# DCPI 2063/2018

[2021] HKDC 1304

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 2063 OF 2018

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BETWEEN

SIU LAI YEE Plaintiff

and

WONG KING HAY Defendant

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Before: His Honour Judge Andrew Li in Court

Dates of Hearing: 1 September 2021

Date of Judgment: 26 October 2021

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JUDGMENT

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*INTRODUCTION*

1. This is a personal injury claim brought by the plaintiff against the defendant arising out of a traffic accident happened on 27 June 2016 at around 7:00 pm on Harbour Road, Wanchai (“the Accident”).

*BACKGROUND*

*The Accident*

1. At the time of the Accident, the plaintiff was the front seat passenger of a private vehicle bearing registration number TN 7543 which is a black Mercedes Benz (“P’s Vehicle”) driven by her boyfriend who is not a party or witness in this case (“P’s boyfriend”). She was 30 years old at the time of the Accident.
2. Sometimes before 7:00 pm on the day of the Accident, P’s boyfriend drove P’s Vehicle, stopped and parked illegally in a restricted zone which does not permit parking from 7:00 am to 7:00 pm each day. It was parked on the 1st left lane on the single yellow line outside of Causeway Centre, opposite the Wan Chai Swimming Pool, in a westerly direction on Harbour Road. P’s boyfriend apparently had left the car in order to buy some medicine in a nearby drugstore for the plaintiff who was experiencing some headache at the time. Thus, the plaintiff was left in P’s Vehicle by herself, sitting on the left front passenger seat, while waiting for the driver to return.
3. In the meantime, the defendant, a medical doctor, was driving his private vehicle (which is a white Mercedes Benz) bearing registration number NY 620 (“D’s Vehicle”) along the same carriageway.
4. The Accident happened on a busy Friday evening with heavy traffic on both lanes of the westbound carriageway. The traffic was moving slowly on both lanes. Due to P’s boyfriend’s illegal parking, other vehicles had to drive on the 2nd lane and then cut back into the 1st lane in order to join the slow moving traffic towards the Cross Harbour Tunnel direction.
5. The defendant was originally driving on the 1st left lane of the road towards a westerly direction. Due to P’s Vehicle blocking the 1st lane of the road, like other drivers travelling on the 1st lane, he had to drive onto the 2nd lane in order to overtake it and then return to his own lane. This was exactly what the defendant did or attempted to do. The defendant managed to cut partially into the 2nd lane and overtook P’s Vehicle. However, while he was trying to return to the 1st lane, the nearside wing mirror of D’s Vehicle hit the offside wing mirror of P's Vehicle. The force of the impact allegedly has caused the plaintiff to sustain both neck and thumb injuries.
6. A dash camera (or commonly known as a “car-cam”) was installed inside P’s Vehicle and captured the entire Accident with audio recording. The length of video is about 40 seconds but the important moments are captured in the first few seconds only.
7. It can be clearly seen from the video recording that the traffic was very heavy at the time of the Accident with slow moving vehicles packed on both lanes towards the westerly direction. D’s Vehicle was travelling at a fairly fast speed – estimated by the defendant himself at 20 to 30 kph -- while trying to overtake P’s Vehicle. Someone had sounded the horn of a vehicle before D’s Vehicle overtake P’s Vehicle although the defendant denies that it was him who did it. The sound of impact between the 2 mirrors can be heard when the left wing mirror of D’s Vehicle came into contact with the right wing mirror of P’s Vehicle. The collision probably can be best described as the left wing mirror of D’s Vehicle having “clipped” the right wing mirror of P’s Vehicle.
8. However, what is very significant to note is the fact that no visible movement / sudden jerk can be detected inside P’s Vehicle at the time of the impact. None of the plaintiff’s limbs or any part of her body was captured by the camera. There is no evidence that she had been pushed forward by the very minor impact between the 2 vehicles. All that can be heard clearly was the loud voice of the plaintiff’s immediately swearing at the other driver by shouting out the words: 「嘩 有冇搞Ｘ錯啊 ！」(“Wow, what the f\_ \_ \_ing wrong!”).”
9. As a result of the Accident, the defendant was charged with the offence of careless driving. On 3 January 2017, upon his own guilty plea, he was convicted and fined HK$900 at the Eastern Magistracy. The brief facts, which the defendant had admitted in the magistrates’ court, are almost identical to the plaintiff’s pleaded case.

