

A DCPI 2164/2009 A

B
C **IN THE DISTRICT COURT OF THE**
D **HONG KONG SPECIAL ADMINISTRATIVE REGION**
E

D **PERSONAL INJURIES ACTION NO. 2164 OF 2009**
E

F **BETWEEN** F

G **WONG BIK CHUEN** G

H Plaintiff H

I and I

J **HUA MIN TOURISM AUTOMOBILE**
K **TRANSPORT COMPANY LIMITED** J

I Defendant I

L Before: Her Honour Judge H C Wong in Court L

M Date of Hearing: 11-13 January 2011 M

N Date of Delivery of Judgment: 13 January 2011 N

O **J U D G M E N T** O

P 1. The plaintiff claimed against the defendant for damages P
Q suffered as a result of injuries sustained at a chain collision traffic accident Q
R on 4 March 2008 as a passenger on board the defendant's cross-border bus R
S No. ZSM27 travelling from Hong Kong to Anhai in Fujian, China. S

T 2. The defendant denied the plaintiff's injuries were sustained at T
U the accident on 4 March 2008 on board its bus. The defendant abandoned U

A

B the defence of exemption clauses on the bus ticket and the issue of jurisdiction at the hearing.

A

B

C

The Plaintiff's Case

C

D

E It is the plaintiff's evidence that he boarded the defendant's F bus in Hong Kong at about 6.30 pm on 4 March 2008 for his travel to G Anhai in Fujian. After the bus crossed over to the Shenzhen border and H was travelling on the Hong Kong and Jiangxi Highway (廣錦高速公路) - I where the defendant's bus driven by its driver, Mr Yang Huabing (DW1), collided with the coach in front of the defendant's bus. As a result, the plaintiff, Mr Wong, was thrown forward from his seat and knocked his jaw against the back of the seat in front, causing injuries to his mouth and teeth.

D

E

F

G

H

I

J

K Mr Wong claimed that he was bleeding from the mouth, and L he also found his lower front incisors became loose immediately after the M accident. He claimed he was told by the second driver of the bus, Mr Lee, N to board another bus belonging to the defendant company which was O travelling in the same direction to the same destination as ZSM27. He P claimed there were other passengers who were injured at the accident, other Q passengers were also told to board the same bus but as this bus had only R five or six seats remaining, those who were injured were given priority to S board the second bus. This happened before the traffic police arrived at the T scene of the accident. When he made enquiries of the second bus driver, U Mr Lee, about reporting his injuries and claiming compensation, he was V told that the defendant would deal with his claim in Hong Kong.

J

K

L

M

N

O

P

Q

R

S

T Upon arrival in Anhai, Mr Wong sought treatments at the U Anhai Hospital, 晉江安海醫院. He produced the medical records of his treatments at the hospital and the treatment certificate. These appear at V

S

T

U

A

page 91 to 94 with the transcript at 95 to 96, pages 91 to 94, pages 95 to 97, the certificate at page 98 of the bundle. The records showed Mr Wong was diagnosed to suffer from:

D

(1) lower lip trauma with a wound of 3 x 2 cm;

E

(2) dislocation of two lower central incisors (teeth No. 31 and 41);

G

(3) subluxation with grade II mobility of two lower lateral incisors, (teeth Nos. 32 and 42).

I

6. He received treatments, including debridement of wound, reduction of displaced and subluxed teeth under local anaesthetics and fixation by legation of wires.

L

7. On 8 March 2008, he attended the Xiamen Hong Yun Oral Clinic 厦門鴻運陳聰口腔診所 operated by Dr Chan Chung. He had root canal treatments of the four affected teeth to relieve his pain and infection. His lower incisors were stabilised with wire braces and brackets as part of the treatment received. He claimed he had to travel to Xiamen five times for his treatments at the clinic, and he had paid a total of RMB12,000 to the Xiamen clinic plus the sum of RMB3,000 to the Anhai Hospital for his treatment on 5 March 2008.

R

8. As a result of his injuries, he had to delay the construction of his new house in Anhai because he was not able to closely supervise the building works and he could not speak properly after the accident due to the injury to his lip and teeth.

U

V

A

A

B

The Defence Case

B

C

9. The defence adduced evidence from three witnesses. They were the main bus driver of bus ZSM27, Mr Yang Huabing, the main and assistant drivers of bus registration number 「閩 AY 3508」 which picked up passengers from the bus involved in the accident, ZSM27, on the highway where the accident occurred.

