# DCPI 1985/2013

[2019] HKDC 543

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 1985 OF 2013

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BETWEEN

CHAN KWOK KUEN Plaintiff

and

ACTIONSPORTS Defendant

INTERNATIONAL LIMITED

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Before: Deputy District Judge K. C. Chan in Court

Dates of Hearing: 9-12, 15 and 18 October 2018 and 28 November 2018

Date of Judgment: 30 April 2019

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JUDGMENT

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1. This is the trial of a personal injury action. The plaintiff claims that he has suffered injuries at work on 26 March 2012.
2. Liability and quantum are both contested. The main defence against liability raised by the defendant, among a number of other matters, is that all the plaintiff’s allegations “are and form part of pre-meditated, deceptive and fraudulent allegations and claims”[[1]](#footnote-1).

*The plaintiff’s background and employment with the defendant*

1. The plaintiff was born in 1987. He obtained a Higher Diploma from the Institute of Vocational Education in Chai Wan in 2009 and went on to further obtain a Bachelor of Arts Degree in 2011. While studying and between 2005 and 2011, he took up a number of part time jobs to support himself.
2. Shortly after graduation and on 6 December 2011, he signed an employment contract with the defendant to be employed by it as a “Junior Sports sales/project trainee” earning a salary of HK$10,000 a month. It is common ground that he was the only one such trainee in the employ of the defendant at the time.
3. The plaintiff is of small to medium build and is described as genteel by both Mr Clough and Mr Sadhwani, respectively counsel for the plaintiff and the defendant.

*The defendant company and the Site*

1. The defendant is the Hong Kong branch of an international group which describes itself as a specialist designer, contractor, project manager and installer of leading synthetic sports surface systems for venues such as rugby and football fields.
2. It has won the contract to lay for Hong Kong Rugby Union the sports surface system of a rugby field in Tin Shui Wai Area 108A (“the Site”).

***LIABILITY***

*The plaintiff’s evidence as to how the accident happened and his case on liability*

1. The plaintiff is the only witness giving evidence for his case.
2. The accident allegedly happened when the shockpads were being laid at the Site.
3. It is common ground that before the artificial turf was laid, a foundation layer called “shockpads” would need to be installed. The shockpads were formed by a mixture of plastic pellets mixed with glue which was spread onto the surface of the field evenly and made flat by a specialized paver machine. The glue was contained in standard oil drum size barrels weighing about 220 kg each. At the Site, the barrel of glue would be laid flat and lifted up to a platform of about 3 feet high by a forklift ran on light petroleum gas. It would then be fixated on the platform by putting wedges at its sides. The glue would then be drained from it onto plastic buckets and taken by the workers to be mixed with the pellets, to be made ready for spreading.
4. The plaintiff’s evidence is that in the morning on 26 March 2012 at about 10:30 am, the forklift was found to be out of fuel. The foreman of the defendant supervising at the Site Mr Akbar Ali was on leave that day to be with his wife who was giving birth in a hospital. The next senior worker of the defendant Mr Leung Yiu Wing went out to fetch or purchase LPG for the forklift. While Mr. Leung Yiu Wing was away, the workers at the Site decided to roll a barrel of glue manually onto the platform along two wooden planks lain at the one end on the top of the platform and the other on the ground. The plaintiff was then called by a senior worker employed by the defendant nick-named 坤爺 (張華坤) to perform the task with him and two other workers. The plaintiff then stood at the far right side of the barrel in a half squatting position, and as he demonstrated in court, with his right foot in front and right knee bend and his left foot behind and left knee also slightly bend but less so than his right one. His both hands grabbed onto the edge of the barrel. While the barrel was rolled to a point close to the top, the barrel started to tilt to the plaintiff’s side resulting in its weight shifted towards him. He later surmised that this happened probably because those on the left pushed stronger while he was weak. Thereupon, he mustered all his strength and tried to push by twisting his body clockwise. He then felt a click from his left knee and felt intense pain. In the meantime, the other 3 workers had rolled the barrel to the top of the platform. He told them he was in pain and raised his left foot and hopped and limped to the side and sat down.
5. The plaintiff then telephoned the Project Manager of the defendant one Mr Benny Chui to report the accident. The plaintiff then called an ambulance which took him to the Tuen Mun Hospital for treatment.
6. The plaintiff pleads quite a number of particulars as to how the defendant has been negligent, but in gist, that manually moving such a heavy barrel up the platform was inherently risky and should not have been undertaken without adequate equipment, a safe system of work and supervision, that the defendant has failed to supervise the work at the Site to ensure safety, that no adequate training, instruction and supervision was provided to him to ensure his safety, that the workers at the Site were negligent in moving the barrel in the manner described and to ask the plaintiff to participate and the defendant is vicariously liable for their negligence.

