

HONG KONG / JUDGMENT

KWOK HING YUEN v. GOODPOINT ENGINEERING LTD AND OTHERS

COURT

Court of First Instance

DECIDED

25 April 2007

CASE / FILE NUMBER

HCPI736/2004

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

bjbj HCPI 736/2004 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE PERSONAL INJURIES ACTION NO. 1028 OF 2002

BETWEEN KWOK HING YUEN Plaintiff and GOODPOINT ENGINEERING LIMITED 1st Defendant
WING SUM CONSTRUCTION & 2nd Defendant ENGINEERING CO. LIMITED OTIS ELEVATOR
COMPANY 3rd Defendant (H.K.) LIMITED (Discontinued) FAN CHOW SANG 4th Defendant CHAN
CHO LEUNG 5th Defendant

Before : Hon Suffiad J in Court Dates of Hearing : 9, 12 and 13 February 2007 Date of Judgment :
25 April 2007

J U D G M E N T

AUTONUMOUT In this matter liability is no longer in issue since the 1st and 2nd defendants have admitted liability at the commencement of trial before me. Leave was also given to the plaintiff to withdraw its claim against the 4th and 5th defendants. The proceedings against the 3rd defendant have previously been discontinued. AUTONUMOUT The only issue left outstanding is therefore the assessment of damages with which this judgment is concerned. The Accident AUTONUMOUT At about 10 a.m. on 21 August 2001, the plaintiff was working at a construction site at No. 410 Kwun Tong Road, Kowloon (the Site). The plaintiff had been adjusting the position of some brackets for lift railings at the No. 4 Lift shaft in the basement of the Site. Having finished adjusting the brackets, he went up the stairs to the 1st floor to check the lift railings. When he was walking past the opening of the No. 1 lift shaft on the 1st floor lobby some rubbish and debris were dumped from the upper floor of the lift shaft. Some of the debris and rubbish, including a

metal wheel, bounced out of the No. 1 lift shaft opening and struck the plaintiff. As a result the plaintiff suffered injuries and was admitted to the Accident and Emergency Department (A & E Dept) of the United Christian Hospital () at about 11.31 a.m. the same day. Injuries and Treatment AUTONUMOUT When admitted to the A & E Dept of UCH, the plaintiff was fully conscious and alert. AUTONUMOUT He was in shock with abdominal distention. His right hand was lacerated. He was in great pain. Haemoperitoneum with intraperitoneal organ damage was suspected. AUTONUMOUT Ultrasound scan showed there were signs of intraperitoneal haemorrhage and he soon became hypotensive. X-ray revealed undisplaced fracture of the proximal phalanx of the right ring finger. AUTONUMOUT He was immediately treated with fluid displacement and oxygen. Urgent laparotomy was carried out. Torn mesenteric vessels and perforated small bowel were found during the operation. Repair of the perforation of the small bowel and partial colectomy were performed. AUTONUMOUT The right ring finger was treated by dressing and was given a Buddy splint to stabilize the fracture. AUTONUMOUT The plaintiff recovered gradually and was discharged from UCH on 1 September 2001 with medication and follow-up treatment. AUTONUMOUT After discharge from UCH, the plaintiff was referred to orthopaedic specialist clinic for further treatment of his fractured finger. The wound healed uneventfully. It was confirmed during his follow-up sessions at the orthopaedic clinic on 8 January 2002 that the plaintiff had gained full range of motion. Repeated X-ray revealed satisfactory bone healing. He was then discharged from the orthopaedic clinic. Assessment by Experts AUTONUMOUT The plaintiff had initially instructed Dr Edward Lai as his orthopaedic expert. However, some time before the trial commenced, leave was given to the plaintiff to change medical expert to Dr David T.Y. Lam. That leave was given to the plaintiff when Dr Lai admitted that he had made a mistake in the joint report given by him and Dr Derek Y.S. Kwok, the defendants medical expert. That joint report was compiled after their joint examination of the plaintiff on 9 September 2005. AUTONUMOUT In giving leave to the plaintiff to change medical expert, one condition imposed was that all the medical reports prepared by Dr Lai including the joint report with Dr Kwok be put into evidence before the trial judge. AUTONUMOUT The plaintiff was examined by Dr Lai on 17 December 2002. On examination Dr Lai found a 25 cm long midline abdominal incision extending from three inches distal to the xiphisternum to about three inches distal to the umbilicus and curving to the right. There were also two additional small scars on each side of the lower abdomen. Further two 2 cm long scars were found over dorsum of the plaintiff s right hand. AUTONUMOUT Lai found that there was no limitation of the range and power of flexion of the plaintiff s abdomen, except mild tenderness noted by the plaintiff when flexion was performed against resistance. AUTONUMOUT Range of movements of the plaintiff s right wrist joint, proximal and distal interphalangeal joints of all fingers were full and there was no loss of gripping power AUTONUMOUT The residual pain from his emergency abdominal operation was said to be the plaintiff s main complaint. Nevertheless, Dr Lai considered that the plaintiff was only fit to take up position which does not require heavy weight-lifting such as security guard and that the plaintiff s performance as a skilled labourer involving lift repair would be compromised. AUTONUMOUT As already stated above, there was a joint examination of the plaintiff by Dr Lai and Dr Kwok on 9 September 2005. AUTONUMOUT During that examination, the plaintiff claimed that he had persistent pain at the anterior abdomen on

