 was asked by the Court why she did not obtain and disclose records from the Vet Clinic to show the time at which the dog was first admitted. Such records were independent contemporaneous documents, which could potentially corroborate her version of events and directly contradict P’s story. D1 explained that it had never occurred to her to do so, and neither her legal representatives nor P’s legal representatives had ever requested her to do so or even brought it up. I accept D1’s explanation and do not draw any adverse inference against her in this regard.
6. In closing submissions, it was argued by P’s counsel that D1 had admitted or conceded in cross-examination that she would have seen P, had she been keeping a proper lookout. I disagree that D1 had made any admission or concession; when understood in its proper context it is clear that D1 was giving a hypothetical answer to what she understood to be a hypothetical question.
7. In contrast, I find that P is not a credible witness, and that P’s testimony is untruthful and unreliable. In particular, P’s testimony was problematic in multiple aspects:-
8. *Evidence of falling debris from Scaffolded Building raised for the first time in cross-examination* –
9. P was heavily challenged in cross-examination as to why he was walking in the middle of the road in the Car Park.
10. In his witness statement and in his previous testimony in criminal proceedings, P explained that he chose his route for convenience and because it was safe.
11. Until cross-examination before this Court, P had never said anything about wanting to avoid the dangers of falling debris from the Scaffolded Building.
12. P’s explanation for why he only raised such an important piece of information for the first time in cross-examination is simply that, he had forgotten to explain earlier (“漏咗冇講”).
13. It is incredulous that P would have forgotten to mention such an important detail on previous occasions. The trial of the criminal proceedings was held in September 2014, less than 1 year from the Alleged Collision when P’s memory must have been fresher compared to when he was before this Court. On that occasion, P was giving evidence under oath, and must have appreciated the gravity of the situation and the need to give a full and complete answer. From the Magistracy Transcript (at pp 23O to 24I), it can be seen that P was specifically asked and answered multiple questions about why he was walking in the middle of the road.
14. The fact that such an important detail was mentioned only for the first time in cross-examination suggests that it was a last minute concoction made up by P in the witness box.
15. *Inherent implausibility of P’s chosen route* –
16. In addition to being raised at the last minute, P’s explanation of avoiding falling debris from the Scaffolded Building is inherently implausible. This Court takes judicial notice of the fact that falling objects from height is regarded as a serious problem in Hong Kong. If there was truly debris falling from the Scaffolded Building posing a danger to pedestrians on the sidewalk below, a report would surely have been made to the relevant authorities to put a stop to such danger, particularly as the Scaffolded Building and the Car Park are located in a busy urban area. Such a hazard would not have been allowed to persist for P to have noticed it on multiple occasions of visiting the Car Park.
17. Further, regardless of avoiding falling debris from the Scaffolded Building, even if P did not walk on the sidewalk or along the narrow pedestrian walkway in the middle of the Car Park, it is inherently implausible that as a reasonable pedestrian P would walk along the middle of the road, instead of hugging the side of the road.
18. Still further, it is inherently implausible why P did not turn upwards to walk through the Open Space in the yellow-hatched area, which was the most open and direct path for P to get to the Sidewalk Access, compared to P’s intended route of passing through the Narrow Gap between 2 parked cars. It was simply unnecessary for P to walk past the Car at all.
19. *Internal inconsistency in the circumstances of the Alleged Collision* –
20. P’s own evidence was that he walked by the rear of the Car at a distance of about 2 to 3 meters away, whilst paying particular attention to engine sounds or engine starting sounds as he was walking.
21. Of course, in order for D1 to reverse the Car, the engine of the Car had to be started.
22. On P’s own case and as expressly accepted by P, having walked by the Car at a distance of about 2 to 3 meters away whilst paying particular attention, he would have been able to hear engine sounds or engine starting sounds of the Car. On hearing such sounds, P would then have appreciated that the Car may be reversing, and therefore would have taken evasive action in response.
23. However, P insists that he never heard any engine sound or engine starting sound as he walked by the Car, and that within 2 to 3 seconds after walking past the Car he was hit from behind.
24. On its face, P’s case is self-contradictory in this respect and simply makes no sense, which reflects negatively on the credibility and reliability of P’s evidence.
25. *Inherent implausibility of P’s alleged injuries and case on quantum* –
26. P has chosen to produce extremely limited evidence to support his case on quantum. No expert medical witness was called. The only medical records produced were from the A&E department of the Hospital, dating back to December 2013 (about 4½ years ago). In addition to being outdated, I do not regard A&E records as particularly weighty evidence in the present case. By the very nature of the A&E department, A&E doctors would only have limited time and opportunity to examine the extent of P’s alleged injuries.
27. The Alleged Collision did not appear to be a serious accident. By P’s own account, he stumbled 3 to 4 feet from the Alleged Collision and maintained balance. There is no suggestion that P suffered from any external wounds or bruising.