*The defendant’s case against liability*

1. As the defendant alleges fraud against the plaintiff and pleads quite a number of matters by way of defence, I will set them out as alleged, in summary, as follows:-
2. The plaintiff was not required by the defendant to perform strong or heavy physical work[[2]](#footnote-2) as he was employed as a Junior Sports sales/project trainee to be trained ultimately to be responsible for sales and project management involving quotation and site inspection[[3]](#footnote-3). Not only was the plaintiff not instructed to install shockpads at the Site, he was specifically instructed not to participate in certain manual labour including the lifting or attempted lifting of the barrel.[[4]](#footnote-4)
3. The sole employee of the defendant present at the Site was Mr Akbar Ali[[5]](#footnote-5). The defendant has engaged a sub-contractor at the Site to undertake the installation work,
4. and the barrel of glue was moved by the employees of the defendant’s sub-contractor and its representative on site[[6]](#footnote-6);
5. the plaintiff was never requested by any employee of the defendant, or indeed anyone, to move the barrel. Rather, the plaintiff was directed in strong terms to cease his attempt to participate in lifting the barrels by employees of the sub-contractor.[[7]](#footnote-7)
6. The accident never occurred and the plaintiff has not sustained any injury arising from the alleged accident[[8]](#footnote-8). Rather, the plaintiff informed the defendant that he had injured his knee playing football shortly before the alleged accident, but such previous injury was in no way “preventive of the plaintiff performing his employment duties in whole or in part”.[[9]](#footnote-9)
7. The defendant took reasonable steps to safeguard the safety of the plaintiff in that[[10]](#footnote-10):-
8. the plaintiff was instructed by Akbar Ali as to “all relevant matters applicable to site safety”, particularly, the plaintiff was directed not to participate in any of the physical work of installation;
9. the plaintiff was at all times supervised by Akbar Ali whilst on site;
10. the plaintiff “was directed to attend a site safety course by the defendant to obtain the relevant safety card and to train and familiarize him with all necessary site safety matters and instructions”; and
11. the defendant has hired an experience sub-contractor.
12. Then in paragraph 17 of the defence, which is about 5 pages in length, the defendant pleads essentially that the whole incident was a “pre-meditated, deceptive and fraudulent” scheme on the part of the plaintiff to obtain compensation. In that paragraph, the factual allegations above set out in sub-paragraph (a) to (d) above are essentially repeated with elaborate arguments. Additionally, the defendant
13. alleges that “the plaintiff had sought to procure and obtain by way of a corrupt bribe and advantage a payment and advantage from a provider of services to the Defendant …”[[11]](#footnote-11);
14. alleges that the plaintiff “was witnessed to walk unaided, unhindered and unaffected by any alleged injury, or at all, the full length of the Site of approximately 50-70 meters …”[[12]](#footnote-12);
15. alleges that the plaintiff had persistently made enquires with the defendant’s office manager as to the nature of the defendant’s medical insurance cover for employees[[13]](#footnote-13), insinuating that the plaintiff has been scheming; and
16. insinuates that the sick leave certificates issued by Dr Raymond Lai was obtained by the plaintiff and issued by the doctor dishonestly and fraudulently.[[14]](#footnote-14)
17. As averred to in paragraph 17(k)(vi) of the defence, the defendant had lodged a formal complaint to ICAC against the plaintiff and Dr Lai. I am informed at trial that the ICAC has not taken any action after investigation.
18. I should mention that at trial, the defendant sought and was granted leave to delete paragraph 17(a)(i) and (ii) of the defence (alleging that the plaintiff has sought to procure and obtain a bribe). Mr Simon Bach in evidence also somewhat reluctantly, but in my view properly, withdraws on behalf of the defendant all allegations against Dr Lai.
19. The defendant has not pleaded in its defence that the plaintiff was guilty of contributory negligence, which question therefore does not arise.
20. The following 5 witnesses give evidence on the defendant’s behalf:-
21. Madam Lee Yuen Mui (“Lee”), the then office manager of the defendant;
22. Mr Ng Wah Chun (“Ng”), who was one of the person working at Site during the accident;
23. Mr Akbar Ali, (nickname Amo, “Amo”), the foreman employed by the defendant;
24. Mr Simon R R Bach (“Bach”), the beneficial owner and Managing Director of the defendant; and
25. Mr Chan King Leong (“Chan”), who was also one of the person working at Site during the accident.
26. Mr Leung Yiu Wing (“Wing”), who was a worker working at the Site at the time, filed a witness statement on the defendant’s behalf, but he does not attend trial to give evidence. His witness statement is therefore expunged from the hearing bundles upon the plaintiff’s application.