*DISCUSSION*

*Liability*

1. The plaintiff’s case against the defendant is straightforward. She claims that the defendant’s negligent driving manner has caused the Accident and her alleged injuries. The particulars of negligence have been pleaded in paragraph 3 of the statement of claim. The main allegations included driving without a proper lookout; driving at an excessive speed in the circumstances; and overtaking P’s Vehicle when it was unsafe to do so.
2. The plaintiff further relies upon the defendant’s conviction, the car-cam footage and the plaintiff’s own evidence given at the trial to prove her case.
3. The defendant denies liability and suggests that “(the plaintiff) had chosen to sit in the vehicle which was illegally parked in the rush hour on Harbour Road posing chaos in the road traffic.”

*Findings of the Court on liability*

1. In my judgment, there is no doubt that the defendant was solely responsible for causing the Accident. While it was wrong for P’s boyfriend to park P’s Vehicle illegally on a restricted zone during the rush hour, the defendant, who was doing an unusual manoeuvre, namely, to overtake P’s Vehicle which was parked in a stationary position, must take reasonable care while doing so. By doing that at a “fairly fast speed” (as admitted by the defendant himself and for which can be clearly seen in the video recording) and driving too close to P’s Vehicle, the defendant must be answerable for causing the Accident.
2. The plaintiff who was not the driver of P’s Vehicle but was merely the front seat passenger should not be responsible for the Accident in any way.
3. Further, the fact that the defendant has been convicted on his own plea of careless driving and admitted to the brief facts, would have the effect of shifting the burden of proof to him to show why he was not negligent during the Accident. A burden which I find the defendant has failed to discharge during the trial.
4. Hence, I have no hesitation to find the defendant 100% liable for the Accident.

*QUANTUM*

1. This is where the main dispute lies in this case which requires a closer scrutiny of the plaintiff’s case.
2. In the statement of damages filed together with the statement of claim back in October 2018, the plaintiff claimed a sum of HK$125,574 which included a sum of HK$120,000 for pain, suffering & loss of amenities (“PSLA”) and a sum of HK$5,574 for special damages (including HK$5,000 for tonic food and HK$574 for travelling expenses and hospital fees) plus interest.
3. However, by the time when the plaintiff filed her revised statement of damages (“RSD”) in November 2020, the claim has been reduced to a sum of HK$90,000 for PSLA and HK$5,574 for special damages plus interest.
4. It is to be noted that the increase of jurisdiction of the District Court which took place in December 2018 has effectively increased the upper jurisdictional limit of the Small Claims Tribunal (“SCT”) from HK$50,000 to HK$75,000.

*The Plaintiff’s Alleged Injuries*

1. Initially, the plaintiff claims that she has sustained both neck and thumb injuries in the Accident.
2. In the RSD which was filed on 2 November 2020, the plaintiff still maintained that her right thumb “was caused to contuse against the control panel” of P’s Vehicle. She claimed that she *“*immediately suffered from neck pain and right thumb pain”. It is further claimed in the RSD that “(A)s she thought her injuries were not significant at the time, she did not seek immediate medical treatment”. It was only “thereafter” when “the neck pain and right thumb pain had become progressive” that she attended the accident and emergency department (“A&E”) of Tang Shiu Kin and Ruttonjee Hospital.

*The plaintiff’s evidence*

1. In her oral evidence, the plaintiff explained that she was sitting at the front passenger seat diagonally facing towards the Wanchai Swimming Pool direction on the opposite side of the road. Both of her legs were raised and touching the glove compartment of the dash board under the windscreen in front of her. She was “leaning slightly” backwards towards her seat with the right side of her back leaning against the seat while her left side of her back away from the seat. She said that both of her hands were holding her mobile phone which she was using at the time. She said she was wearing her seat belt which was different from what she had told the doctors at the government hospitals when it was recorded repeatedly that she was not wearing any seat belt at the time.