C

D

D

E

E

F

F

G

10. Mr Yang denied he was driving negligently on the highway on 4 March 2008. He admitted he was told by the traffic police at the scene of the accident that he had failed to keep a safe distance between his bus and the coach in front, and it resulted in the collision. He admitted the traffic police confirmation of accident report at page 162 of the bundle was signed by him and the two other vehicle drivers. Though the report stated the finding that he was wholly responsible for the collision, Mr Wong disagreed with the finding. He said it was solely because he was the last vehicle involved in the chain collision that he was the only one to blame. He blamed the accident on the driver of the private vehicle in front of the coach. He claimed the driver was trying to reverse his car causing the coach in front of his bus to brake suddenly and resulted in Mr Yang's failure to stop his bus in time to avoid colliding with the coach in front and causing the coach to collide with the private car in front.

G

H

H

I

I

J

J

K

K

L

L

M

M

N

N

O

O

P

P

Q

Q

R

R

S

S

T

T

U

U

V

V

A

B passengers from ZSM27 at the scene and these were all the passengers
from the bus ZSM27.

A

B

C

Analysis

C

D

E The plaintiff claimed Mr Wong and the other injured
F passengers were picked up by the bus that had arrived at the scene before
G the traffic police got to the scene. As that bus had only five to six vacant
H seats, only five to six passengers from ZSM27 who were injured were
allowed to board that bus, it had left the scene before the traffic police
arrived. Mr Wong was assured at the time that the defendant company
would deal with his claim after he returned to Hong Kong.

D

E

F

G

H

I

J This was denied by the defence. The defence claimed that
K there was only the 「閩 AY 3508」 bus which arrived at the scene to pick
L up the ZSM27 passengers. It arrived after the traffic police got to the scene
of the accident. The defence also claimed that there were no other injured
persons beside a Mr Sze.

I

J

M

N According to the traffic police report, the accident took place
O at 2110 hours. This of course can only be a hearsay record as the traffic
P police did not witness the accident. On the other hand, both Mr Wong and
Q Mr Yang, the driver, stated in their witness statements that the accident had
R taken place at around 10 pm on 4 March 2008. However, Mr Wong in his
S evidence in court claimed the accident took place at around 9 pm. The
T traffic police report recorded the accident took place at the Hong Kong and
U Jiangxi Highway at 250 kilometres. On the other hand, paragraph 7 of
V Mr Yang's witness statement and paragraph 5 in Mr Lam and Mr Cheung's
witness statements also stated the site of the accident was at the Hong Kong
and Jiangxi Highway 250 miles location. They have therefore referred to

M

N

O

P

Q

R

S

T

A

A

B the imperial measurement of miles rather than the metric measurement of
C kilometres. It is possible that 250 English miles in Mr Yang's, Mr Lam's
D and Mr Cheung's witness statements should read "kilometres" instead of
E "miles" for they worked in mainland China and the metric measurement is
F the official measurement in China as opposed to Hong Kong where the
imperial measurement very often is still in use together with the metric
system.

B

C

D

E

F

F

G

G

H 15. If the site of the accident was 250 kilometres on the
I expressway between Hong Kong and Jiangxi, it is quite possible the
J accident had taken place within two and a half to three hours of its journey
K from Hong Kong. This would be consistent with the record of the accident
L taking place sometime after 9 pm rather than 10 pm.

H

I

J

J

K

K

L 16. The second bus driven by Mr Lam, according to Mr Lam's
M witness statement, had set off from Shenzhen at 9 pm on 4 March 2008.
N Therefore, at the point of 250 kilometres of the highway, it could not have
O arrived earlier than 11 pm if he was travelling at about 100 kilometres an
P hour. It would take longer if his bus was travelling under 100 kilometres
Q an hour. It is Mr Lam and Mr Cheung's evidence that they were informed
R of the accident at around 10 pm that night. Therefore, it was one hour into
S their journey that they were informed of the accident. And according to
T paragraph 5 of both their witness statements, this timing was so recorded.

L

M

N

O

P

Q

Q

R 17. It is therefore logical to conclude the plaintiff's claim that
S Mr Wong was picked up by an earlier bus from the defendant which
T arrived at the scene of the accident shortly after the collision, it had picked
U up five injured passengers or five or six injured passengers to their
V

R

S

T

U

V

A

B

destination in Fujian before the traffic police arrived at the scene as claimed by Mr Wong.