*The defendant had not engaged a subcontractor at the Site; all workers, except Akbar Ali and the plaintiff, were casual workers employed by the defendant*

1. As set out above, one of the main defence is that the defendant had engaged a sub-contractor to undertake the installation work, and that it was the employees of this sub-contractor that had pushed the barrel in question and the plaintiff was instructed by them not to participate.
2. The fact that such a sub-contractor was engaged was spoken to in the witness statements of Bach[[15]](#footnote-15), Amo[[16]](#footnote-16), Ng[[17]](#footnote-17) and Chan[[18]](#footnote-18).
3. However, when giving oral evidence, Lee, the then office manager of the defendant, readily accepts that all the other workers at the Site installing the artificial turf were casual workers engaged and being paid daily wages, upon the introduction of Amo, by the defendant, and that the defendant had not engaged a sub-contractor to undertake the installation work at the Site. This is also readily accepted by all the other witnesses of the defendant, including Bach, Amo, Ng and Chan in their cross-examinations. It is also their clear evidence that these workers worked under the direct supervision and instruction of Amo, who as he himself accepts, was effectively the foreman at the Site. I therefore find that no sub-contractor was engaged by the defendant at the Site for the installation work and that these workers were in fact employees of the defendant.
4. Therefore, the defence case based on the allegation that the defendant had engaged a sub-contractor at the Site has crumbled.

*Was the plaintiff required to perform manual work in the course of his employment with the defendant?*

1. The defendant relies on the job description attached to the employment contract of the plaintiff dated 6 December 2011[[19]](#footnote-19), which does not contain any reference to manual labour work. However, at the bottom of the job description page, there is a statement that “\*\*\* Tasks can be added and/or removed from time to time, if necessary”. It is therefore clear that the defendant was entitled to change the plaintiff’s job description from time to time.
2. It is Bach’s evidence, which I accept, that given the plaintiff’s lack of knowledge, understanding and interest in the defendant’s products[[20]](#footnote-20), he asked the plaintiff to join Amo and Wing on site in Shanghai and at the Site, and that Amo had responsibility to work with and supervise the plaintiff. As will explain below, I do not accept that the plaintiff was merely instructed to observe or witness the operation and installation on site, or that he was instructed not to do any physical labour.
3. The Shanghai trip, according to Amo’s recollection, took place just before the Chinese New Year of 2012. It was a trip to repair the artificial turf installed at a school. The plaintiff said that 4 of them went, including himself and Amo and the repair work took 2 and half days. There, he was asked to observe how different procedures were performed, he was also instructed by Amo as to what to do step by step. The plaintiff said he was asked by Amo to, and did actually try to, perform these procedures himself; a matter not disputed by Amo, and I so find.
4. It is common ground that about 2 weeks before the accident, the plaintiff was asked to and did attend the Site daily. His evidence is that Amo’s general instruction to him was that he should do whatever he saw. He helped translating for a consultant called Wayne. He took part in the transportation and moving of materials. He also helped in the installation of the shockpads, and in that regard his main task was to stand on the paving machine, use a shovel to scoop or push the pellet mixture to appropriate spots or to level them. He had been instructed and shown how to do so by 坤爺.
5. The plaintiff gives evidence about a discussion with Mr Benny Chui, the Project Manager, that took place about a week after he had so worked at the Site, which I accept, that he told Benny that he felt it was “inappropriate” for him as a sales trainee to engage in manual labour work at the Site, and he and Benny then reached a consensus that he would work at the Site every other day – on Monday, Wednesday and Friday. Amo however says in evidence, which I accept, that he did not know about the arrangement. Apparently, this had not been communicated to Amo and the other workers. I have the distinct impression that this had caused some misunderstanding as Amo and Ng mention in evidence somewhat derogatively that the plaintiff attended the Site some days and some days not.
6. In cross examination, when being asked twice whether the plaintiff did take part in physical work at the Site as part of his training, Amo answers on both occasions that he has “no idea”. In re-examination, he clarifies that he said “no idea” because he was working and operating the paving machine and he was not paying too much attention to what the plaintiff was doing. As Amo was the person supervising the plaintiff and he was at the Site most of the time, if the plaintiff was not doing any physical work at all at the Site in those 2 weeks’ time, as the defendant alleges, Amo should have no difficulty in confirming that. I find his answers hard to believe. I do not think he is forthright in giving evidence on this issue.
7. On the other hand, I am impressed with the plaintiff as a witness and find him honest, reliable and credible. Accepting his evidence and also considering the matters set out in the preceding paragraphs, I find that he was required to and did take part in physical work at the Site in the course of his employment with the defendant in the manner described in paragraph 27 above.

