DCPI 2570/2011

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 2570 OF 2011

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BETWEEN

LEUNG KWONG CHIN Plaintiff

and

MAK CHUN HUNG Defendant

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Before: His Honour Judge Chow

Dates of Hearing: 25 & 28 January 2013

Date of Judgment: 27 March 2013

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J U D G M E N T

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1. This is the trial for the assessment of losses and damages suffered by the plaintiff as a result of the accident which occurred on 3 June 2009 at Waterloo Road, Kowloon. On that day, he was riding a bicycle and he was hit by the defendant’s private car. He was sent to the Kwong Wah Hospital for treatment, and was discharged on the same day. X-ray taken from him did not show any fracture at his left leg or left ankle.

*Headache*

1. In his testimony, the plaintiff said that he had headache, which arose since October 2009. The medical report dated 14.8.2009 issued by the Kwong Wah Hospital reveals :-

“The above named patient attended our AED on 3/6/09 because of a road traffic accident happened on the same day. He was hit by a private car while he was riding a bicycle. He suffered from left leg injury.

Abrasion wounds were noted over his left leg. Tenderness was elicited on palpation of the left distal tibia and fibula. The range of left ankle movements was decreased. X ray films of left leg and ankle showed no fracture. He was discharged with analgesics and granted 4 days of sick leave.

He attended on 6/6/09 and complained of persistent left ankle pain. He was discharged with analgesics and granted 4 days of sick leave.

He attended on 20/6/09 and complained of persistent left ankle pain. He was discharged with analgesics and granted 4 days sick leave. He was referred to the Physiotherapy department for physiotherapy.”

It is noted that there is no mentioning of headache in this medical report. In his witness statement, the plaintiff has not mentioned about headache. The headache he alleges to suffer cannot be related to the accident.

*Back pain*

1. Paragraph 2 of the joint medical report dated 26.8.2011 states :-

“He complained of on and off back pain that started 2 weeks after the injury, the pain was aggravated by weather change.”

1. Under paragraph 11, 15 and 16 of his witness statement the plaintiff referred to back pain. Under paragraph 11, he states that on 20.11.2010 and 4.12.2010, he felt stiffness on his back. He opined that it is the suffering on his leg which led to the pain on his back. So he again went to the Kwong Wah Hospital for treatment. He is not a medical doctor. He did not say how the suffering on his leg would lead to the pain on his back. I attach no weight to his opinion.
2. Paragraph 2 of the joint orthopaedic report states :-

‘For the back pain, we note that the back injury was not reported after the accident. According to the medical notes of GOPC he started to complain of back pain on 17 September 2009 that started just around one week before that consultation. Also, it was documented in the notes of KWH GOPD that he had chronic back pain. We agree the back pain should not be related to the said accident.’

I accept the contents of the joint orthopaedic report, and find that the back pain is not related to the accident.

1. What the plaintiff suffered from the accident was a left ankle sprain. The joint medical report states :-

“We agree Mr Leung should be independent in activities of daily living.”

The physiotherapy progress report as at August 2009 shows: “Ankle movement and power are functional; ADL’s no significant c/o, progressing well.” So his ankle problem has improved.

*Loss of earnings*

1. The appropriate sum agreed by the parties is $33,458.6.

*Loss of earning capacity*

1. The evidence adduced by the plaintiff shows that there is simply no substantial or real risk that he will lose his job as a security guard at some time before the estimated end of his working life. Regarding his job as a delivery worker. Regarding his job as a delivery worker, the tax return for the period from 1.4.2007 to 31.3.2008 is only $9,180. In his witness statement, he said that his monthly income was $5,600. Thus the income, if wholly from his work as a delivery worker, should be $67,200 ($5,600 x 12) for the whole year. The burden is on him to show that there is a real or substantial risk that he will lose his job as delivery worker. The circumstances of his work as a delivery worker resulting in an income of $9,180 have not been fully revealed to his Court. There is no evidence to show that because of his injuries he was not able to find a job in the day time after the accident. In any event, it is not possible for him to work in the day time and to work in the right time as a security guard. At present he is working in the night time. He needs to sleep in the day time. Hence it is not possible for him to do a day time job. No award will be granted under this head of damages.

*Pain, suffering and loss of amenities (PSLA)*

1. The plaintiff claims a sum of $240,000. The authorities relied on by the plaintiff involve fractures of bones. They involve more serious injuries, and so they are not appropriate authorities for assessing awards to the plaintiff, since the plaintiff did not suffer any bone fracture. The defendant submits that the award under this head of award ranges should range from $60,000 to $80,000. The plaintiff was born on 25.4.1956. At the time of the accident he was 53 years old. His injuries were not serious, but he could not enjoy the sports he used to have. Under this head of damages, I make an award of $80,000.

*Special damages*

1. Both parties agreed that the appropriate sum under this head should be $6,925.

*Total award*

1. Under employees’ compensation, the plaintiff was paid $31,450 by way of employees’ compensation. Hence, the total award is $88,933.04 ($80,000 + $33,458.6 + $6,925 - $31,450.56).
2. I order that the defendant do pay to the plaintiff, within 14 days from today, the sum of $88,933.04 with interest thereon; interest at 2% per annum on the sum of $80,000 from 28.12.2011 up to 26.3.2013; interest on the sum of $8,933.04, commencing from 3.6.2011 to 26.3.2013, at 50% judgment rate, and at judgment rate on the sum of $88,933.04 , commencing from 27.3.2013 until satisfaction.

*Costs*

1. I make an order *nisi*, to be made obsolete in 14 days’ time, that the defendant do pay costs of these proceedings to the plaintiff, to be taxed, if not agreed, with certificate for counsel. The plaintiff’s own costs to be taxed in accordance with Legal Aid Regulations.

( S Chow )

District Judge

Mr Peter Wong, instructed by Deannie Yew & Associates, assigned by D.L.A. Solicitors for the plaintiff

Mr Victor Gidwani & Bosco Cheung, instructed by Leo Cheng & Co, Solictors for the defendant