28. The contemporaneous records do not describe P’s alleged injuries consistently. In his police interview record, P states that his hand was injured. In the diagram attached to his police interview record, P states that the right side of his body was hit. The 3 medical records of the A&E department of the Hospital state 3 different provisional diagnoses of neck, upper limb, and hand pain.
29. P now clarifies his case that he was hit by the Car in the upper arm area, near the elbow.
30. It is not apparent at all how P suffered any injury to his hand from the Alleged Collision. By his own account, he did not fall over, and his hand and wrist did not come into contact or impact with anything as a result of the Alleged Collision. Indeed, the A&E record of 18 December 2013 recorded the following observations: “no external wound”, “no bruising”, “no definite tender spot”, “range of motion full”, “observed holding the paper with right hand without difficulty”, and “exaggerated facial expressions when holding a fist”.
31. There is no updated medical evidence produced to substantiate the Alleged Symptoms which P alleges to suffer from up to present day, some of which appear to be serious aftereffects of injury such as limited range of body movement or persistent intermittent pain and needle prick sensations. The only evidence to support that P suffers from the Alleged Symptoms is P’s own bare assertions.
32. In the circumstances of the present case, I do not find P’s bare assertions as to his alleged injuries and the Alleged Symptoms convincing at all.
33. *P’s nonsensical explanation of his own previous remarks suggesting monetary motivation* –
34. In his previous testimony as seen in the Magistracy Transcript (at pp 24L, 24T to 25G), P said words to the effect that, if D1 had shown a better attitude and more sincerity, there would have been a different direction or different way of handling things.
35. Notably, P was not only complaining about D1 having an (alleged) poor attitude – he specifically alluded to alternatives to going to Court. The learned Magistrate expressed alarm and concern at such words, which suggest that P may be strongly motivated by monetary incenttives which heavily taint his testimony (at p 39B-E).
36. In cross-examination before this Court, when P was taken to his previous remarks, P explained that what he meant by a “different way or different direction of handling things” would be for D1 to drive him and accompany him to see a doctor.
37. However, on P’s own case, he was in a rush to get home for work purposes, which was so urgent and important that P even refused to go with the ambulance to a hospital for immediate treatment. P’s explanation of his previous remarks therefore makes no sense.
38. *Demeanor of P* – Additionally, P was argumentative and evasive in cross-examination, frequently failing to answer the questions he was asked and constantly seeking to repeat arguments to advance his case. As one example:-
39. As seen from the Magistracy Transcript (at p 24O), the testimony previously given by P in criminal proceedings was that D1 did not check her mirrors as she reversed the Car.
40. In cross-examination before this Court, it was pointed out to P that on his own evidence he only saw D1 for the first time after the Alleged Collision.
41. P then argued, his previous testimony was based on what D1 had told him after the Alleged Collision, in response to P’s query as to whether D1 had checked her mirrors.
42. However, as seen from the Magistracy Transcript (at pp 18S to 19A), even according to P’s previous testimony, D1 just mumbled apologies in response to P’s query, but never admitted or accepted that she did not check her mirrors.
43. It was only upon being pressed further in cross-examination that P clarified that it was his own inference that D1 did not check her mirrors and did not turn her head to check her surroundings.
44. The above example illustrates that in giving evidence, P drew no distinction between what he actually saw and heard, and the subjective conclusions and inferences he drew in favour of his own case.
45. The totality of the analysis above overwhelmingly demonstrates that P’s testimony is far from truthful or reliable.
46. In closing submissions, P relied on the undisputed existence of the dog as conclusive proof that P was telling the truth. It was argued that if P had not seen the dog on D1’s lap he would not have known of its existence. With respect, this is a bootstraps argument, as it is premised upon this Court first believing P’s testimony that he only saw D1 for the first time after the Alleged Collision. P could well have seen D1 (and the dog) from a distance at an earlier point in time.
47. In light of my above views on the credibility and reliability of the respective witnesses, I generally accept that D1’s version of events reflects the truth of what happened, and I reject P’s version of events in its entirety. In particular, I make the following factual findings:-
48. Before D1 reversed the Car, she had checked the mirrors and turned her head to check the rear and sides of the Car. She was not using her mobile telephone, nor did she have a dog on her lap. She did not see P, as P was not within the vicinity of the Car at the time.
49. D1 then proceeded to reverse the car at a slow speed, below 5km/h. As D1 reversed the Car, she continued to keep a proper lookout as to the Car’s surroundings. She did not see P, as P was not within the vicinity of the Car at the time.
50. After several seconds of D1 reversing the Car, P suddenly stepped up to the Car, from a place which D1 could not have seen despite her keeping a reasonable lookout throughout, and struck the Car causing a noise. D1 then immediately stopped the Car. The Alleged Collision as put forward in P’s case did not occur.
51. I specifically make no finding as to precisely how and why P suddenly emerged from an unseen place to strike the Car. There could be any number of explanations for what happened, and there is insufficient evidence before me to draw the conclusion that P acted deliberately. D1’s own evidence in this regard was, by her own admission, speculative and inferential.