*Did the plaintiff take part in rolling and pushing the barrel onto the platform as instructed by*坤爺 *and did he thereby sustain injuries?*

1. The plaintiff’s evidence thereon has been set out in paragraph 11 above.
2. In his witness statement, Ng said the following. He was standing next to where the workers rolled and pushed the barrel and was watching while it was being rolled and pushed up the platform by 坤爺, Chen Kong and Ah Leung. Towards the end of the process, the plaintiff approached as if to help, but was told by 坤爺 in foul language to go away. Ng stated in clear terms that the plaintiff was not involved at all in the pushing of the barrel. He then said the plaintiff walked off, then squatted or sat down at the far end of the Site and moments later an ambulance arrived and took the plaintiff.
3. In cross-examination, Ng admits that he was asked to recollect the events on 26 March 2012 for the first time when he made his witness statement more than 3 years later on 20 April 2015. Prior to that, he cannot recollect having been asked by anyone about what happened that day. He cannot recall how long he had worked for the defendant before 26 March 2012. He cannot recall for how long Wing had left the Site that day when he went to fetch or purchase the LPG. When pressed, he said that in fact he was squatting down busy cleaning the glue off the buckets instead of just standing there and watching as he said in his witness statement. When Ng was shown the 2 short written statements in Chinese referred to below, he changes his evidence and confirms that the plaintiff had in fact took part in pushing and rolling the barrel.
4. In all, I am not impressed with Ng as a witness and find him not a reliable and credible witness.
5. The first short Chinese statement[[21]](#footnote-21) stated on its face to have been signed by 張華坤（坤爺）“as witness”. It states and I quote it in full:-

“2012年3月26日天水圍球場內，碌一桶重220 kg的㬵水在卡板，當時是用兩条木方作斜台上料用，上料時我本人在中央，亜良在左边，陳江及陳國杈在我右邊，大家一齊上料，上完㬵水后，沒有任何意外發生，陳國杈還很自然行埋一边吸姻，但是15分鈡后，有救护車到球場，陳國权說剛才上料受傷，我听后真不知他如何受傷，过程就是這樣

見証人 [signature of 張華坤]

手机 94605590

备註

陳國杈是當時之傷者”

1. The second short Chinese statement[[22]](#footnote-22) stated on its face to have been signed by Chen Kong “as witness”. It states and I quote it in full:-

“在2012年3月26日天水圍新做球場內上一桶㬵水在卡板上，其時是用兩条木方作斜台用，當時我在斜台右邊（陳國权）亦是在右边，張华坤在中央，亜良在左边，大家一齊上料，上完料后沒有任何意外發生，但是拾多分鈡後有救护車到球場內，陳國权說剛才上料受傷，但真不知他如何受傷

見証人 [signature of 陳江]”