1. She then heard the “pop” sound when the collision took place between the 2 vehicles. However, she did not feel any vibration.
2. When asked about her response by her counsel, the plaintiff claimed that she was “scared, lost her centre of gravity and fell to (her) right”. The bottom of her right thumb allegedly hit the corner of the gear stick, although the same was not caught by the car-cam.
3. She said that the pain on her neck was like “stretching” and it was “not so painful that I could not move” (「當時係有啲扯住咁樣囉，當時就唔會話…即係痛到郁唔到」).
4. She allegedly waited for 2 to 3 more minutes before P’s boyfriend returned to the scene. By that time the defendant had already alighted from D’s Vehicle and checked the damage to his side mirror and any damage to P’s Vehicle. P’s boyfriend immediately went up to the defendant and they had an argument which lasted for at least 5 to 10 minutes according to the plaintiff.
5. It was after a period of time when P’s boyfriend and the defendant continued to argue over the damage that the police was allegedly called by P’s boyfriend. The police arrived about 10 to 15 minutes thereafter. The plaintiff estimated that the police arrived about 20 minutes after the Accident.
6. It is perhaps important to note here that while the left wing mirror of D’s Vehicle suffered some very minor damage (with a minor scratch mark at the bottom corner), there is no evidence to indicate that P’s Vehicle had suffered any damage at all.

*The defendant’s evidence*

1. The defendant’s version of what happened after the Accident is quite different from the plaintiff’s. I prefer his evidence than that given by the plaintiff as they are inherently more probable; more consistent with the very minor impact between the two vehicles; and the ensuring bitter arguments between the two drivers.
2. In his police statement, the defendant said that after the collision and when he went up to check on P’s Vehicle, the plaintiff started to scold him severely. Around 5 to 10 minutes after the collision, P’s boyfriend returned to the scene. An argument between the defendant and P’s boyfriend then took place during which P’s boyfriend demanded the defendant to pay him compensation eventhough there was no apparent damage caused to P’s Vehicle. The defendant then reported the matter to the police. After P’s boyfriend took a look of the road licence and parking permits on D’s Vehicle and having found out that the defendant was a medical doctor, he then made a phone call to someone. After the phone call, P’s boyfriend then alleged that the right rear mirror of P’s Vehicle had been damaged and asked the defendant for monetary compensation. He also claimed that the defendant had prevented him from taking part in a ball game with Mr Li Siu-Ka (李小加) who as widely known was the CEO of the Hong Kong Stock Exchange at the time. The defendant ignored P’s boyfriend’s demand and left the scene after providing his personal particulars to the police.

1. It is important to note that neither the plaintiff nor P’s boyfriend had made any allegation to the police at the scene that she was injured in the Accident. In fact, the police officer (PC 19227) who arrived the scene at 19:41 to investigate the matter has specifically made a record in his police statement that the drivers of the vehicles and the passenger of P’s Vehicle were not injured in the Accident.
2. Judging from the time when the Accident took place to the time when the police officers arrived the scene and the time it took them to investigate into the matter, I estimate the whole incident lasted for about an hour. Thus, I find the arguments between the defendant and the plaintiff and P’s boyfriend had lasted much longer than the 5 to 10 minutes as suggested by the plaintiff. I find most of the time between when the Accident happened at around 7:00 pm to when the Police arrived the scene at around 7:41 pm, the defendant and P’s boyfriend were arguing with each other during which both sides had exchanged some very harsh words.
3. What took place after the parties left the scene was rather unusual. Even though the plaintiff claimed that she had experienced neck and thumb pain immediately after the Accident, she failed to mention this to the defendant and her boyfriend at the scene. She also failed to mention this to the police officers who arrived the scene to investigate into the Accident. It was only after the police had left the scene that she allegedly mentioned this to her boyfriend for the first time. I find this difficult to believe as, if the plaintiff had in fact suffered any genuine neck and thumb injury immediately after the Accident as she now claims, it is most unlikely that she would have failed to mention this to either her boyfriend or the police officers. For an hour between the time when the very minor collision took place to the time when the parties left the scene, it is incredible that she would not have mentioned this to anybody at all. Had she done that, no doubt an ambulance would be called and she would be sent to the A&E of a government hospital immediately. I certainly do not accept the reason she gave at the trial when she said that she did not do so because she felt scared.
4. What happened next was that P’s boyfriend immediately took the plaintiff in P’s Vehicle to Tang Shiu Kin Hospital sometimes after 8:00 pm. She was dropped off by P’s boyfriend who then left for his ball game and dinner with friends. Upon finding out that there was no A&E at the hospital, the plaintiff then took a taxi to Ruttonjee Hospital where they have an A&E and at which she received initial treatments. She was later transferred to the Pamela Youde Nethersole Eastern Hospital (“PYNEH”) where she was hospitalized for 3 days.

