

HONG KONG / JUDGMENT

CHAU MING LUNG v. FASTCUT SERVICES LTD AND OTHERS

COURT

Court of First Instance

DECIDED

17 September 2007

CASE / FILE NUMBER

HCPI545/2001

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bjbj HCPI 545/2001 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE PERSONAL INJURIES ACTION NO. 545 OF 2001

BETWEEN CHAU MING LUNG Plaintiff and FASTCUT SERVICES LIMITED 1st Defendant
TRIDANT PLUMBING ENGINEERS LIMITED 2nd Defendant HIP HING CONSTRUCTION
COMPANY LIMITED 3rd Defendant

Before : Hon Yam J in Court Dates of Hearing : 5 to 7 September 2007 Date of Handing Down
Judgment : 17 September 2007

JUDGMENT

AUTONUMOUT On 3 July 1998, the plaintiff Mr Chau was injured whilst working on a platform and fell from a height of about 3 metres. The platform on which he was standing collapsed and he fell to the ground. He was then 48 years of age. AUTONUMOUT Liability was admitted at the start of the trial and I am only concerned with the quantum of damages. THE PLAINTIFF S INJURIES AUTONUMOUT Chau was immediately taken to Princess Margaret Hospital () and he was examined by a doctor at the A&E Department. The History & Clinical Findings were as follows Fall from height ~ 10 feet, R buttock landed onto ground. R hip pain [present]. No other site of injury. HI (no head injury). LOC (no loss of consciousness). No neck pain, chest pain and abdominal pain. Non-tender at chest. 2 cm superficial abrasion at right elbow with mild swelling present and range of motion full. Non-tender at low back. Tenderness present at right pelvic stable and at right gluteal region. AUTONUMOUT The X-rays taken on the same day showed the following :

- (a) minimally displaced fracture of the right superior and inferior pubic rami; vague vertical sclerotic line on right ilium; acetabular sclerosis on both sides were the same; and iliac bones and hip joints were normal. AUTONUMOUT Chau was hospitalized for about two weeks and was discharged from PMH on 16 July 1998. He was re-admitted into PMH on 29 July 1998 for numbness in the right leg, right arm and back pain. He was treated with physiotherapy for another week prior to his discharge. Thereafter he continued to receive physiotherapy as an out-patient until May 1999. AUTONUMOUT There were 11 subsequent occasions of repeated X-rays taken between 30 July 1998 and 1 May 2000 and the aforesaid relevant features remained the same except that the X-rays taken since 16 November 1998 showed the fracture of the pubic rami had healed with no deformity. AUTONUMOUT The main complaint of Mr Chau now is that he still experienced severe pain on the right hip and he has to take painkiller three times a day in order to alleviate his problem. He said when he was able to walk again unaided in or about October 1998, i.e. three months after the accident, he began to experience pain and discomfort in his right hip and knee. In order to support his right leg while he was standing or walking, he had to lean more heavily on his left leg. Consequently his weak left knee which he said was a pre-accident condition, became worse. Thus in the end he had pain in the right and the left knees. The pain in his right gluteal region also started around that time. He said that the main problem now is the right hip pain. AUTONUMOUT
- (a) Mr Chau has been examined by his own expert Dr Arthur Chiang who has made three medical reports on 2 June 2001, 5 June 2001 and 28 February 2002.
- (b) Mr Chau was also examined by the defendant's orthopaedic surgeon, Dr Chun Yeung and he has also made also three medical reports on 17 March 2001, 1 December 2001 and 7 August 2002.
- (c) Eventually both orthopaedic surgeons made a joint medical report on 24 January 2007. AUTONUMOUT Both doctors agreed that the fracture in the pubic rami had already healed and therefore it cannot be the source of the hip pain. AUTONUMOUT At one time Dr Chiang opined that since there was a prolapse in the lumbar region it might be the source of the hip pain but Dr Chun disagreed with the evidence of the prolapse which Dr Chiang said has recovered quickly in a short while anyway. AUTONUMOUT Chun came to the conclusion that Mr Chau's complaint of the hip pain is a matter of magnification and exaggeration. He opined that Mr Chau could only have three months sick leave after the accident whereas Dr Chiang said Mr Chau is entitled to sick leave to the end of November 1999. AUTONUMOUT It is common ground that there was a longitudinal line right across the right ilium. Dr Chun opined that it is a line of sclerosis which appeared in the X-ray taken on the day of the accident. Since sclerosis do not develop right away after injury and it would take some time to develop sclerosis, this is not a result of the accident. The sclerotic line may well be congenital. AUTONUMOUT Chau, in his most recent supplemental witness statement written on the first day of the trial, pointed out that this is not a sclerotic line but a line of fracture which has not been healed and that was the cause of his right hip pain. Since Mr