1. There is no dispute that the person named “陳國权” in these two Chinese statements is the plaintiff.
2. Bach confirms in evidence that these 2 Chinese statements are the defendant’s documents which have been referred to as “witness statements” and attached to the defendant’s letter to the Labour Department dated 20 August 2012[[23]](#footnote-23) complaining that the plaintiff’s alleged accident and injury was a fraud.
3. As these are admittedly the defendant’s own documents and there is no reason to believe that they are but genuine, I do attach weight to them as accounts given by 坤爺 and Chen Kong as to what happened that day.
4. Their accounts clearly said that the plaintiff has participated in the pushing and rolling of the barrel, and that he was positioned on the right side thereof. They contradicted the defendant’s allegations that the plaintiff was told by the workers in strong language not to participate in the pushing of the barrel and that he in fact did not participate.
5. The other witness for the defendant present at the Site at the time of the accident, Chan, said in his witness statement that he was sitting at a place about 30 meters away from the barrel when it was being rolled and pushed by 坤爺, Chen Kong and Ah Leung. He then said the plaintiff walked up, touched and placed his hands on the barrel but was not in any way involved in actively pushing it.
6. In cross-examination when shown the said 2 Chinese statements, he accepts that the plaintiff did take part in the rolling and pushing of the barrel. It is also clear from his evidence that in saying the plaintiff was not involved, he is merely expressing his own view based on his assessment that in the manner the plaintiff has held the barrel he would not be able “to give force”.
7. Both Ng and Chan agree in evidence that they maintain the view that there was no accident that day because they did not perceive any visible sign or manifestation of an accident, as one usually would expect, like the collapse of the ramp or that the barrel fell on the plaintiff and such.
8. For completeness, I should also mention this. Amo in paragraph 9 of his witness statement recounted quite extensively what he purportedly heard from 坤爺, Chen Kong and Wing as to what happened. However, in cross examination he says that Benny Chui came to the Site to investigate the next day, he asked Benny to talk to the workers direct and he recalled Benny did so and took down some notes, while he himself has not noted down anything in writing. He agrees that he has not reduced into writing any of these matters that he allegedly heard, but 3 years later in April 2015 recalled all these from his head and set them out in his witness statement. However, what Amo said in his witness statement as to what 坤爺 and Chen Kong told him were very different from what the two said in the said two short Chinese statements which they had signed. In the premises, I do not give any weight to these hearsays so recounted by Amo.
9. Having so investigated, Mr Benny Chui on 3 April 2012 filled out, signed and declared a Form 2 on behalf of the defendant[[24]](#footnote-24) and submitted it to the Labour Department. It was declared there that the accident happened while the plaintiff was moving building materials（搬運材料）. There is no evidence proffered by the defendant why this was so declared other than that it was the conclusion reached by Mr Benny Chui.
10. Taking into account the above matters and finding the plaintiff an honest, reliable and credible witness, I have little hesitation in finding in favour of the plaintiff’s version of events and how he was thereby injured as set out in paragraph 11 above.
11. The defendant’s allegation, that the plaintiff did not sustain any injury that day which injury instead was sustained when he played soccer earlier on and that the whole thing was a scam, needs only to be stated to be dismissed. First, such allegation is not supported by any medical or other evidence save a hearsay. Second, the evidence of such hearsay was given by Bach[[25]](#footnote-25). He said he heard it from Amo and Wing who was told so by the plaintiff during the Shanghai trip. Surprisingly, Amo did not give any evidence on this in his witness statement. This was also not mentioned in the defendant’s letter to the Labour Department dated 20 August 2012[[26]](#footnote-26) complaining of fraud in which various other matters were raised in support of the defendant’s allegation. Third, the Shanghai trip took place before Chinese New Year 2012. If the defendant’s allegation were true, it would mean that the plaintiff has chosen to endure the pain and swelling and run the risk of further injury associated with a complex tear of left medial menisci and a complete tear of ACL in left knee, and not sought treatment or obtained sick leave, but has chosen to continue to work daily for about a month to wait for an opportune occasion to stage a scam. Such in my view is completely improbable.

*Was the defendant negligent?*

1. It is trite that the defendant as employer owes a non-delegable duty of care to the plaintiff, its employee, to take reasonable steps to safeguard him from injury in the course of employment.
2. The defendant’s averments that it has taken reasonable steps to fulfil that duty are summarized in paragraph 14(d) above. In the preceding part of this judgment, I have found against the defendant’s allegations that it had engaged a sub-contractor to undertake the installation work at the Site and that it has instructed the plaintiff not to participate in any physical work. As said above, I find to the contrary that the plaintiff was required to and did perform physical work in the course of his employment with the defendant.
3. Though pleaded, there is no evidence proffered by the defendant to support its allegation that it has directed the plaintiff to attend a site safety course; rather, its position all along is that the plaintiff was instructed not to perform any physical labour. I therefore reject this allegation.
4. Mr Sadhwani submits that the pushing and rolling of the barrel onto the platform was a simple and non-complicated operation such that it is reasonable to leave its execution to the workers on the spot (citing *Winter v Cardiff Rural District Council* [1950] 1 All ER 819).
5. There are a host of local cases applying this, as observed by A. Cheung J (as he then was):-

“Of course, all these cases turned on their own facts, but they provided illustrations of the same principle that for a simple and straightforward task, where the decision how it shall be done has to be taken frequently, it is natural and reasonable that it should be left to the employee on the spot.”

(*Cheng Lung Fong v Mitoyo Hong Kong Limited* HCPI  63/2007, unreported, 6 May 2010 at §19)

