

HONG KONG / JUDGMENT

CHEUNG WAI PING v. CHAN YUEN YEE

COURT

Court of First Instance

DECIDED

8 February 2007

CASE / FILE NUMBER

HCPI668/2005

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bjbj HCPI 668/2005 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE PERSONAL INJURIES ACTION NO. 668 OF 2005

BETWEEN CHEUNG WAI PING Plaintiff and CHAN YUEN YEE Defendant

Before: Deputy High Court Judge Muttrie in Court Dates of Trial: 16-18 January 2007 Date of
Judgment: 8 February 2007

J U D G M E N T

The plaintiff claims damages for personal injuries suffered by him as a result of a traffic accident. The accident happened on 24 February 2003 on San Wan Road, Sheung Shui. The defendant was driving a PLB maxicab on San Wan Road towards Sheung Shui. The defendant, who was riding a bicycle across the road, having emerged from a cycle track which joined the road at right angles on the left side of the defendant's line of travel, came in front of the PLB and was knocked down. The plaintiff suffered severe head injuries. Originally he sued in his own name, but when the parties psychiatric experts carried out a joint examination of the plaintiff on 10 May 2006 they came to the view that he was a mentally disordered person and as such incapable of managing and administering his property and affairs, and on 23 June 2006 the plaintiff's wife Madam Cheung Wai Kwan was appointed to act as his next friend in the action. Liability The only live evidence of the accident comes from the defendant; the plaintiff has no memory of it. He relies, however, on the police plans and photographs, and on the statements made by witnesses to the police. From the police documents it appears that the accident happened on a straight road, in fine weather and clear visibility in the middle of the day. The defendant was driving the PLB on San Wan Road in a south-easterly direction from Sam Po Street towards Sheung Shui. A little before arriving at the point of impact the PLB had to pass under the flyover of Kwong Sheuk Wu

Road. San Wan Road is a two-lane road, with a central broken white surface line; from the police sketch it is about 11 metres wide, and from the photographs each lane is wide enough to accommodate two vehicles. There is a 50 kph speed limit. Some vehicles were parked under and beyond the flyover on the east side of the carriageway, i.e. on the defendant's left. The last of these before the point of impact was a container truck, which had been removed by the time the police came to the scene. On the east side of the road, a cycle track joins at right-angles, and more or less opposite, there is an opening on the west side to the continuing cycle track which runs parallel to the road. A cyclist approaching the road on the east side sees, at the mouth of the cycle track, a blue cycling restriction graphic sign as well as surface markings indicating the end of the cycle track. There are also raised studs on the footway which the cyclist has to cross to reach the carriageway. At the west side opening, where the cycle track resumes, there is a fixed end of cycling restriction graphic sign and the police photographs also show a removable cycling restriction graphic sign above a cyclist dismount sign in words, facing out across the carriageway. Beyond the opening on the west side was an area of road works, which took up most of the north-west-bound lane of the carriageway. The broken dividing line had been repainted to divide the two narrowed lanes, and before this point, the line had been painted diagonally from the original line to the new line. It appears from the statements of passengers and that of the defendant herself that as the PLB came past the container truck, which was some way back from the cycle track opening, the plaintiff appeared on his bicycle, crossing the road from left to right. The defendant braked, leaving brake marks of 16.2 metres on the right and 2.6 metres on the left, and the PLB came to a halt opposite the mouth of the cycle track, with its right side just within the original central dividing line, but over the new diagonal markings. The right front of the PLB collided with the plaintiff. One of the passengers, Mr Yan Ping Chak, told the police that when the PLB was drawing abreast of the goods vehicle, he suddenly saw a bicycle coming out from the entrance to the cycle track. He was not sure of its speed, but the cycle appeared to have just started, with the cyclist pedalling hard forward. Ms Lau argues that the plaintiff's failure to call this witness should give rise to the inference that the witness's evidence would not have helped his case; see *Li Sau Keung v Maxcredit Engineering Ltd & Anor* [2004] 1 HKC 434. The defendant's evidence The defendant says that she was driving to the No. 18 minibus station at Sheung Shui, with two passengers on board. She saw a container truck with a 20 foot container parked on her left side, under or partly under the flyover. She was moving along near the white line, passing the right side of the container. Her speed was about 50-60 kph and she changed from 4th to 3rd gear. Suddenly she saw a man riding a bicycle out on to the carriageway, from left to right, wobbling from side to side. She knew that the cycle track was there, that pedestrians and cyclists often crossed at this point, and that cyclists were supposed to dismount and walk across. She immediately braked, but the right front of the PLB near her seat hit the cyclist. Under cross-examination the defendant said that she was familiar with the road and knew that the cycle track was there, and that pedestrians and cyclists could be expected to cross the road at that point, but not usually. She had seen people crossing there but had seldom seen any cyclist cycling across. As she passed the container truck, she could not see the mouth of the cycle track on her left. She admitted that, despite not being able to see the opening, she had decided to accelerate and overtake the container truck. She explained that she knew that she needed to get past and move