C

18. It is further supported by the fact that both drivers of the later bus, Mr Lam and Mr Cheung, claimed in paragraph 6 of their witness statements that their bus picked up all of the passengers in ZSM27 and that none of the passengers were injured except for one Mr Sze. Mr Cheung also admitted that there were only 10-odd passengers they picked up from ZSM27 while Mr Wong claimed there were 30-odd passengers on board ZSM27 when they left Hong Kong that evening. Mr Wong also claimed that he and the injured passengers were picked up by another bus. From the evidence of all the witnesses at the hearing, the inference is there was another bus which picked up some of ZSM27's passengers before bus 「閩AY 3508」 arrived and picked up the rest of the passengers from ZSM27.

K

19. It is unfortunate that neither the plaintiff nor the defendant called the second bus driver of ZSM27, Mr Lee, to give evidence at the hearing. He would have been able to tell the court whether he did send the injured passengers on an earlier bus before the traffic police arrived. Counsel for the plaintiff, Mr Ho, accused the defence of deliberately playing down the serious nature of the accident and had sent off the injured passengers in another bus before the traffic police arrived to the scene. This may or may not be true, in any event, from my analysis above, it is possible that it may have been the case even though it may not be a deliberate act, merely a well-intended gesture to send the injured persons to their destination as soon as possible even though the act meant the traffic police investigation of the accident would be hampered and interfered with by those who suffered injuries not being present at the scene when the traffic police arrived.

U

V

A

B

C

D

E

F

G

H

I

J

K

L

M

N

O

P

Q

R

S

T

U

V

A

A

B 20. I accept the plaintiff Mr Wong's evidence on the accident that
C he did sustain injuries described by him at the accident which was caused
D by the defendant's driver Mr Yang's failure to keep a safe distance from
E the vehicle in front, thus causing the collision and injuries to the bus
F passengers. Even if the vehicle in front had suddenly braked, if Mr Yang
G had kept a safe distance, the collision would not have taken place. This of
course is in regard to the speed Mr Yang was driving the bus. For the
aforesaid reason, I find the defendant liable.

H

H

Quantum:

I Pain, Suffering and Loss of Amenities

I

J 21. The plaintiff claimed he suffered from bleeding and pain on
K his mouth and teeth after the accident. He sought treatment at Anhai
L Hospital and the Xiamen clinic, and he had expended the sum of
M RMB15,000 on emergency and follow-up treatments with RMB3,000 to
N the 晉江安海 Hospital and RMB12,000 to the Xiamen 鴻運口腔診所.
O They were supported by official receipts from the Xiamen clinic and the
P medical hospital notes from the Anhai Hospital. The plaintiff also took
Q photographs of his mouth and teeth after the treatments on 5 March 2008,
R 8 March 2008 and 26 March 2008. I accept he did suffer pain and
S discomfort, bleeding and infection of his teeth and gum as a result of the
T accident and that his condition had affected his speech. It is also
U undisputed that he had gone through a few months of discomfort and pain
V after the accident.

S 22. I have considered the authorities referred to me by both
T counsel: the case of *Pang Wai Hung v MPC Express Services Limited*
U HCMP1093 of 1995 decided in May 96 by Cheung J (as he then was). The

A sum of \$70,000 for the damage to the teeth and \$10,000 to the scar was
B awarded to the plaintiff who lost the upper right, central and lateral incisors,
C the canine and the lower right central incisor with two other teeth chipped;
D the case of *So Sau Man v Leung Ming Kwok & Another* DCPI1276 of 2005,
E decision of District Court Judge Lok in October 2005 where he awarded
F \$100,000 to the plaintiff who lost three teeth as a result of a traffic accident;
G and the third case of *Orla Gilroy v Easy Up Investments Limited*
DCPI1252/2004 decided by Deputy Judge K Lo on 1 February 2006 where
she awarded \$170,000 to the 31-year-old female plaintiff who suffered
bruises to her eyes, nose, lip and right hip.

H

I 23. I do not think the 1982 case of *Cheung Lap Yan v Siu Ching Kee* where Registrar Betts awarded \$45,000 to the plaintiff for the loss of
J four teeth to be applicable because the award is 19 years old.

