

HONG KONG / JUDGMENT

CHAN HA v. LEE HON MING AND ANOTHER

COURT

Court of First Instance

DECIDED

7 July 2007

CASE / FILE NUMBER

HCPI414/2001

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCPI 414/2001 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE PERSONAL INJURIES ACTION NO. 414 OF 2001

BETWEEN CHAN HA Plaintiff LEE HON MING 1st Defendant EVERY SUCCESS TRANSPORT
COMPANY LIMITED 2nd Defendant

Coram : Before Master de Souza in Court Dates of Hearing : 21, 22 and 23 June 2006, 18 December
2006 and 9 March 2007 Date of Handing Down Judgment : 7 July 2007

J U D G M E N T

Introduction

AUTONUM This is an assessment of damages. No notice of intention to defend having been given, interlocutory judgment on liability with damages to be assessed was entered against the 1st and 2nd Defendants respectively in August and July 2001. The 1st Defendant was neither present nor represented at the hearing. Brief Factual Overview AUTONUM The Plaintiff, a clerk, was born on 3 December 1976 and aged 23 when she met with an accident on 24 May 2000. At the material time she was a front seat passenger in a lorry owned by the 2nd Defendant, her employer and driven by the 1st Defendant along Fan Kam Road, Fanling. The mishap occurred when the 1st Defendant negligently traversed the double white lines separating the lanes of traffic and collided with an on-coming KMB bus. The lorry then rammed a tree before coming to a halt, trapping the Plaintiff in her seat. She had to be freed by firemen. There was no issue that the Plaintiff was injured in the course of her employment. At the commencement of the assessment

hearing, she was aged 29, rising 30. The Plaintiff's Injuries and Treatment AUTONUM The following is gleaned from the numerous medical reports that were available for the hearing. AUTONUM The Plaintiff was admitted to the Accident and Emergency Department of North District Hospital () on the day of the accident. She was conscious and complained of headache, amnesia and pain in the left pelvic region and in her right leg. There was a small laceration over her left parietal region and a superficial abrasion over her right knee. There was tenderness in the right leg and left groin/pelvic and left sacro-iliac joint regions. Her chest was clear and her abdomen appeared normal. AUTONUM X-ray revealed a fracture to her left superior and inferior pubic rami. A CT scan showed a fracture of the left sacrum at the left sacro-iliac joint. The diagnosis indicated right leg contusion, a fracture of the left pubic rami and a crack fracture of the left sacrum. The Plaintiff was transferred to the Orthopaedic ward on 25 May 2000. AUTONUM The Plaintiff was treated conservatively with analgesics and physiotherapy. On 8 June 2000, her condition being satisfactory, she was transferred to the Tai Po Hospital () to continue rehabilitation until her discharge with crutches on 10 July 2000. Thereafter she attended outpatient physiotherapy at the Department of Orthopaedics and Traumatology and Department of Neurology at the North District Hospital (). The various fractures have healed well by August 2001. AUTONUM In the same month, Dr. Julian W Chang (Dr. Chang), an orthopaedic surgeon brought in by the defence to examine the Plaintiff opined that the Plaintiff had shown significant improvement and recovered well from her injuries but noted her complaint of residual pelvic pain. Based upon his examination of the Plaintiff he assessed her degree of permanent disability at no more than 1%. He considered that the fracture of the left sacrum was minor with no actual disruption of the left sacro-iliac joint. This was markedly different from the view expressed by the Plaintiff's own Orthopaedic expert, Dr. Lau Hoi Kuen (Dr. Lau). Dr. Lau's assessment dated 24 February 2001 suggested a 10% impairment of the whole person owing to the fracture of the sacrum. The single ramus fracture left no impairment. However, Dr. Lau reported that the Plaintiff would be left with a considerable amount of residual pain in the pelvic region that would disrupt her daily activities. He advised continued physiotherapy and drug treatment from NDH and further assessment 6 months hence. On 27 September of the same year, he examined the Plaintiff again and found that the condition of her pelvic injury had improved in the preceding 8 months. Speaking in terms of an average case, he would expect further improvement over time. Accordingly, he said the Plaintiff could at that time return to employment as a clerk but with reduced efficiency. AUTONUM According to the Plaintiff, not only did her pelvic pain not improve, it had persisted throughout. AUTONUM Initially, she was given different types of oral analgesics. When that did not alleviate her condition as she maintained, she was put on methadone. That was in 2001 and continues. She had an episode of skin lesion in September 2001 and two instances of neuropathic anaesthesia overdose in October 2001 and January 2002. She underwent various injection therapies from about September or October 2001 to November 2003. To control her pain she had epidural injection, caudal block, sacral nerve block, cervical facet joint injection and stellate ganglion block, all being invasive in nature. AUTONUM On 27 July 2001, she began to complain to the doctors at the Pain Clinic of severe pain in her coccyx. On 2 July 2002, her coccyx was surgically removed. This did not result in any significant pain relief. There was no evidence whatsoever linking any injury of the coccyx to the accident, a condition