to the left, where the road narrowed, in case of oncoming traffic, and she wanted to get past as soon as possible; although she could not remember if there was any oncoming traffic. She did not see the cyclist until he was already in the middle of her lane, i.e. the narrow, reduced lane. She was not sure if she had passed the truck at that point, though she had to come clear of it before she could see the opening. In fact it appears she tried to swerve right a little whilst braking; she says so, and the brake marks show a slight curve to the right. Was the defendant negligent? The defendant was a straightforward witness, and I found her truthful and reliable. What she said was consistent with what she had told the police. I do not think there is any need to go into the few differences which appear between what she says and what the passenger, Mr Yan, told the police. Nor is it necessary to decide whether the failure to call Mr Yan infers that his evidence would not have helped the plaintiff's case. He has not been called, what he told the police is hearsay, and where there is a conflict I would prefer the defendant's evidence. There is really no indication as to whether the plaintiff rode directly out of the cycle track, across the pavement on to the road, or whether he walked across the pavement and then mounted again to cross the road. If he was wobbling, as the defendant says, or pedalling hard as the passenger says, perhaps it was the latter; or perhaps he had seen the PLB coming and was trying to get clear. It is clear, however, that he managed to travel some distance across the road, because he was struck by the right side of the front of the PLB. As I have indicated the PLB stopped within the original centre line. The bicycle was found more or less on the original centre line. Ms Lau, who appears for the defendant argues that the case is analogous to decided cases involving collisions at the junction of a major and a minor road, and also to those where involving a pedestrian crossing where his view and that of the oncoming traffic is obstructed by a stationary vehicle. The traffic coming from the minor road must give way to that on the major road; see *Watson v Everall & Tebbett*, cited in *Bingham and Berrymans Motor Claims Cases*, 11th Ed. at 9.123, and *Watkins v Moffatt & Ors.*, (1967) 111 Sol. Jo. 719; but while the driver on the main road is to keep a proper lookout at junctions, he does not have to slow down or take his foot off the accelerator, and poise it over the brake, in case another vehicle is driven dangerously out of the side road; see *Humphrey v Leigh* [1971] RTR 363. Where a pedestrian comes out from behind a stationary vehicle, it is for him to check for approaching traffic, and the approaching driver does not have to slow down to a speed that would ensure that he can stop if a pedestrian comes out, even if he is aware that there might be pedestrians in front of the stationary vehicle. See *Moore v Poyner*, [1975] RTR 127; *Ng Ching Hung v Lau Shun Hing*, CACV 182 of 1990; *Barry v Wynn*, unreported, C.A., 11 May 2001. The difficulty for the defendant is that on her own admission, although she knew that pedestrians or cyclists might come out of the exit which she could not see, she decided to accelerate and try to get past quickly, though there seems to have been no particular need to do that; she could not remember what traffic, if any was coming the other way, but she thought it was safe to pass the container truck. I do not see that this is the same kind of case as those cited. I accept that the defendant was not under a duty to slow down; but equally it seems to me that to speed up, in the circumstances where she knew of but could not see the junction ahead and the possibility that cyclists or pedestrians would cross there, was to take an unnecessary risk. I also note that under cross-examination the defendant said that when she saw the plaintiff, he was already in her lane, which seems to mean the reduced or left lane. She was not sure if she had got past the container