K

L 24. I find Cheung J's judgment to be of greater assistance for he
M had considered not only *Cheung Lap Yan*'s case and he also considered the
United Kingdom assessment guidelines in his judgment for the loss of teeth
N before making the award under PSLA at \$70,000. I will follow his
O assessment and award the sum of \$130,000 for the plaintiff's pain and
suffering and loss of amenities given the lapse of time and inflation
adjustment to today's standard.

P

Q Medical Expenses and Travelling Expenses

R 25. Mr Wong asked for the recovery of the medical expenses and
S travelling expenses relating to his treatments in Xiamen from Anhai in the
total sum of RMB17,500. He produced receipts from the Xiamen clinic
T which bore the official stamps from the government. He also produced the
medical notes from the Anhai Hospital. I accept he had expended those

A
B
C

A
B
C

medical fees in China from the documents produced. As to the travelling expenses to Xiamen for treatments, due to the better care available there and not available in Anhai, I accept his claim was genuine and necessary.

D Tonic Foods

D
E
F
G
H
I

26. Mr Wong claimed he had expended \$20,000 on tonic foods. He produced no receipts for his claim of expensive Chinese tonic foods. There was no medical report from Chinese herbalists in support of his claim. I cannot allow the total sum of \$20,000 under the circumstances. I will, however, allow the sum of \$8,000 on the basis that his injury was to his teeth and gum, that he did not suffer any fractures or internal organ injuries or such serious injuries as in the case authorities cited by Mr Ho.

J Future Dental Treatment

J
K
L
M
N
O
P
Q

27. Mr Wong produced a medical report from Dr William C W Yung, a prosthodontist. Dr Yung prescribed two plans of treatment. The first plan is a conservative treatment for Mr Wong's displaced lower incisors by endodontic treatment which Dr Yung considered has only a 50 per cent chance of survival of Mr Wong's lower central incisors. The second plan is to perform a teeth implant treatment to replace the poor prognostic lower incisors. He also emphasised the importance of the patient's need to keep up his oral hygiene to maintain the implant's life. The cost of the former treatment is \$74,000; the latter treatment, \$119,000, \$40,000 more.

R
S
T
U
V

R
S
T
U
V

28. I will allow the award of the more expensive treatment of teeth implant because of Dr Yung's report and opinion that it gives a better prognosis for the patient's oral health. Therefore, I assess the award at \$119,000.

A

A

B Rental Loss and Compensation to Workers and the Loss of Building B
C Materials C

D 29. I am not convinced by Mr Wong's claim on the building D workers' rental and compensation of their wages. The plaintiff could have E mitigated his loss instead of giving to the workers more than Mr Wong's F contractual liability. If he had chosen to give and compensate the wages to G the workers, it was entirely his choice and should not be completely borne

G by the defendant.

H 30. However, the delay of the building works as a result and H consequence to his injuries caused by the defendant is a genuine loss. In I my consideration, this delay in the building works should not be for a J period of as long as two months since Mr Wong could have delegated the K building work supervision to a building professional such as an architect or L an engineer rather than opting for requiring the workers to wait for his M recovery. It is too long and too remote to be recoverable to claim a two N months' loss of wages and rental. I will allow a smaller sum to reflect the O loss at HK\$15,000 which should be sufficient for a shorter period of P compensation to Mr Wong's loss.

Q

Q

R

R

S

S

T

T

U

U

V

V

A			A
<u>Summary</u>			
B	31.	PSLA	B
C		Medical and travelling expenses	C
D		RMB17,500 at the exchange	D
E		rate of RMB1 to HK\$0.87647	E
F		Tonic food	F
G		Workers' compensation	G
		Future dental treatment	
		<u>\$119,000</u>	
		Total	
		\$291,966	

H Interests H

I 32. Interests on the PSLA award at 2 per cent per annum from the I date of writ to the date of judgment; interests on special damages at half J judgment rate from the date of accident to the date of judgment, thereafter K at full judgment rate. K

L Costs L

M 33. Costs to the plaintiff to be taxed if not agreed with certificate M for counsel. N

O O

P P

Q (H C Wong) Q
District Court Judge

R R

S Mr B K Ho, instructed by Hon & Co., for the Plaintiff S
Mr C H Yip, instructed by Messrs Edward Lau, Wong & Lou, for the T Defendant T