## DCPI 2222/2007

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSON INJURIES ACTION NO. 2222 OF 2007

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##### BETWEEN

Ng Wai Yip Plaintiff

### and

Borich Contracting Limited Defendant

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Coram : H.H. Judge Chow

Date of Hearing : 28th August, 2008

Date of handing down Judgment : 30th October, 2008

J U D G M E N T

1. On 5.6.2008, liability was entered against the Defendant in respect of the Plaintiff’s claim. What this Court has to do is to assess the damages suffered by the Plaintiff due to the injuries sustained by him.
2. At about 10:30 a.m. on 2.6.2005, an accident occurred. As a result the Plaintiff sprained his left wrist. He was afterwards sent to the hospital for medical treatment. On examination he was found to have a local tender around his left wrist with scaphoid tenderness. X-ray showed that there was scaphoid fracture in his left wrist. He was hospitalized from 2nd to 7th June, 2005.
3. On 5.6.2005 reduction and screw fixation surgery to the left scaphoid was done. On 30.12.2005 removal of the implant was performed. He was discharged on the following day. Thereafter he had some sessions of phystiotherapy and occupational therapy treatment. He suffers from wrist pain in the end range of motion and heavy exertion of left wrist.
4. He was granted sick leave from 2.6.2005 to 1.4.2006, and from 30.4.2006 to 27.5.2006, for a total period of 332 days.
5. He was assessed by the Employees’ Compensation Board on 21st June, 2006 to have suffered 2% permanent loss of earning capacity due to the injury.

Pain, suffering and loss of amenities (“PSLA”)

1. In Tang Shu Shek v. Leung Chi Kit & Anor. (HCPI 219 of 2002), the Plaintiff injured his wrist when he fell to the ground. X-ray showed a fractured left scaphoid. He was hospitalized for 2 days and his wrist was placed in a plaster cast for 2 months. Thereafter he had some sessions of physiotherapy. One expert assessed permanent impairment at 1% of the whole person, whilst another expert assessed permanent impairment at 3% of the whole person. He still complained of pain when he moved his left hand in an upward direction or when the weather changed. The Court award PSLA at $180,000.
2. In Lau Chi Man v. Kowloon Canton Railway Corporation (DCPI 501/2005), the Plaintiff sustained a fractured shaft of his right radius. His right forearm was swollen, and deformed with marked decrease in the range of movement. Open reduction and internal fixation of fracture right radius was performed, leaving a long scar on his right forearm after the surgery. The Court awarded him $220,000 for PSLA.
3. Having regard to the above 2 cases, the award for PSLA for the present case should be $200,000.

Pre-trial loss of earnings

1. Prior to the accident, the Plaintiff earned a monthly salary of $12,000 per month to $13,000. Therefore the average monthly salary is $12,500. He was granted sick leave for a total period of 332 days. This is no evidence to show that the sick leave period is unreasonable. The sick leave was granted by medical practitioners and was approved by the Employees’ Compensation (Ordinary Assessment) Board as “period(s) of absence from duty necessary as a result of the injury.” I adjudge that the sick leave is reasonable for the Plaintiff’s injury. The loss of the Plaintiff for the sick leave period including MPF is $145,250 ($12,500 x 332/30 x 1.05 (MPF)).
2. The Plaintiff could not work for 28 days, between the periods of sick leave from 2.4.2006 to 29.4.2006. He is entitled to the loss of earnings for this period, including MPF in the sum of $12,250 ($12,500 x 28 ÷ 30 x 1.05 (MPF)).
3. After the sick leave period ended in 27.5.2006, the Plaintiff resumed his pre-accident job as an electrical technician. Due to his permanent disability caused by the accident, he could not work as efficiently as before. His income therefore decreased. He earned about $3,000 from 28.5.2006 to 30.11.2006 (6 months). He is entitled to loss of earnings (including MPF) for this period in the sum of $59,850 (($12,500 - $3,000) x 6 months x 1.05 (MPF)).
4. From December, 2006 to 31.3.2006 (4 months), his income was increased to about $3,500 to $5,000 per month (i.e. $4,250 on average) since he also worked as a part-time lorry driver. He is entitled to loss of earnings (including MPF) for this period in the sum of $34,650 (($12,500 - $4,250) x 4 months x 1.05).
5. From April 2007 onwards he started to work as a lifeguard. He earns $507 per day in the “winter months” (6 months), and $580 per day in the “summer months” (6 months). He earns $14,000 - $15,000 ($14,500 on the average) in the summer months and $7,000 - $7,500 ($7,250 on the average) in the winter months. Therefore on the average he earns $10,875 per month [($14,500 + $7,250) ÷2] since April 2007 onwards.
6. From April 2007 to the date of trial on 28.8.2008 (17 months), the Plaintiff is entitled to loss of earnings (including MPF) in the sum of $29,006 (($12,500 - $10,875) x 17 months x 1.05 (MPF)).
7. The total pre-trial loss of earnings is $281,006 ($145,250 + $12,250 + $59,850 + $34,650 + $29,006).

Post-trial loss of earnings

1. The Plaintiff was born on 15.9.1979. He was about 28.9 years old at the date of trial. He is expected to work until 65 years old. A multiplier of 16 should be adopted. The incident occurred on 2.6.2005. As time goes by the Plaintiff should have acquired an increased competency in his job as an electrical technician, and his salary should have increased after 3 years after the accident. He ought to have earned at least $13,000 per month at the date of trial. The award for future loss of earnings including MPF is $428,400 (($13,000 - $10,875) x 12 x 16 x 1.05 (MPF)).

Loss of earning capacity

1. The Plaintiff claims loss of earning capacity in the sum of $100,000 on the ground that he will face a handicap in the open labour market due to his injuries and consequential residual effects. But he is fully compensated according to law for his loss of earning in the future under the previous head of award. Furthermore, unless he returns to his former job as an electrical technician, he will not have to confront the said handicap. So there should be no award for this head.

Special damages

1. The Plaintiff spent $7,401 for his medical expenses, and $2,500 for travelling. He claimed for $8,000 in tonic food and $3,000 for medical health care products. The total amount is $20,901 ($7,401 + $2,500 + $8,000 + $3,000).

E C Claim

1. The Plaintiff received $125,760 under related employees’ compensation proceedings. This figure is to be deducted from the award granted to the Plaintiff.
2. The total award granted to the Plaintiff is $804,547 ($200,000 + $281,006 + $428,400 + $20,901 - $125,760).
3. I order that the Defendant do pay to the Plaintiff 14 days from today the sum of $804,547 with interest thereon; interest at 50% judgment rate on $20,901 from 2.6.2005 to 30.10.2008, and on $200,000 from 23.10.2007 up to 30.10.2008 at 2% per annum, and at judgment rate on $804,547 from 31.10.2008 until satisfaction.

Costs

1. I make an order nisi for costs, to be made absolute in 14 days’ time, that the Defendant do pay costs of this action to the Plaintiff, to be taxed, if not agreed, with certificate for Counsel.

( S. Chow )

District Judge

The Plaintiff : represented by Mr. Edward Poon instructed by M/S. B. Mak & Co., Solicitors

The Defendant : represented by Mr. Fok Yiu Kee, unrepresented