that would readily have been discovered at or soon after her initial admission to hospital as extensive tests had been conducted. AUTONUM In April 2002, the Plaintiff was referred to Tseung Kwun O Hospital (TKOH). AUTONUM In October 2003, a physician treating her at the Department of Anaesthesiology at NDH, Dr. Sze Tak Suen (Dr. Sze) certified her to be suffering from post traumatic neuropathic pain. The Plaintiff then consented to a new treatment modality called spinal cord stimulation. In May 2004, a dorsal root nerve stimulator was implanted into the Plaintiff s back for pain control at NDH. The implant was partially funded by a charity. The stimulator offered temporary relief for several months. It then threw up new problems for the Plaintiff. It produced new pain over the implant site just 3 to 4 months later and was subsequently surgically removed. It was replaced by a surgical electrode in May 2006. AUTONUM The Plaintiff continued to complain of severe and chronic back pain. In March 2005, she was transferred to the Pain Department in Prince of Wales Hospital () for management. In that year, she was also examined by two psychiatrists, Dr. Peter Ho Pang Nin (Dr. Ho) and Dr. K Singer (Dr. Singer). AUTONUM Dr. Sze left NDH in October 2004 to commence private practice and the Plaintiff has followed him and continues to be treated by him. AUTONUM The Plaintiff who has not worked since the accident now claims substantial damages. Analysis of the medical opinions AUTONUM There is no dispute that the Plaintiff has sustained fractures of her left superior and inferior pubic rami and a fracture of the left sacrum at the left sacro-iliac joint. These injuries, in themselves not particularly serious, have healed well with conservative treatment according to the reports from the Government hospitals and from Dr. Lau and Dr. Chang. By December 2000, her mobility was such that she could walk with full bearing weight. Progress was apparently uneventful as was expected for injuries of the type under review. AUTONUM In November 2000, the NDH s Orthopaedic Clinic reported that she had but mild left pelvic pain and that she was able to walk independently for short distances. Further distances required the use of crutches. When Dr. Lau examined her in February 2001, she needed no walking aid. She did however complain to him of having pain over the left side of the pelvis. Her other complaints of, inter alia, disturbed sleep, headache, are set out on page 2 of Dr. Lau s report dated 24 February 2001. AUTONUM February 2001 was the watershed in this case. The Plaintiff s solicitors issued a letter before action to the 2nd Defendant. As Mr. Sakhrani, counsel for that defendant pertinently submitted, the extent and frequency of the Plaintiff s complaints of pain inexplicably increased. Her pain apparently worsened at a time when her own expert, Dr. Lau was expecting further improvements in her condition following what seemed to have been a fairly successful course of conservative treatment. The fractures had bonded well with expectation of the pain gradually diminishing. Instead, the Plaintiff presented a deteriorating scenario for which there was no medical basis even on the evidence of Dr. Lau, not to mention the opinion of Dr. Chang. AUTONUM Mr. Sakhrani contended that the Plaintiff s allegations of increasing problems from back pain were highly suspect. He went as far as to suggest (as did Dr. Singer) that the Plaintiff was bent on falsifying her predicament in the hope of securing greater damages. This is a bold contention to make and one that the court will be slow to uphold. However, when the Plaintiff s evidence is objectively scrutinized against the medical evidence and the contents of the video surveillance tapes, I am persuaded that there is much in Mr. Sakhrani s submission to recommend itself to me. The Plaintiff s alleged deteriorating physical condition does not fit the

clinical findings. Neither Dr. Lau nor Dr. Chang was able to offer any underlying physiological basis for the Plaintiff's presentation. That was when the psychiatrists became involved.

