#### DCPI1988/2006

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 1988 OF 2006

BETWEEN

LEE YUK MAN Plaintiff

and

HILLBERG LIMITED Defendant

(虹寶有限公司)

trading as TSUI KING LAU RESTAURANT (FWS)

(福榮街醉瓊樓酒家) (in liquidation)

##### Coram: Deputy District Judge K Lo in Court

Date of Hearing: 6 June 2007

Date of Delivery of Judgment: 6 June 2007

## J U D G M E N T

###### Background

1. The plaintiff claims damages for loss for personal injuries allegedly sustained by him resulting from an accident on 11 February 2005. At the material time, the plaintiff was employed as a chef working at Tsui King Lau Restaurant operated and owned by Hillberg Limited (hereinafter called the “Company”).
2. Pursuant to the order of Master S Kwang of the High Court, the Company was wound up and subsequently the defendant was appointed provisional liquidator of the affairs of the Company. On 3 October 2006, leave was granted to the plaintiff to commence common law personal injuries action against the Company arising from the said accident.
3. The plaintiff alleged that the said accident arose out of negligence and/or breach of contract of employment and/or breach of statutory duty and/or breach of common duty of care and/or breach of occupier’s liability on the part of the defendant, their servants and agents. The defendant was absent during trial. In fact, they did not file any pleadings or documents in the proceedings.

Plaintiff’s case

1. Plaintiff said on the day while he stepped out of the kitchen area to the corridor outside and in order to get some rice for cooking, he stepped onto something oily and slippery. Plaintiff said he lost balance and fell. The right side of his body landed on his own right wrist and he sustained injury as a result.
2. Plaintiff said on getting up from the floor after the fall, he noted that there was this oily patch on the ground and he was of the opinion that this was the cause of his fall.
3. He further submitted that the lighting in the corridor was inadequate for him to see the said water and oily patch on the floor before the fall.
4. He said that in the past, workers would clean the floor of the corridor in question once daily. He said they cleaned the floor with water and detergent but only in a broad brush manner and plaintiff said they did not clean the floor well. He also said that the manager Tsang of the defendant should be well aware of the situation as he would walk around the shop, including the corridor in question, every day. He said the said manager Tsang did not do anything to improve the cleanliness on the floor.
5. He also said that a lot of people made use of this corridor in and out of the kitchen and, as a result, the floor is often loaded with oily patches and water patches. Plaintiff said all along he had been careful walking on this corridor but, on the day in question, due to insufficient lighting, he had not noticed the water/oily patch in question. He said he was already wearing his own skid-resistance shoes.
6. Plaintiff said the defendant did not warn the staff orally or by way of written notice regarding the wet or slippery floor.
7. Plaintiff was employed by defendant since 25 January 2005, i.e. 17 days before the incident occurred.

Liability

1. Coming to the issue of liability, the evidence of the plaintiff is unchallenged. In my view, defendant in the circumstances is clearly liable to the plaintiff for breach of their duties of care both at common law and under statute as pleaded by the plaintiff.

###### Quantum

1. Coming to the issue of quantum, the plaintiff attended the Accident and Emergency Department of Caritas Medical Centre immediately after the accident. Physical examination revealed contusion injury to right chest wall and right wrist. X-ray showed avulsion fracture of the triquetral bone. The plaintiff was treated conservatively and discharged on the same day. Upon discharge, he was referred to Orthopaedic and Traumatology Department for treatment. He was prescribed with a splint on 15 February 2005 and the same was removed after about two weeks. The plaintiff still complains of pain in his right chest area and right wrist.

Medical evidence

1. Dr Lee Po-chin, the plaintiff’s orthopaedic expert, examined the plaintiff and compiled a medical report. His report was admitted without the need for him to give evidence. He takes the view that the injuries suffered by the plaintiff, i.e. the right chest contusion injury and fracture triquetrum of the right wrist was consistent with the accident alleged by the plaintiff.
2. Physical examination revealed mild tenderness over the triquetrum. There was a full range of movement of the right wrist and, according to this report, the muscle power of the plaintiff was good and there was no muscle wasting. Examination of the chest showed tenderness in the right third costo-chrondral junction. There was no pain on full inspiration.
3. The medical report of Dr Lee also revealed that the residual pain was consistent with contusion injury of the chest with residual pain. There was also right wrist as an aftermath of the fracture triquetrum. As the plaintiff still complains of residual pain at the right wrist and right chest, Dr Lee assessed the plaintiff suffered from 3 per cent total impairment of the whole person.
4. As for employability, since the plaintiff was required to lift heavy weight in his job as a chef, Dr Lee agreed that the residual pain would make it difficult for the plaintiff to return to full duties as a chef. He was of the opinion that the normal sick leave for the plaintiff in the circumstances is about three months.