truck at that point. It is not clear where the container truck was relative to the cycle track though the plans drawn for the police by the defendant herself and the other witnesses suggest that it was some way back. Indeed her own explanation written on her sketch is that only after she passed the front of the truck did she notice the bicycle right in front of her, in the middle of the road, about 10 metres away. It is clear enough that the container truck was not parked with its front next to the cycle track opening. We are not dealing with the situation where a cyclist or pedestrian suddenly appears round the front of a parked vehicle. The defendant, in the driving seat of the PLB, would have been able to see the pavement some way ahead of the container truck even before she passed its front. That she did not see the defendant until he was already well into the road indicates that she cannot have been keeping a proper lookout. I find, therefore, that the defendant negligently failed to consider that vehicles might emerge from the cycle track, failed to consider that her view was blocked by the stationary vehicle, drove at a speed which was excessive in the circumstances and failed to observe the plaintiff on his bicycle in time.

Contributory negligence Ms Lee, for the plaintiff, argues that the plaintiff's contribution should be in the region of 10%. Ms Lau argues for a figure of at least 75% by reference to the cases of *Britland v East Midland Motor Services Ltd*, 1 April 1988, CA, cited in *Bingham & Berryman*, and *Chiu Pan Mong (a Minor) v Tam Kak-kong*, DCPI 139 of 2001. In the first case a 12-year-old boy ran into the road, through parked cars, in front of a bus. It was held that he was reckless and largely to blame, though the bus driver should have noticed him running along beforehand, and should have slowed or covered his brakes in anticipation of the child's running out. The bus driver was held 25% to blame. The facts in that case were not too different from those in *Moore v Poyner*, where the bus driver was held not to blame at all. The second case involved an 11-year-old boy who stepped out from between vehicles and was knocked down by a lorry. In fact the judge found that the lorry driver was not to blame, but, in case he was wrong on that, said that he would have discounted the plaintiff's award by 60%, or, for an older plaintiff, 75%. In order to apportion contributory negligence the court must take into account two matters, namely causative potency and blameworthiness; *Brown v Thompson* [1968] 2 All ER 708. Each case is decided on its own facts. Similar cases if indeed they are similar are not often helpful. It is not known whether the plaintiff failed to dismount and rode across the pavement on to the road, or whether he dismounted and re-mounted on the road. In any event, he was riding on the road at a point where he should have known that it was unsafe to do so; the signs which I have described above make that clear. It is also clear that he came out on to the outer part of the southbound lane from a point behind the container truck, where he would have been invisible to oncoming traffic. It seems to me that he also was negligent. It seems to me that for causative potency, the parties were about equal. The defendant was going past something which blocked her view of the place from which the plaintiff came; and the plaintiff was coming out on his bicycle, rather than wheeling it, where his view of approaching traffic was also blocked. Though I have found the defendant negligent, I think her blameworthiness was relatively less than that of the plaintiff. She was going too fast, but not by too much; she admits to 50-60 kph. The brake mark tables in *Bingham and Berryman* suggest, though they cannot be taken as conclusive, that she was travelling at around 50 kph. I find that the plaintiff was two thirds to blame and the defendant one third to blame for the accident. Quantum The plaintiff's medical condition The plaintiff suffered