AUTONUM The video surveillance was conducted on 29 and 31 May 2001, 4 June 2001, 5, 7 and 8 March 2002, 6 November 2003, 14 and 26 August 2004, 21 September 2004, 9 October 2004, and 6, 9 and 18 April 2005. In all there were 5 videotapes. AUTONUM The video evidence clearly demonstrates that the Plaintiff had no problems walking, at times briskly, in a normal fashion. Of particular significance is the fact that there was no suggestion of limping or any obvious discomfort when this young woman, now aged 30, was going about her daily activities of shopping either on her own or in company. She was able to overtake pedestrians, mount and descend staircases or steps, sit for periods and even drive her own car, all apparently without difficulty. This piece of evidence is so wholly at odds with the Plaintiff's complaints as to throw her allegations into serious doubt. Aside from the months immediately following her admission to hospital, I find it difficult to accept the Plaintiff's evidence in her 3rd supplemental witness statement made in April 2005 that I cannot stand for long time and there are a lot of movement that I can't manage by myself. I needed the assistance of others. For example, I needed my mother to assist me when bathing. And, a chair has to be taken into the bathroom so that I can sit down and rest after bathing for a while. There is also evidence that during subsequent admissions to hospitals, she had absented herself without leave to spend time with other people. This much was brought out in cross-examination. AUTONUM Mr. Law, counsel for the Plaintiff submitted that there were instances shown on the tapes to indicate that the Plaintiff appeared to need support on occasions and that the sequences captured not being continuous might not present a true picture. Much the same observations were made by Dr. Ho who criticized the video evidence as arbitrarily edited, intermittent and suspiciously unnatural. Yet Dr. Lau and Dr. Chang had to revise their opinions on being shown the video evidence. AUTONUM In the nature of surreptitious surveillance, non-contiguous recording is an inevitable feature. The video tapes recorded over a number of years and covering numerous sightings, in my view, do offer a reliable view of the Plaintiff's physical conditions. That presentation is cogent and compelling evidence that cannot be so readily discounted as Dr. Ho and counsel would have liked. AUTONUM The evidence disclosed that the Plaintiff had deliberately embarked on a course of highly intrusive procedures at the Pain Clinic that engendered more pain and discomfort, and adverse reactions such as drop foot, rashes and polyneuropathy. She endured numerous injections to relieve pain that were not indicated or necessary. In any event, they failed to offer the relief that she said she sought. If she had a genuine physical condition, doubtless relief would have followed. There was none. Despite such failure, she persisted in pursuing such ineffective treatment. AUTONUM There was evidence that when problems with the coccyx surfaced, Dr. Sze advised a course of injection therapy. The Plaintiff somewhat surprisingly insisted on excision of the coccyx after being apprised of the fact that removal only had a 60-70% rate of success in alleviating pain. She had implants put in, yet her problem continued to this day. Dr. Chang and Dr. Singer, highly experienced in their respective fields of expertise, opined that her pain was not genuine. I have no hesitation in accepting their medical findings and conclusions. These were rendered and explained in a coherent and well-reasoned fashion. They presented their views as independent experts without bias, offering their opinions clearly and concisely with reference to their own

detailed examinations of the Plaintiff and to the body of medical evidence that went before. AUTONUM As for Dr. Ho, I view his testimony with circumspection. His evidence was less objective. Mr. Sakhrani submitted a litany of complaints against this witness, all of which I accept as justified on the evidence. I am, however, less inclined to be persuaded that as Dr. Ho had been criticized by a High Court Judge in a earlier case, his evidence was without more necessarily less reliable. I have examined this expert s findings and opinion. In the circumstances of the case, I would prefer to rely on Dr. Singer instead. AUTONUM I find that the Plaintiff has failed to establish her complaints of chronic and persisted pain. There was no medical justification for the type of treatment that she willingly undertook. She was unable to demonstrate any physiological basis for the pain she said she suffered and continues to endure. Her orthopaedic condition improved as was expected. Dr. Singer could not find any genuine psychiatric basis for her continued assertions of pain. He was driven to the conclusion that the Plaintiff did not have any psychiatric disorder. If there were, it would lend credence to her assertions. This I wholly accept. AUTONUM On the evidence, I hold that the Plaintiff has presented an unconvincing and false case. The effort was totally unreliable in light of the medical findings that I accept when viewed against the video evidence. Her irrational behaviour in resorting to the treatments that we have seen underscores her attempts to maximize damages. In this she has failed dismally. If the Plaintiff has suffered additionally on account of the invasive treatment undertaken most inappropriately in my view, then it may be regarded as novus actus interveniens within the meaning of the decision in *McKew v Holland and Hannen and Cubitts* [1969] 3 All ER 1621. Pain, suffering & loss of amenities AUTONUM Having concluded that the Plaintiff s continuing assertions of persistent significant chronic back pain were unsubstantiated and her present predicament was the result of her own deliberate, ill-advised and wholly unjustified conduct in undergoing radical and invasive treatments that were totally uncalled for, one is left with established injuries that were not especially serious on any view. AUTONUM There was no doubt that the Plaintiff had suffered physical pain following the fractures of her left superior and inferior pubic rami and of the left sacrum, some superficial abrasion to the right knee, and laceration in her left parietal region. For a limited period, her mobility was curtailed requiring her to resort to crutches. However, by end September 2001, her condition had improved so significantly as to elicit the comment from her own orthopaedic expert, Dr. Lau that she can now return to work as a clerk provided that she can be exempted from the delivery part of the duty . The Plaintiff admitted that Dr. Wong Wah-bong of NDH in September 2001 had wanted to prepare her for return to work. To that end, an assessment was scheduled. In the event, with increasing complaints of pain, the assessment was delayed. AUTONUM Dr. Chang stated that the Plaintiff had recovered well from her injuries, having shown significant improvement by early August 2001. There was nothing in his finding to suggest that the Plaintiff could not resume work from about that time. He said that his 1% impairment figure was premised on the genuineness of her complaints of pain. He, as we have seen, did not consider her pain to be genuine. AUTONUM Dr. Chang and Dr. Lau conducted a joint examination of the Plaintiff on 21 September 2004. They agreed that the physical findings of her condition remained about the same as when she was seen in 2001. They further agreed that the physical findings do not suggest such severe pain and disability as to require all these drastic measures (multiple injections into the spine and pelvis,