*The experts’ evidence*

1. The parties’ orthopaedic experts Dr Johnson Lam (for the plaintiff) and Dr Chun Siu Yeung (for the defendant) conducted a joint medical examination on the plaintiff and later produced a joint expert report dated 7 September 2020 (“the Joint Expert Report”).
2. Both experts agreed on the following matters in the Joint Expert Report:
3. On 27 June 2016 (ie date of accident), the plaintiff was admitted to PYNEH for treatments and later discharged on 29 June 2016. She complained of right side neck and right hand thumb pain;
4. On 13 July 2016, the plaintiff attended the A&E of PYNEH and complained persistent neck pain. She was discharged on the same day;
5. On 4 August 2016, the plaintiff attended PYNEH to follow up on her injury. She had no more neck pain complaint by this time;
6. The plaintiff was granted sick leave from 27 June 2016 to 17 July 2016 and 4 August 2016. These sick leaves granted are said to be reasonable. Thus, the total length of sick leave granted was about 3 weeks;
7. The available medical documentation suggests a diagnosis of minor sprain of the soft tissue of the neck. The right thumb pain should be unrelated. Such possible minor/mild sprain under normal circumstances will be recovered within a short period of time. There was no facture, no neurological deficit;
8. At the joint medical examination on 9 August 2019, the plaintiff did not have any neck pain or other symptoms. Physical examination showed no abnormality. She had recovered well and so no further treatment was required; and
9. Both experts did not say that the plaintiff might have any pre-existing conditions being complained of by the plaintiff after the Accident.
10. On the diagnosis and causation, I much prefer the opinion of Dr Chun when he stated in the Joint Expert Report that from the “orthoopaedic biochemical perspective, the hit on the reverse mirror, from the car camera viewing showing no movement of the Benz at the time of the ‘bump’ sound, this would very strongly suggest that there was little force transmitted from the reverse mirror to the car body not to say to the body of (the plaintiff).” I further agree with Dr Chun’s view that “this very insignificant force, if any, would not have caused her legs and feet to drop from the case panel to the floor and should not have moved her right hand onto a site near the gear to cause the ball of thumb pain as she reported at this examination.” This is something which was agreed by Dr Lam for the plaintiff. This piece of undisputed opinion of the experts seems to me to be entirely consistent with the video footage recorded by the car-cam and the very minor impact caused by the collision during the Accident.
11. However, Dr Lam opined that “it is possible that as a result of the impact and sudden jerk, the startle response and the commotion that followed would have caused (the plaintiff) to drop her leg/feet and move her right hand, and also sustained mild sprain to her neck.” With respect to Dr Lam, I do not agree with his opinion on this at all. Given the fact that there was only a very minor impact and no sudden jerk was recorded by the car-cam, I simply cannot see how it would be able to cause any “startle response” or “commotion” as speculated by Dr Lam.
12. Both experts however agreed that the exact circumstances of the traffic accident are matters to be determined by the Court. This must be correct.
13. All in all, I do not find the plaintiff as an honest witness at all. I find the plaintiff has grossly exaggerated her response in the Accident. I do not accept her allegation that the minor impact had caused her legs/feet to drop from the car panel and/or moved her hand to hit the gear panel, thus causing injury to her neck as well as the ball of her thumb at all. I simply cannot see how a very minor clip between the wing mirrors of 2 vehicles, which did not even cause P’s Vehicle to jerk, would cause that kind of response, let alone the neck and thumb injuries she later complained of. Given the fact that she was able to calmly and clearly uttered out those swear words immediately after the impact, I reject any suggestion that there was any “startle response” as opined by Dr Lam.
14. The experts then went on to state that “*the available documentation suggests* a diagnosis of minor sprain of the soft tissue of the neck, the right thumb MCPJ pain should be unrelated.” [emphasis added].
15. I find the plaintiff has deliberately exaggerated the injuries she allegedly has sustained in the Accident. I doubt very much she has suffered from any neck injury at all. The fact that she had made no such complaint at the scene to her boyfriend and to the police officers during the hour or so after the Accident suggests that most likely they were made up by her and her boyfriend in order to extort some money from the defendant. That was after P’s boyfriend had found out at the scene of the defendant’s profession. I believe the defendant when he said that P’s boyfriend had threatened to report the matter to the medical body had he not pay him HK$4,000 for the alleged damage to P’s Vehicle. I find that it was due to the defendant’s refusal of paying him any compensation at the scene that the plaintiff and P’s boyfriend made up a story of injures and went immediately to the hospital for examination.
16. A closer examination of the medical records and reports from the government hospitals reveals that the plaintiff’s alleged injures are not supported by any objective findings. There was no swelling; no bruising over the neck, tenderness over the right sided neck, power, sensation and reflexes of the upper and lower limbs were found to be normal; limitation of range of motions of the neck and shoulders are satisfactory. CT cervical spine on the date of the Accident did not reveal any fractures nor dislocation but loss of cervical lordosis (which was due to normal degeneration). X-ray cervical spine in PYNEH also did not reveal any instability. Thus, except the plaintiff’s subjective complaints, there was nothing to support she has actually suffered from any neck injuries during the Accident at all. In any event, by 4 August 2016, the plaintiff no longer complained of any neck pain to the doctors at the Hospital Authority.
17. Similarly, for the thumb pain, the record reveals that it was not until the second day of her hospitalization, some 12 hours after her admission to PYNEH, that she first complained to a nurse of the right thumb pain. Again, the alleged injury was not supported by any objective evidence, There was no swelling or bruises, no triggering, no laxity on medial and lateral stress of the right thumb metacarpal-phalangeal joint (“MCPJ”). X-ray showed no facture to the thumb. The doctors at PYNEH made no specific findings on the alleged thumb injury.
18. Hence, I do not find the thumb injury believable at all. I do not see how a minor clip on the mirror would able to cause the plaintiff to hit her thumb against the surface of the gear. I find it was made up by the plaintiff in order to embellish her claim. If the plaintiff did suffer any thumb injury at all as she claims, I find it was totally unrelated to the Accident. In any event, Mr Wong for the plaintiff no longer pursues this claim during the trial.
19. I accept the experts’ opinion that, based on the available medical documents, the plaintiff has probably suffered from a minor sprain of the soft tissue of the neck. I further find that the right thumb injury, if she had sustained it at all, was unrelated to the Accident. I also find that the plaintiff has grossly exaggerated her injuries with a view to obtaining some compensation from the defendant when P’s boyfriend could not get any money from the defendant for the non-existence damage to P’s Vehicle.