serious head injuries. He was taken to the North District Hospital where his Glasgow Coma scale was 11/15. A CT brain scan showed a left parietal epidural haematoma and traumatic sub-arachnoid haemorrhage. There was a fracture of the left parietal bone. An emergency craniotomy was carried out on the same day to evacuate the haematoma. On the following day, on a finding of right frontal and temporal lobe contusional haematoma, another craniotomy was performed. On 1 March, a tracheostomy was performed to facilitate ventilation. On 10 March 2003, the plaintiff was transferred to the Cheshire Home for rehabilitation. By this time he was able to obey commands with slow mentality, but the tracheostomy was still in place, he had a tube for enteric feeding and he was doubly incontinent. He had right side 3rd nerve palsy and left side lower and upper limb weakness. On 16 April 2003, the plaintiff was transferred to the Prince of Wales Hospital because of infections. He was returned to the Cheshire Home on 6 May 2003. He remained there until discharge on 3 June 2003. He could walk slowly by then, with assistance. According to the medical reports, he belonged to the moderate to severe disability group. He was left with a depression in his skull for which it was suggested that he undergo cranioplasty, but he has not done so. The plaintiff continued to attend the neurosurgery out-patient clinic until 24 March 2004, by which time he is described as being able to walk unaided with steady gait and to manage the activities of daily living. He complained of poor memory but no headache or convulsion. He also underwent physiotherapy and occupational therapy and by March 2004 he was described by the occupational therapist as able to perform basic activities of daily living, but as needing standby assistance for climbing stairs and outdoor ambulation. The plaintiff's own neurologist, Dr Yu Yuk Ling, saw him in October 2004. Dr Yu's opinion is that as a result of his severe head injury, the plaintiff experiences neurocognitive and neurobehavioural impairments, and left hemiparesis. By the time of examination, his defects were probably permanent. He would be unable to resume his pre-accident or any employment; he was not fit for any manual or sedentary job. There was also a risk of post-traumatic epilepsy. The defendant's neurologist, Dr Edmund K W Woo saw the plaintiff on 30 November 2005. He found that the plaintiff suffered from residual cognitive dysfunction and left hemiparesis. Further improvement was not expected. It was unlikely that the plaintiff could return to pre-accident work (he was a livestock keeper) but could do simple, menial sedentary tasks. Dr Woo thought the risk of post-traumatic epilepsy was very low. By reference to the American Medical Association Guides, Dr Yu put the permanent impairment of the whole person at 20%. Dr Woo put it at 15%. I mention this, not because the concept of permanent impairment of the whole person is regarded as useful in arriving at an award of common law damages, but to show that the experts are not far apart in their estimate of continuing disability. Both agree that the plaintiff should have a cranioplasty operation in future. The plaintiff had been referred to the psychiatric department at the North District Hospital for management of depressive mood and was first seen there in October 2004. He was diagnosed as having an Organic Mental Disorder and put on medication. In May 2006 the plaintiff was jointly examined by two psychiatrists, Dr Chung See Yuen, instructed by the plaintiff and Dr Wong Chung-kwong, instructed by the defendant. As I have noted, they found that he was a mentally disordered person and as such incapable of managing and administering his property and affairs. They found that he was free from psychiatric disorder before the accident but now suffers from dementia due to head trauma. They say that he suffers from moderate symptoms or

moderate difficulty in social, occupational or school functioning , using the classification from the American diagnostic manual DSM-IV. He is able to look after his self care. He mainly keeps himself at home and does not have any interest in social activities. He needs to be accompanied when he goes out, and supervised when he takes medicine. He cannot manage his family finances. He suffers loss of interest in sex, caused by the dementia. The psychiatrists agree that the plaintiff's condition is non-progressive. It is unlikely that he will get worse or better. He cannot work in the open job market. He should spend time in a sheltered workshop or day centre, not to earn any substantial salary, but to keep him occupied. He should have ongoing psychiatric treatment for three years, at a cost in the private sector of \$20,000 per year. The plaintiff's present condition, as described by his wife The plaintiff's wife, Madam Cheung, gave evidence of the plaintiff's original condition when he was in the North District Hospital and the Cheshire home, and of his improvement to the condition in which he finds himself now. In brief, she says that his memory is very bad. She does not have to do anything for him, such as assist him with bathing; but she has to remind him to has to remind him of to close the toilet door and flush the toilet. When he has a bath or shower, she has to put out clean clothes for him, because he will not remember where to find them for himself. She also has to remind him to take his psychiatric drugs, once a day. He can feed himself, but he cannot cook, which is something he did, or helped with, before; he tried once but forgot to turn off the gas. Madam Cheung says that the plaintiff cannot go out alone; he does not have the confidence. She takes him for a walk to the market or the park twice a day, but she could not leave him; he would not find his own way home. He can, it appears, walk slowly without assistance, and he has to rest often; but she has to help him on stairs. She has given up her job to look after him. It is argued that Madam Cheung has exaggerated the plaintiff's problems; she is describing his condition as worse than it appears from the medical reports. In this connection reference is made to the fact that the plaintiff did not himself give evidence. Madam Cheung, when asked under cross-examination why he was not called, said that he could not express himself properly. She said that he did not know how to talk and would just say anything at random, that you would not like to hear. It is argued that the plaintiff's failure to give evidence gives rise to the adverse inference that his own evidence would not have helped his case, see *Li Sau Keung*, above. I do not agree. It may be that he would have described his present problems differently, but one cannot speculate as to what a witness might have said, if called. However, given the agreed opinion of the two psychiatrists that he is suffering from dementia, it is difficult to see what weight, one way or another, could be given to his evidence. Also, it is always possible for a mentally ill or traumatised person to give an impression of normality to a judge who has no psychiatric expertise. At the same time, Madam Cheung was not a very good witness. She was, as Ms Lau has noted, argumentative and evasive. I think that overall, the expert evidence must be a better guide, where there is a direct conflict. At the same time, when it comes to describing the minutiae of the plaintiff's life now, Madam Cheung must have a better idea of that than any professional, because she is with him all the time as his primary care-giver. I turn to the specific heads of claim. Pain, suffering and loss of amenity Ms Lee says that the plaintiff is to be regarded as being in the gross disability category of disablement. Ms Lau says that he should only be regarded as within the substantial injury category. Ms Lau argues for an award of \$1,200,000. By reference to the cases of *Wong Hin Pui v*