1. Whether this principle ought to be applied depends on the facts of each case.
2. On present facts, I cannot accept Mr Sadhwani’s such submission but accept Mr Clough’s submission that the task involved was not a simple and straightforward task, but rather a dangerous one. It involved the manhandling of a heavy barrel weighing 220 kg up a makeshift ramp put together on the spot. Evidently, the safe performance and completion of the task require well-coordinated and simultaneous efforts on the part of the 4 workers involved. It is, in my view, reasonably foreseeable, that where the efforts are not well-coordinated or the strength exerted on both sides are not matched, the barrel may tilt and it poses a safety risk to all involved. Also, in my view, the employer should also see to it that the individual workers involved is well trained and experienced in handling manually a heavy load, otherwise, he may sustain injury himself and may in the process risk the safety of the other workers involved.
3. In this case, the defendant well knew that the plaintiff was a genteel fresh graduate with no training and little experience in performing manual tasks, and he was not of strong build. It is common ground that when Amo was not at the Site, Wing would be in charge and supervising; and when Wing was not there, 坤爺, the most experienced worker who was respected as a master in the installation of artificial turf by the workers as well as Bach, would be in charge and supervising. In my judgment, it was negligent of 坤爺 to have asked and/or allowed the plaintiff to take part in this task alongside 3 very experienced and much stronger workers in that it was foreseeable, with the plaintiff’s lack of training, experience and strength, he might injure himself in performing such a demanding task. Having entrusted the supervision to 坤爺in the absence of Amo and Wing, the defendant was in my judgment vicariously liable for the negligence of 坤爺.
4. Moreover and in my judgment, clear instructions should have been given by the defendant to the workers that such task should not be undertaken unless there was proper supervision. Clear instructions also should have been given to the plaintiff and the workers that the plaintiff specifically was **not** to undertake any manual tasks that he was not trained for or experienced in or which might be beyond his physical abilities. In failing to give these instructions and applying reasonable effort to see to it that they were followed, the defendant has failed its duty to safeguard the safety of the plaintiff in the course of his employment.
5. For these reasons, I hold that the defendant is liable to the plaintiff. There being no issue of contributory negligence which was not pleaded, I hold the defendant 100% liable.

*The defendant’s allegations of fraud are clearly without basis*

1. It follows from my findings and holding above that I completely and without hesitation reject the defendant’s allegations of fraud against the plaintiff. In fact, in my view, there is not a shred of evidence, not to say sufficient evidence, to even raise the plea of fraud.
2. Despite so pleaded in §17(d) of the defence that the plaintiff had persistently made enquires with the defendant’s office manager as to the nature of the defendant’s medical insurance cover for employees – as part of the particulars in support of the allegation of fraud, there is no such evidence contained in the witness statement of Lee. On the contrary, when cross-examined, Lee readily offers the evidence that the plaintiff has asked about the defendant’s medical insurance cover for employees **only once** shortly after he was employed, which seems to me to be a very normal and reasonable query by the plaintiff.
3. I find it disturbing that allegations of fraud were made without any shred of evidence; and more so when particulars in support of fraud were in fact clearly contradicted by the alleging party’s own evidence.

***QUANTUM***

1. The quantum case is straightforward and not seriously disputed.

*The plaintiff’s injury and treatment*

1. The plaintiff was taken by ambulance to the Accident and Emergency Department of Tuen Mun Hospital. Examination revealed no fracture but tenderness over medial side of left knee. He was given sick leave and discharged.
2. Feeling pain and his left knee was swelling and on 29 March 2012, the plaintiff consulted Dr Raymond Lai of Fortitude Specialist Clinic Limited. Effusion was found on his left knee with clicking sensation, Lochman’s test and pivot shift test were positive. The plaintiff was referred to and did have an MRI on 3 April 2012.
3. The MRI revealed a complex tear involving the anterior horn, body and posterior horn of the medial meniscus and a complete tear of the ACL close to the femoral insertion.
4. The plaintiff was then admitted on 18 April 2012 to St Teresa’s Hospital. The next day, he underwent a 4-hour surgery involving ACL reconstruction and partial medial meniscectomy with left knee arthroscopy. He was hospitalised for 5 days until 22 April 2012. He was discharged walking with a pair of clutches.
5. The plaintiff since then has been followed up by Dr Lai until he was last seen on 14 January 2013. The plaintiff was seen by Dr Lai for a total of 25 times.
6. Since 14 June 2012, the plaintiff has been receiving physiotherapy treatments from North District Hospital until 23 January 2013 for a total of 31 sessions.

*Joint Orthopaedics Expert report*

1. The plaintiff was examined by orthopaedics experts Dr Peter Tio (for the plaintiff) and Dr David Cheng (for the defendant) on 23 June 2017. The experts compiled a joint report dated 24 August 2017.
2. There was no material divergence in the opinion of the experts. They both agreed that:-
3. the plaintiff suffered from a complex tear involving the anterior horn, body and posterior horn of the medial meniscus and a complete tear of the ACL of the left knee;
4. the likely mechanism of injury is a fairly powerful twisting force of internal and forward rotation of the knee and that the accident should be the cause of these injuries;
5. there is no pre-existing pathology of the injured knee;
6. the treatment received was standard and appropriate, the plaintiff has recovered satisfactorily, and he has reached maximum medical improvement;
7. presently, the left knee of the plaintiff was in a satisfactory condition in that there was good stability, full range of movement and good muscle power, though there was residual wasting of his left lower limb, and the plaintiff has a sense of uneasiness with jogging, difficulty in full squat, walking downstairs and playing football;
8. the plaintiff can resume his pre-accident work;
9. Dr Cheng has the concern over the plaintiff’s lack of confidence in sporting activities, while Dr Tio opined that his enjoyment of sports should be reduced; and
10. sick leave up to 27 January 2013, as given by the treating doctors and endorsed by the Employee Compensation Assessment Board, was reasonable and should be endorsed.