*PSLA*

1. Mr Wong for the plaintiff has referred me to a number of cases which he said are all related to sprain injury to the neck. They included *Lin Chui Ling Chelly v Kings Beauty House Limited* [2021] HKDC 686; *Wong Kwong San v Lee Choi Wan*, HCPI 700/2020, unreported, 10 August 2017; *Law Tze Ho v Li Man Kin & others*, HCPI 692/2009, unreported, 15 November 201; *Chan Chun Pong v Wong Tsz Lung*, HCPI 391/2008, unreported, 19 January 2010; *Siu Leung Shang Peter v Chung Wai Ming*, HCPI 43/2006, unreported, 16 March 2007 where awards from HK$30,000 to $150,000 were made for PSLA for various degree of seriousness of neck injury. Mr Wong submits that the plaintiff in the present action should be awarded in the sum ranging around HK$75,000 to HK$90,000 as the PSLA for her neck pain.
2. With respect, I do not agree. If the plaintiff has suffered from any neck pain in the Accident at all, I consider that as very minor sprain of the soft tissue of the neck of which she should have recovered within a very short time. Her injuries are therefore much less serious than any of the cases cited by her counsel. Even given her the benefit of the doubt, I consider a sum of HK$10,000 should be considered as more than reasonable as PSLA award in this case.