excision of the coccyx, implantation of dorsal root nerve stimulator and long term oral Methadone) to control her pain . Dr. Lau conceded under cross-examination that the Plaintiff's complaints were overstated. This was not surprising given the surveillance evidence depicting the Plaintiff going about her business as a normal person would and having no difficulty driving herself in her car. AUTONUM For damages under this head, I would assess quantum in the sum of \$150,000. In coming to this view, I have considered the similar yet different cases referred to by counsel. These were Lee Yuk Lan v Royaltelle International Ltd., unreported., HCPI 187/95, Chair Sai Sui v International Country Club Ltd. & anr. [2000] 1 HKLRD A14, Yeung Sze v Win Art Design & Decoration Co Ltd., unrep., HCPI No. 6 of 2000, Tam Yuen Hoi v Chan Muk Sing & ors [2003] HKLRD K16, Limbu Saram Kumar v Cheng Man Chung [2006] 3 HKLRD G10, and Leung Ho Mimi v Morning Corporation Ltd., DCPI 440/2005. These decisions are necessarily case sensitive, but they offer guidance for the present exercise. Loss of past remuneration and MPF AUTONUM The Plaintiff has been out of work for over 6 years, a fact I find to be totally unwarranted on the medical and other evidence. She admitted to Dr. Ho she had made no attempts to find work in the interim. AUTONUM I am in agreement with Mr. Sakhrani that the Plaintiff could and should have returned to open employment on the medical evidence by October 2001. That was some 17 months after the accident. AUTONUM The Plaintiff was paid \$9,300 a month with an annual bonus equivalent to a month's salary. I accept her employer's evidence that she was paid additionally \$1,500 and \$200 as reimbursement respectively for use of her private car and mobile phone on company business. These monthly additions did not form a part of her salary. AUTONUM Her loss of earnings and 5% MPF benefit may be calculated thus: $[(\$9,300 \times 17 \text{ months}) + (\$9,300 \times 17/12)] \times 105\% = \$179,839$ AUTONUM The 2nd Defendant has made partial payments to the Plaintiff in the interim totaling \$191,144 for which the Plaintiff accepts that credit must be given. As her computed loss under this head amounts to less than what she has been paid, no damages fall to be paid. Whether Mr. So wishes to seek reimbursement for the overpaid balance is a matter for him. Loss of future earnings and earning capacity AUTONUM In light of my holding, it is unnecessary to embark on an assessment under this head. The Plaintiff should have returned to work a long time ago. Dr. Chang considered that there was no loss of earning capacity. I agree. The Plaintiff could manifestly earn a living as a clerk and command a salary commensurate with her Form 3 education and work experience. Her ability to earn a living has not been impaired in any way given the nature of her injuries with full recovery. AUTONUM Accordingly, no damages will be offered in this regard. Medical expenses and other special loss AUTONUM No provision will be made for future medical care as such is not indicated. AUTONUM The Plaintiff claims a modest sum of \$39,602 for hospital, traveling expenses, tonics and use of a therapeutic machine. I have no difficulty with this claim. I award her the sum claimed.

Conclusion

AUTONUM Damages awarded are summarized as follows: PSLA \$150,000 Special Damages \$39,602 Total Damages \$189,602 AUTONUM There will be interest at the rate of 2% pa on general damages from the date of the writ to today and interest at half judgment rate pa from the date of

the accident to the date hereof as well. AUTONUM Additionally, the Plaintiff shall be entitled to the costs of the assessment with certificate for counsel, taxed if not agreed. This order is nisi with 14 days to apply. The parties may wish to be heard on the scale of costs. (B.L. de Souza) Master of the High Court Mr Dennis Law, instructed by Messrs Chan & Chan, for Plaintiff 1st Defendant, in person, absent Mr Ashok Sakhrani, instructed by Messrs Ip, Kwan & Co., for 2nd Defendant - PAGE - A B C D E F 1udk 1udk & 6" Normal.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=57692

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/chan-ha-v-lee-hon-ming-and-another-2007>

Prepared on 27 October 2026 · Esheria