Pre-trial loss of earnings

1. On evidence before the Court, sick leave was granted to the plaintiff from 11 February 2005 until 1 March 2005. I do not accept that the sick leave for the period from 20 March 2005 to 23 March 2005 has anything to do with injuries suffered in the accident.
2. In fact, going to the first witness statement of the plaintiff, he related to this court that he returned to work on 2 March 2005 and he only terminated out of his own will his contract of employment as he was not paid by his employer, i.e. the defendant. The said termination in my view is totally unrelated to the injuries. In fact, in court today, he also confirmed that he had not informed the defendant of this episode and he thought that the illness was due to his own personal reasons.
3. After termination, plaintiff proceeded to seek alternative employment and managed to do so since 15 April 2005, earning on average $5,000 per month as an assistant cook. From October 2006 to mid‑February 2007, he left Hong Kong for Venezuela for a job with income earning $11,000 per month. He returned to Hong Kong in February 2007.
4. The calculation of the total pre-trial loss of earnings is as follows:-
5. For the sick leave period, i.e. 11 February 2005 to 1 March 2005, i.e. 19 days, 18 days in February and one day in March, the loss of earnings is accordingly calculated as  x $16,000 +  x $16,000. The total sum would be $10,819.
6. For the period 16 April 2005 to 30 September 2006, a total of 17.5 months, the total loss of earnings during this period is $11,000 per month ($16,000 - $5,000) x 17.5 = $192,500.
7. As for the period from 1 October 2006 to 15 February 2007, that would be 4.5 x ($16,000 - $11,000) = $22,500.
8. For the period 16 February 2007 to 6 June 2007, i.e. today, that would be 3 x ($16,000 - $5,000) = $39966. Therefore, the total pre‑trial loss of earnings for the plaintiff in this case is $265,785 ($10,819 + $192,500 + $22,500 + $39,966) coupled with the loss of provident fund which is an extra 5%, that would be $279,074.30.
9. I accept the submission by the plaintiff’s counsel that there is to be no deduction for MPF for the plaintiff’s actual earnings in the circumstances.

###### Post-trial loss of earnings

1. Coming to the post-trial loss of earnings, the plaintiff is now claiming 7 as the multiplier in this case and a post-trial loss of earnings of $352,800. I accept that in full and the same is allowed.

Loss of earning capacity

1. Coming to the loss of earning capacity, although $80,000 is claimed under this heading, I find having regard to the circumstances, i.e. the age, monthly income of the plaintiff and the disability in this case, $50,000 is a more appropriate sum.

PLSA

1. Coming to the item PSLA, $220,000 is claimed under this head by the plaintiff. The injuries in this case fell far short of the serious category and based on the unchallenged medical evidence before this court, the appropriate sum awarded under this head is $160,000.

Special damages

1. Having heard the evidence of the plaintiff in court that he did not really say that the chest infection on 20 March 2005 is attributed to the accident in question, I find that the medical consultations on 20, on 23 and 30 March were unrelated to the accident. The medical fees claimed by the plaintiff would be deducted by the sum of $200, being the consultation fee on the 23rd and the 20th and the total medical fees allowed would be $920.

Tonic food

1. $5,000 is claimed without any documentary evidence in support. I allow $3,000 under this head.

Travelling expenses

1. There are four round trips, i.e. 11 February, 15 February, 18 February and 30 March, which I find to be related to the injuries in question. These round trips together with the three round trips to bonesetters totalled seven round trips, I will allow $400 travelling expenses.

Herbal oil

1. $500 is claimed and no receipt or documentary evidence in support, I allow $100 under this head.
2. The total special damages allowed is medical fee $920, travelling expenses $400, herbal oil $100, totalling $1,420.
3. Credit must be given to the defendant as plaintiff has received the $60,100 from the Employers’ Compensation Assistance Board previously.

Summary

1. (a) PSLA $160,000;

(b) pre-trial loss of earnings, including the loss of provident fund, $279,074.30;

(c) post-trial loss of earnings, including loss of provident fund, $352,800;

(d) loss of earning capacity $50,000;

(e) special damages $4,420.

1. The total sum under (a), (b), (c) , (d) and (e) is $846,294.30 and having deducted $60,100 from the same, there would be judgment in favour of plaintiff against defendant in the sum of $786,194.30.
2. Interest is to accrue on the award for PSLA at 2 per cent from the date of writ to date of judgment, interest to accrue on the pre-trial loss of earnings, including loss of provident fund and other special damages at half the judgment rate from the date of accident until the date of judgment.
3. Interest will run from the final judgment sum from today’s date until payment at the judgment rate.
4. There will also be an order nisi that the defendant shall pay the plaintiff’s costs, such costs to be taxed, if not agreed with certificate for counsel and the plaintiff’s own costs to be taxed in accordance with Legal Aid Regulations.

# (K Lo)

# Deputy District Judge

Mr Charles T C Wong, instructed by Messrs Szwina Pang, Edward Li & Company (assigned by D.L.A.), for the Plaintiff

Defendant in person, absent