Mok Ying Kit [2000] 1 HKLRD 858, Chan Yuk v Dragages et Travaux Publics (HK) Ltd & Ors [2000] 2 HKLRD 795 and Wong Sin Lam v Kuen Fung Construction Ltd & Ors., HCPI 1286 of 1999, she says that the range of awards for persons who have suffered severe brain damage and lost the ability to manage their own affairs is from \$1,000,000 to \$1,250,000. Ms Lau argues for an award of \$700,000, with particular reference to Wong Hin Pui, as well as Lau Chung Nam v Au Wai Man, [2004] 1 HKLRD 57, and Chan Sze Ki v Department of Justice [2005] 3 HKLRD 520. She says that the plaintiff's disabilities are not so severe as those cases in which the awards ranged from \$1,000,000 to \$700,000. I take into account that the plaintiff has suffered irreparable brain damage and can no longer conduct his own affairs. He has, effectively, to be looked after all or most of the time; he cannot even remember to flush the lavatory after himself. In Wong Sin Lam Stone J described the plaintiff before him as a shambling hulk of a man who has lost any meaningful existence when compared to that which he enjoyed prior to this accident. That, I think, is not much different from the plaintiff's condition. He still has some hemiparesis and his memory is such that while he performs the activities of daily living, and even reads novels to himself, he cannot remember what he has just done or read. He is certainly very much reduced from the man he used to be. I accept that the plaintiff is in the gross disability category. I award \$1,000,000 under this head of claim.

Loss of society This is the wife's claim under section 20C(1) of the Law Amendment and Reform (Consolidation) Ordinance, Cap. 23 (LARCO). It was established by Chan Yuk, above, that such a claim may be brought in an action by the husband for damages for his own personal injuries, and this is not in dispute. Under subsection (2) the maximum is not to exceed the sum specified in section 4(3) of the Fatal Accidents Ordinance (Cap.22), which is now \$150,000. In Chan Yuk Seagroatt J noted at page 802E that the statutory limit was imposed so as to indicate, rationally enough, that the award must bear some relationship to the bereavement award (then \$40,000). Ms Lee says that the award should be about \$120,000 or \$130,000. Ms Lau puts it at \$40,000. Complete loss of society, for instance if the plaintiff were in a vegetative state, would require an award at the maximum level; in Wong Kwun Sang v Yiu Woon Ming & Ors., HCPI 633 of 2004, Suffiad J awarded \$140,000 to a plaintiff who was not totally in a vegetative state. Here the plaintiff is nowhere near to being in a vegetative state. However, although his mood is generally good, though he loses his temper if he has to talk for too long, and he continues to enjoy his wife's company, in his forgetful and dependent state the loss of his society cannot be regarded as modest. I put it in the middle of the range, and award \$80,000.