Chau himself is not a trained and qualified radiologist either, I cannot accept his evidence in the medical sense. AUTONUMOUT However, the fact remained that Mr Chau complained about this hip pain from day one and it appeared in all the follow up record and whenever he was examined by Dr Chiang and Dr Chun. AUTONUMOUT Chau gave his evidence in a careful, sincere and earnest manner. He only denied those parts which he could not agree. He was quite frank and honest as to other parts which he so readily accepted when they were put to him. I consider him to be a very honest and genuine person. His complaint of the pain in the right hip is genuine. When he was asked to walk across the courtroom, he did not deliberately walk with significant limp. He walked as usually and normally as possible. It was only when he had to step up to the witness box again he ascended with a noticeable limp. This is in line with his evidence, i.e. when he has to take the staircase he will have difficulty with his right leg. When he was standing or walking he tried to put his weight on the left side and that is why his left knee with a pre-accident weakness, became worse. AUTONUMOUT Eventually both doctors said the pain on the right hip could not be explained. However, I accept Mr Chau s evidence that he genuinely has pain in the right hip up till now. AUTONUMOUT also accept that from the medical history of healing Mr Chau could not work until after November

1999. In fact Mr Chau had tried to work again since December 1999 but he had to stop working from time to time because of his pain problem. He was unable to find a steady job because of his own problem and also because the year 1999 up to 2002 is a difficult financial period for Hong Kong and therefore for general labour in particular. He worked until the end of July 2007 when the pain in his right hip again prevented him from working. AUTONUMOUT accept his evidence that he could not go back to become a driller again because he could not walk up and down staircases in a construction site with equipment of up to 40 Kg, not to mention climbing up and down scaffoldings and bamboo foldings and working at height. He had adopted lighter duties as a security guard for the past years which I shall set out in a moment. In other words, I do not accept Dr Chun s opinion that Mr Chau could return to his pre-accident employment. AUTONUMOUT do not accept Dr Chun s evidence that Mr Chau s hip pain might come from his condition of gout. Mr Chau said his gout condition did not develop until more prominently in the year 2003. His urate testing in July 1998, June 2001 and November 2001 only showed an increase of the urate just above the normal maximum of 0.42. It only became worse by the end of 2001 and he felt the pain of gout by 2003. The reading in June 2006 became quite high and by then he complained of pain over the first tarso-metatarsal joint at the big toe. AUTONUMOUT In fact Mr Chau readily admitted all these except that he disagreed with Dr Chun that the hip pain might well be caused by his gout condition. I do not accept that his hip pain was because of his gout condition. He complained of hip pain from day one of the accident. AUTONUMOUT For the aforesaid reasons I assess the quantum of damages with Mr Chau s hip pain subsisting as a result of the accident. DAMAGES psla AUTONUMOUT Leung Ho Mimi v. Morning Corporation Ltd, DCPI 440/2005, date of judgment : 14 June 2006 referred. The plaintiff therein had fractures of the right pubic rami and right ilium. Both fractures healed up with

mild deformity. She was awarded \$180,000 for PSLA. AUTONUMOUT Here Mr Chau has a continuing pain in his hip and both knees. He is now 57 years of age. AUTONUMOUT assessed the appropriate award for PSLA at \$200,000. Pre-accident earnings AUTONUMOUT Chau earned an average of \$12,972 per month with a double pay of \$10,010 a year and monthly bonus of \$1,500 per month between September 1997 and July