*C2. Conclusions on negligence and contributory negligence in light of findings of fact*

1. Both counsel have sought to assist this Court by producing a large number of authorities to this Court concerning the duty of care and standard of care of road users. However, both counsel agreed that this is ultimately a fact sensitive question, dependent upon the individual circumstances of each case. I will therefore refrain from repeating or reciting the voluminous authorities cited to me.
2. In the context of the factual findings as set out above, where I have found that the Alleged Collision did not occur, I see no basis whatsoever for saying that there is any negligence on the part of D1. In particular:-
3. Before and during reversing the Car, D1 kept a reasonable and proper lookout as to the Car’s surroundings.
4. D1 reversed the Car at a slow and safe sped.
5. Whilst there was contact between P and the Car, as I have found above this was a result of P suddenly stepping up to the Car to strike it, and not because of any action, failure, or omission on the part of D1.
6. As I have concluded that there is no negligence on the part of D1, it is unnecessary for me to consider contributory negligence on the part of P.

*C3. Vicarious liability of D2*

1. In light of my findings of fact and conclusions above that there was no negligence on the part of D1, it is strictly unnecessary for me to deal with the issue of vicarious liability of D2.
2. For sake of completeness, I would briefly state that I agree with the Defendants’ counsel that there is no evidential basis in the present case to suggest that D1 was acting as the servant or agent of D1 at the time of the Alleged Collision. The mere facts that D1 and D2 are in a husband and wife relationship, and that D2 as owner of the Car gave permission to D1 to drive it, are not sufficient to establish vicarious liability on D2’s part: see *Norwood v Navan* [1981] RTR 457 at 461D-K per Ormrod LJ.

*C4. Quantum of P’s Claim*

1. In light of my findings of fact and conclusions above that there was no negligence on the part of D1, it is strictly unnecessary for me to deal with issues of quantum of P’s claim.
2. Again, for sake of completeness, I note that should I be wrong on the issue of liability, I would have assessed quantum of P’s claim at HK$10,800, as follows:-
3. Given the lack of expert medical evidence in the present case, and my conclusion that P is not a truthful or reliable witness, I find as a fact that P is not suffering from the Alleged Symptoms as he claims.
4. I should add here that, whilst it is *theoretically* possible for the Court to make findings on disputed facts of medical conditions without the benefit of expert medical evidence, such a case would be of the utmost rarity and extremely exceptional. Certainly, in the present case where it is disputed whether P is suffering from the Alleged Symptoms, and if such Alleged Symptoms exist whether they were caused by the Alleged Collision, the Court would require the assistance of expert medical evidence.
5. Therefore, for PSLA, I would only have awarded a nominal sum of HK$10,000, following the approach in *Wong Pou Yin Kennie v Maxim’s Caterers Ltd* (Unreported, HCPI 753/2009, 11 May 2012) at §§49-50 per To J.
6. I would not have awarded any sums for tonic food. Whilst the Court may award a nominal sum for tonic food even in the absence of evidence as to advisability and suitability of the food (see *Yu Ki v Chin Kit Ian* [1981] HKLR 419 at 421G per Roberts CJ), such expenditure should at least be proven with receipts or at least particularized in some detail (see *Ip Wing Cheong v Kam Lam t/a Kong Fun Decoration Works* (Unreported, DCPI 2457/2011, 30 July 2015) at §45 per Deputy Judge LC Cheng). There were no receipts provided and no particulars given by P in the present case – P did not even give broad particulars as to what type, what amount, and over what time tonic food was consumed, and as to where and at what price he had purchased tonic food.
7. The sum of HK$800 for medical and travelling expenses was not disputed and I would have awarded such sum in full.

*D. CONCLUSION & DISPOSITION*

1. For all the reasons as set out above, P’s claim against D1 and D2 is dismissed.
2. Costs should follow the event. I make a costs order *nisi* that P shall pay the costs of D1 and D2 in these proceedings, with certificate for counsel for the trial, to be taxed if not agreed. Unless application to vary is made within 14 days, the costs order *nisi* shall become absolute.
3. I am grateful to both parties’ counsel for their able assistance.

( Christopher Chain )

Deputy District Judge

Ms Phyllis Lee, instructed by Au Yeung, Cheng, Ho and Tin, for the plaintiff

Mr Chan Kin Keung Danny, instructed by Francis Kong and Co, for the defendants

**ANNEX**

**The Sketch Plan**