Loss of services This claim is under section 20C(4) of the LARCO for the loss of the plaintiff's gratuitous services to his dependant. His wife says that he helped generally with the housework and also did minor handyman repairs. I think it goes deeper than that. The plaintiff has been reduced from being able to provide the normal gratuitous services of a husband to his wife and family, to one who cannot do anything meaningful but must be looked after all the time. The award should be on the same level as that for loss of society. I award \$80,000.

Pre-trial loss of earnings The plaintiff claims loss of earnings at \$9,660 per month. This is based on the Employer's Returns of Remuneration for the years of assessment 2001/02 and 2002/03. However, a letter from the employer to the plaintiff's solicitors shows the plaintiff as having received salary of \$8,000 and travel and meal allowance of \$1,100 i.e. \$9,100 per month, minus MPF contributions. I do not know why the employer should have quoted a higher figure on its tax returns, but it seems that

the most accurate figure is likely to be that supplied directly by the employer to the solicitor. I accept that the plaintiff did not use his travel allowance for travel; he rode a bicycle; so in effect the allowance was an addition to salary. But for the accident, he would have received \$9,100; I do not see that anything is to be deducted because he would not have had travelling expenses afterwards. So I will take the pre-accident earnings as \$9,100. The period from accident to trial is 47 months and the pre-trial loss is $\$9,100 \times 47 = \$427,700$. Post-trial loss of earnings The plaintiff was born on 6 June 1951. At the date of the accident he was 51 and on the date of trial 55 years old. The normal retirement age is 65. There is nothing to suggest that, but for the accident, the plaintiff would not have worked until 65. The plaintiff argues for a multiplier of 6 and the defendant for a multiplier of 5. I will take the former multiplier as appropriate. The loss is therefore $\$9,100 \times 12 \times 6 = \$655,200$. Pre-trial loss of retirement benefits This is calculated at 5% of the pre-trial loss, and is \$21,385. Post-trial loss of retirement benefits This is calculated at 5% of the post-trial loss and is \$32,760. Special damages These are agreed at \$46,588. Value of wife's services pre-trial In the Revised Statement of Damages, the plaintiff claims \$6,000 per month for the period during which he was in hospital, i.e. 3.3 months, and \$7,500 per month thereafter. The defendant replies that the plaintiff is only entitled to \$7,500 per month for the period from discharge from hospital on 3 June 2003, to discharge from occupational therapy on 2 March 2004, i.e. 9 months. Madam Cheung says that she gave up her job as a cleaner at a salary of \$4,500 per month to look after the plaintiff. I do not know where the figure of \$7,500 comes from; Ms Lee seems to have taken it as within a reasonable range from the cases. Presumably it is what a full-time care assistant would cost, if Madam Cheung had not given up her job to supply the care. In any event, the defendant accepts the figure as appropriate, if only for a brief period until the plaintiff became able to perform the activities of daily living. It is argued that once the plaintiff was discharged from occupational therapy, he was able to perform basic activities of daily living and only needed help for climbing stairs and going out. Ms Lau relies on the case of Lau Chung Nam where Suffiad J awarded the value of care and attention suggested by counsel of \$7,500 per month but only for the period during which the plaintiff remained on crutches after discharge from hospital. It is also argued that the plaintiff could go into a sheltered workshop or a day centre, as the psychiatrists recommended, and then he would not have to be looked after all day. This was canvassed, and Madam Cheung said that she had asked him to go to a centre where the elderly play chess, but he did not want to go as he was afraid they would look down on him. In any event, says Ms Lau, all that the wife really does for the plaintiff is to take him out for short walks, a couple of times a day. She is prepared to concede a figure of \$75 per hour for this, or \$2,250 per month. The plaintiff may be regarded as able to perform activities of daily living, in that he can wash and dress himself and the like, but I accept the wife's evidence that he needs her there to look after him all the time. I do not see that he should be required to go to a sheltered workshop or day centre; in the former, it is likely that he would do nothing useful, in a much less pleasant environment than his home; and the latter has been considered and in my view, reasonably rejected by the plaintiff himself, because he thinks the people there will look down on him; as well they might, if they are healthy elderly people, and he a middle-aged dement with a poor short-term memory. I accept that the wife spent a lot of time with the plaintiff while he was in hospital. She says she spent the whole day there until about 16 April 2003 but she was not