1998. The plaintiff's statement of damages worked out his pre-accident monthly earning was about \$15,077 on average. Pre-trial earnings AUTONUMOUT Chau worked after the accident as follows Period Names of Companies Total earnings 17.11.99 9.12.99 Universal Security \$3,615 (ii) 18.12.99 17.3.00 Guardforce \$25,450 (iii) 6.2.02 26.3.02 Public Safe Security \$8,980 (iv) 23.4.02 30.5.02 City Security \$6,960 5.6.02 4.11.02 Yeomen Guards \$31,981 (vi) 11.12.02 31.7.07 Underwriter Security at the average of \$6,000 p.m. for 55.5 months \$333,000 \$409,986 The average monthly salary for the year 2006 was \$6,265 according to the plaintiff. Pre-trial average earnings but for the accident AUTONUMOUT The average monthly income of Mr Chau before the accident was \$15,077. According to the Government salary data for drill operator, there were increases (in four years) and decreases (in four other years) between 1998 to 2006 (eight years). The plaintiff worked out the monthly salary in 2006 was \$15,688. Accordingly the average median of the plaintiff's notional monthly income during the pre-trial period is : $(\$15,077 + \$15,688) \div 2 = \$15,383$. Summary of Damages General AUTONUMOUT

- (a) PSLA \$200,000.00
- (b) Post trial loss of earnings, adopting a multiplier of 6 : $\$15,688 - \$6,265 = 9,423 \times 12 \times 6$
\$678,456.00 Loss of earning capacity $(\$15,688 - \$6,265) \times 12$ \$113,076.00 Sub total (A):
\$991,532.00 Special AUTONUMOUT
- (a) Pre-trial loss of earnings $\$15,383 \times 12 \times 9$ years 2 months (9.17 years) \$1,692,745.00 Less :
Wages received
- \$409,986.00 \$1,282,759.00
- (b) Medical expenses \$12,801.00
- (c) Tonic food \$5,000.00
- (d) Home helper expenses \$496.00
- (e) travelling \$4,052.00 \$1,305,108.00 Loss of MPF Benefit AUTONUMOUT
- (a) Pre-trial : From 1.12.2000 to 31.8.2007 at 5% of (\$15,383
- \$6,000) $\times 81$ months $\times 5\%$ \$38,001.00
- (b) Post-trial $(\$15,688 - \$6,265) \times 12 \times 6 \times 5\%$ \$33,923.00 \$1,377,032.00 Less : Amount received by
the plaintiff by way of sick leave Pay and payments under Employees Compensation
Ordinance

- \$244,352.00 Sub total (B) : \$1,132,680.00 (A) + (B)Total \$2,124,212.00

CONCLUSION

AUTONUMOUT There shall be judgment for the plaintiff in the sum of \$2,124,212.00 together with interest on special damages at half judgment rate from the date of accident to the date of judgment and interest on general damages at 2% per annum from date of writ to date of judgment and thereafter at judgment rate until full payment. AUTONUMOUT There shall also be an order nisi of costs of the action for the plaintiff, to be taxed if not agreed. The plaintiff's own costs shall be taxed according to the Legal Aid Regulations. (D. Yam) Judge of the Court of First Instance High Court Mr Fan Shun Yan Edward, instructed by Messrs Simon Si & Co., assigned by Director of Legal Aid, for the Plaintiff Ms Selina Lau, instructed by Messrs Tsang, Chan & Wong, for the 1st to 3rd Defendants PAGE - PAGE A 1udk 1udk &`#\$ &`#\$ o68 b#jI> o68 b#jI & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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