*Other special damages*

1. For other items of special damages, I am only prepared to allow hospital fees at HK$380 and travelling expenses at HK$194, making a total of HK$574. Given the very minor sprain injury to the soft tissues of the neck, I do not think any tonic food is needed and therefore none would be allowed.

*CONCLUSION*

*Order of the Court*

1. Based on the above, I would enter judgment in favour of the plaintiff in the sum of HK$10,574 plus the usual interest at 2% for the PSLA award from date of issue of writ to date of judgment and at half of the judgment rate for the special damages award from the date of the Accident to date of judgment and thereafter at judgment rate.

*Costs*

1. Costs should follow the event and the defendant as the party found liable for causing the Accident will be responsible to pay the costs of the plaintiff.
2. At the Pre-trial Review of this case on 2 August 2021, I raised the issue of costs with the plaintiff’s counsel and mentioned the fact that in the event if the ultimate quantum fall within the jurisdiction of the SCT, the plaintiff may not be able to recover any costs at the District Court scale.
3. In *Lui King Tong v Hospital Authority* [2019] HKDC 376, the learned Deputy Judge Elaine Liu summarized the relevant legal principles:-

“11. ... If a reasonable assessment shows that the recoverable damages would not be in a figure near the ceiling of the monetary jurisdiction of the Small Claims Tribunal, it would be unreasonable for the plaintiff to commence the action in the District Court and unjustifiably put the burden of footing the legal costs bill on to the defendant. In such case, the court could order that the plaintiff's costs be assessed on a scale similar to that for the Small Claims Tribunal cases...

12. When determining the reasonableness of commencing a claim in this court, the court should consider the evidence available to the plaintiff at the commencement of the action. A claim will not be taken as unreasonable simply because it turned out to be unsuccessful or because it is ambitious...

13. The reasonable prospect test shall apply not only at the commencement of the action, but it shall continue to apply during the proceedings when further evidence and information become available....”

1. Mr Wong submits that the plaintiff did properly and reasonably commence these proceedings in the District Court. He submits that when the plaintiff instituted this action on 24 September 2018, the jurisdiction of the SCT had not yet been amended upward and remained at HK$50,000. The increased jurisdiction to HK$75,000 at the SCT took effect on 3 December 2018 only. Mr Wong says that the plaintiff’s claims including PSLA should have a reasonable prospect of being awarded a sum well exceeding or at least near to HK$50,000.
2. With respect to Mr Wong, I cannot agree with the submissions. As I have found above, I do not think the plaintiff’s complaints on her neck pain was genuine at all. There was a much exaggerated element in her claim. Her thumb injury was certainly made up after the event and was not caused by the Accident. It is clear to me that she has made up or grossly exaggerated her injuries in order to get some compensation from the defendant when P’s boyfriend had failed to get any money out of him for the bogus damage claim to P’s Vehicle. I believe the plaintiff and P’s boyfriend well knew about this at the time of issue of the proceedings in this case. Hence, even based on the evidence at the time of issue of the writ, I find it was unreasonable for the plaintiff to issue the case in the District Court. In my view, this is clearly a case which fell well within the jurisdiction of the SCT at the time of issue of the proceedings. It should never have been brought in the District Court.
3. In the circumstances, I would make an order nisi that the defendant do pay the plaintiff’s costs in these proceedings but the same should be taxed at the SCT scale and not at the District Court scale. If any of party wishes to vary the costs order, they should do so by making an application by summons within 21 days from the date of handing down this judgment.

( Andrew SY Li )

District Judge

Mr Paul Wong, instructed by Messrs Cheng, Chan & Co. for the plaintiff

Mr Wong King Hay, the defendant, acting in person