allowed to visit while he was in the Prince of Wales Hospital because of SARS. At the Cheshire home she was allowed to visit for 2 hours a day. I accept Ms Lau's figure of \$6,000 per month for the care and attention given by the wife over a period of 3.3 months while the plaintiff was in hospital; that is \$19,800. I think the case of Lau Chung Nam is to be distinguished on the facts; in that case the further claim was based on a fear, on the part of the family, of post-traumatic epileptic attacks whereas here there are no attacks, but simply the need to look after a man who cannot really look after himself. I can accept that there would need to be full-time care thereafter. I have difficulty, however, with the claim for \$7,500 per month, at any rate after 2 March 2004. There is no real evidence to support the figure. It seems to have been taken from other cases, such as Lau Chung Nam; but I do not see that there was any evidence to support the figure in that case either. Ms Lee says that the lowest reasonable figure should be \$5,000, by reference to Wong Sin Lam. The plaintiff would not need full-time or even part-time nursing, once he became able to perform the activities of daily living, but I do think he would need much more than just a little assistance from his wife when he goes out. The only concrete figure I have is her loss of earnings and I propose to assess the award on that basis. I will therefore allow \$19,800 for the first 3.3 months, and \$67,500 for the 9 months thereafter. For the period remainder of the pre-trial period, i.e. 34.7 months, I will allow \$4,500 per month, i.e. \$156,150. The total value of the wife's services pre-trial is \$243,450. Future medical and travelling expenses The claims for the cranioplasty operation and future psychiatric treatment are agreed at \$75,000 and \$60,000 respectively. There is a claim for \$9,100 for future neurological treatment which is disputed. Dr Yu says that the plaintiff will need to see a neurologist or neurosurgeon every 4 months up to March 2008 and thereafter as the need arises. Dr Woo says that there is no need for this. Ms Lau says that I should take the middle ground and allow three 6-monthly visits up to March 2008, which comes to \$2,100. Dr Yu's figures were given for the period from his examination in October 2004 to March 2008, i.e. 41 months. This would require 10 visits, at \$700 per visit. It is not clear that there has been any neurological follow-up since March 2004. I will follow Ms Lau's suggestion and allow \$2,100. So the total figure under this head is \$137,100. Future cost of care and attention The plaintiff claims a multiplier of 15 years. Ms Lau says the multiplier should be 14 years, but I accept Ms Lee's argument, based on the life expectancy tables which show a life expectancy of 26 years, that 15 years is proper. The award is therefore $\$4,500 \times 12 \times 15 = \$810,000$. Result I calculate the value of the plaintiff's claim as follows: Pain, suffering and loss of amenity \$1,000,000.00 Loss of society \$80,000.00 Loss of services \$80,000.00 Pre-trial loss of earnings \$427,700.00 Post-trial loss of earnings \$655,200.00 Pre-trial loss of retirement benefits \$21,385.00 Post-trial loss of retirement benefits \$32,760.00 Special damages \$46,588.00 Value of wife's services pre-trial \$243,450.00 Future medical and travelling expenses \$137,100.00 Future cost of care and attention \$810,000.00 Total \$3,534,183.00 This, however, has to be discounted by two thirds because of my finding of contributory negligence. The final figure is therefore \$1,178,061.00. There will be judgment in favour of the plaintiff in the sum of \$1,178,061.00. Interest is awarded at half the judgment rate on the special damages, pre-trial loss of earnings and retirement benefits and the value of the wife's services pre-trial from the date of the accident until the date of judgment, and at 2% on the general damages from the date of service of the Writ until the date of judgment; and thereafter at the judgment rate. Costs be (nisi) to the plaintiff to be taxed if not agreed. The

plaintiff's own costs are to be taxed in accordance with the Legal Aid Regulations. (G.P. Muttrie)
Deputy High Court Judge Ms Christina Lee, instructed by Messrs Lee, Mok & Wong, assigned by
Director of Legal Aid, for the Plaintiff Ms Selina Lau, instructed by Messrs Chong & Partners, for
the Defendant PAGE - PAGE - 1udk 1udk (#p# &`#\$ &`#\$ (#p# &`#\$ &`#\$ (#p# i\$&`G 2^wn Muttrie-
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