*Pain, suffering and loss of amenities*

1. Mr Clough refers me to the following comparable cases, namely, *Yip Leung Hoi v Ting Wo Engineering Co Ltd* HCPI 1026/2004, *Man Ying Chu v Leung Kwok Wing* HCPI 1062/2004, *Rukhar Begum v Native English Center Limited* DCPI 2245/2015, *Poon Ching Man v Lam Hoi Pun* DCPI 1585/2011, *Li Wan Kei v Hyundai Engineering & Construction Co Ltd* HCPI 577/2004, *Frances Christine Keeling v The Hebe Haven Yacht Club Ltd* DCPI 579/2004 and *Lee Kam Lin v Full Wise Limited* DCPI 2354/2014. Mr Clough submits that a reasonable sum for this award should be HK$275,000.
2. Mr Sadhwani cites *Yip Leung Hoi v Ting Wo Engineering Co Ltd* HCPI 1026/2004, *Rukhar Begum v Native English Center Limited* DCPI 2245/2015 and *Frances Christine Keeling v The Hebe Haven Yacht Club Ltd* DCPI 579/2004 (which are also cited by Mr Clough), *Chan Cheuk Yiu v Chan Ho Kwan* HCPI 879/2000, *Yip Yuen Neung Shirley v Lee Sze Wai* DCPI 2012/2008, *Chung Wai Hung v Chung Wai Ming* DCPI 2675/2007, *Lin Chi Lam v Ip’s Engineering Co Ltd* HCPI 446/2005 and submits that the appropriate award should range from HK$100,000 to HK$180,000.
3. I have considered these cases. The injuries suffered by the plaintiffs in the cases cited by Mr Sadhwani were in my view generally less serious than those suffered by the present plaintiff. I note that both experts opined that even as in June 2017 there was residual wasting of his left lower limb suggesting that the left leg was not as much used as the right, and that both experts also opined, albeit expressed in slightly different ways, that the enjoyment of sports by the plaintiff would be reduced. It is not disputed that prior to the accident the plaintiff frequently engaged himself in outdoor sports which were his main social activities. With that in mind and considering these comparables and in all the circumstances, I take the view that a reasonable award would be HK$250,000.

*Pre-trial loss*

1. The defendant does not dispute that the pre-accident monthly average earnings of the plaintiff was HK$10,833.33, after taking into account the year-end bonus.
2. As mentioned the treating doctors gave the plaintiff sick leave up to 27 January 2013. That period of sick leave was endorsed by the Employee Compensation Assessment Board; and both experts, including the expert for the defendant Dr Cheng, opined that such sick leave was reasonable.
3. Mr Sadhwani argues that sick leave should be given only up to 23 July 2012 when it was shown in the surveillance video taken that day that the plaintiff was seen walking normally at a good pace.
4. The surveillance video was shown to the experts. Both commented that the plaintiff was seen limping on two occasions that day when he was going down the stairs, and on both occasions he had to hold onto the handrail for support. Having seen the video, the defendant’s expert Dr Cheng did not seek to dispute the length of the sick leave. In the circumstances, I do not accept the defendant’s argument and find the appropriate sick leave period should be from the day of the accident to 27 January 2013.
5. The plaintiff in his Revised Statement of Damages also claims loss of earnings:-
6. for the period from 28 January 2013, when he formally resigned from the employment of the defendant and “took rest” until 3 March 2013 when he was employed by one 艾橋生物科技集團有限公司[[27]](#footnote-27); and
7. for the period from 22 July 2013 to 27 August 2013 when he was between jobs[[28]](#footnote-28).
8. There is no reason why the defendant should compensate the plaintiff for loss of income for a period that he took rest or for a period when he was between jobs when both occurred outside the sick leave period. I therefore refuse these 2 claims.
9. The plaintiff’s pre-trial loss, including loss of MPF, therefore is HK$10,833.33 x 12 x 309/365 x 1.05 = HK$115,558.

*Loss of earning capacity*

1. Both experts opined that the plaintiff can return fully to his pre-accident line of work. There is no suggestion that the plaintiff will suffer from any impairment or his work capacity would be reduced. There is therefore no evidence that he will suffer a handicap in the labour market. I do not think this is a proper case to award loss of earning capacity and I make no award thereon.

*Special damages*

1. The defendant does not dispute the medical expenses save that they should not be HK$120,000 as claimed but should be the actual amount incurred.
2. In §31 of his witness statement, the plaintiff gave evidence of the actual expenses as per Attachment B thereto which listed the medical expenses in the total amount of HK$114,098.00. This piece of evidence is not challenged at trial and I award this sum as medical expenses.
3. The plaintiff claims tonic food in the sum of HK$5,000 and travel expenses in the sum of HK$3,000. The defendant says that the lesser sums of HK$1,000 and HK$2,000 are reasonable. I think a reasonable amount for the tonic food is HK$4,000. Regarding travelling expenses, bearing in mind that the plaintiff lived at Sheung Shui and Dr Raymond Lai’s clinic was in Mongkok, I consider HK$3,000 as a reasonable amount.

*Summary of award*

1. I award to the plaintiff HK$250,000 for PSLA, HK$115,558 for pre-trial loss and special damages in the total sum of HK$121,098. Those total to HK$486,656.

*Employee Compensation*

1. The defendant has refused to pay the plaintiff any employee compensation save some salary and expenses in the total sum of HK$24,455.70 – a figure that has been agreed upon by both counsel. This amount should be deducted from the total award above.

*Interest*

1. Mr Clough has commented at trial that this action has taken unusually long to come to trial because of the way the defendant has conducted its defence, and that during this interim, save the above sum no employee compensation has been paid to the plaintiff, and that he might in the circumstance address me on the measure of interest after this judgment is handed down. Therefore, instead of awarding the usual interest, the question of interest will be determined as directed below.

*Disposition*

1. I find for the plaintiff’s claim and enter judgment against the defendant in the sum HK$462,200.30 with interest to be determined.
2. Mr Clough has indicated that he may be minded to seek costs to be taxed on a higher basis. In the circumstances, I accede to the joint request of both counsel not to make an order nisi on costs and would direct, as agreed by them, that written submissions be lodged and served on the question of costs and the question of interest to be awarded – the plaintiff’s within 35 days of the handing down of this judgment, the defendant’s within 14 days thereafter, and the plaintiff’s reply, if any, within 7 days thereafter. I intend to dispose of these issues on paper unless otherwise requested or directed.
3. Lastly, I thank counsel for their helpful assistance to the court.

( K. C. Chan )

Deputy District Judge

Mr Neal Clough, instructed by B. Mak & Co., assigned by the Director of Legal Aid, for the plaintiff

Mr Kamlesh Sadhwani, instructed by Tanner De Witt, for the defendant

1. §17 of the defence [↑](#footnote-ref-1)
2. §6 of the defence [↑](#footnote-ref-2)
3. §5 of the defence [↑](#footnote-ref-3)
4. §10 of the defence [↑](#footnote-ref-4)
5. §12 of the defence [↑](#footnote-ref-5)
6. §11 of the defence [↑](#footnote-ref-6)
7. §§11(e) and 12 of the defence [↑](#footnote-ref-7)
8. §14(a) of the defence [↑](#footnote-ref-8)
9. §§13, 17(b), 17(c) and 17(l) of the defence [↑](#footnote-ref-9)
10. §14(b) of the defence [↑](#footnote-ref-10)
11. §17(a) of the defence [↑](#footnote-ref-11)
12. §17(g) of the defence [↑](#footnote-ref-12)
13. §17(d) of the defence [↑](#footnote-ref-13)
14. §17(k) of the defence [↑](#footnote-ref-14)
15. in §7 [↑](#footnote-ref-15)
16. in §3 [↑](#footnote-ref-16)
17. in §3 [↑](#footnote-ref-17)
18. in §§ 1 and 6 [↑](#footnote-ref-18)
19. respectively p 325 and p 324 of the trial bundles [↑](#footnote-ref-19)
20. The plaintiff agrees in cross-examination that he lacks interest in the defendant’s products but adds that such did not affect his work performance. [↑](#footnote-ref-20)
21. p 293 of trial bundles [↑](#footnote-ref-21)
22. p 293 of trial bundles [↑](#footnote-ref-22)
23. pp 294 & 295 of the trial bundles [↑](#footnote-ref-23)
24. p 243 of the trial bundles [↑](#footnote-ref-24)
25. §17(a) of his witness statement at p 156 of trial bundles [↑](#footnote-ref-25)
26. pp 294 & 295 [↑](#footnote-ref-26)
27. §4.2 [↑](#footnote-ref-27)
28. §4.3 [↑](#footnote-ref-28)