straining the abdominal wall muscle and easy fatigue. He said that the discomfort had compromised his ability to work as his pre-accident job required him to climb while carrying heavy equipment. He also complained about abdominal discomfort after meal. AUTONUMOUT In that joint report, both Dr Lai and Dr Kwok agreed that :

- (a) There was no limitation of the range and power of flexion of the plaintiff's abdomen, except subjective tenderness on his right abdomen.
- (b) Range of movements of right wrist joint, proximal and distal inter-phalangeal joints of all fingers are full. There was no loss of gripping power.
- (c) The plaintiff's claim that he could at best resume half of his pre-injury power was not supported by physical examination.
- (d) Examination showed the plaintiff had good and strong abdominal muscle. The abdominal wound had healed well with no complication.
- (e) The plaintiff's abdominal injury did not have any long term sequelae.
- (f) The residual physical limitation from the plaintiff's surgery should be minimal.
- (g) The plaintiff's working ability was not impaired by the accident and he had recovered fully from the injury. AUTONUMOUT The plaintiff's present expert, Dr T.Y. Lam examined the plaintiff on 9 February 2006. At that time, the plaintiff still complained of persistent abdominal wall pain. He alleged that he could not lift heavy object and could not gather force in the abdominal wall muscles because of pain. He further said that he could not wear safety belt required by his job as lift technician because of the pain. There was focal tenderness of the left rectus region, but no clinically detectable atrophy of the left rectus muscle in comparison to the right side. AUTONUMOUT Lam opined that the plaintiff was fit to take up work which did not require heavy weight lifting and force. Further, his pain and weakness in the anterior abdominal wall will compromise his ability to return to his previous job as a lift technician which required climbing scaffolding, carrying heavy objects and use of considerable force. AUTONUMOUT In giving evidence in court, Dr Lam agreed that there is no objective evidence supporting the assertion that the plaintiff's abdominal wall was weakened and that the plaintiff was still in pain. AUTONUMOUT Lam further agreed that his conclusion that the plaintiff cannot resume his pre-accident job was based on :
 - (a) the plaintiff's complaint of tenderness; and
 - (b) the way the plaintiff sat up from a lying position with the help of his left arm during the examination. AUTONUMOUT Lam also agreed that there was no objective evidence in support of the plaintiff's assertion that his abdominal wall was weakened and he was still in pain. AUTONUMOUT In a supplemental report of the defendant's expert, Dr Kwok, dated 13 July 2006 in response to the medical report of Dr Lam, Dr Kwok was of the view that :

- (a) the plaintiff's ability to climb onto a bed three feet high (during the examination) showed that he should not have any severe pain or weakness restricting his abdominal muscle contraction;
 - (b) there is no objective evidence showing that the plaintiff's abdominal wall was weakened;
 - (c) objective evidence showed that the plaintiff in fact did not have any pain at the surgical scar;
 - (d) the plaintiff has recovered well from his abdominal injury with no long term sequelae; and
 - (e) there is no evidence of significant physical disability left in the plaintiff's abdomen that would prevent him from taking up his previous employment. AUTONUMOUT In his evidence given in court, Dr Kwok said that it is difficult to explain the cause of the tenderness on the plaintiff's right abdomen. His opinion is that such pain is not related to the injury arising from the accident nor is it the direct cause of the accident (i.e. the surgery performed after the accident). Issues in dispute and assessment AUTONUMOUT The main issues in dispute between the parties relate to whether the plaintiff is able to return to his pre-accident job as a lift installation technician after the sick leave period expired in 16 July 2002. This disputed issues affect both pre-trial loss of earnings as well as future loss of earnings. AUTONUMOUT Before dealing with the various heads of damages claimed, I will need to assess the evidence given by the plaintiff as well as the medical evidence in dispute between the parties and to make findings thereon. AUTONUMOUT It is the plaintiff's evidence that after the accident and his surgery, the pain and weakness in his abdomen was such that he was unable to return to his pre-accident work as a lift installation technician. AUTONUMOUT The plaintiff did not strike me as being the most reliable of witness. There are areas in his evidence that are evidently exaggerations. AUTONUMOUT Firstly, in his witness statement, it was stated that the doctor had warned me not to exert too much force on the abdomen . When cross-examined as to that, he initially said it was a private doctor who practiced downstairs where he lived. Later he said he had forgotten which doctor had given him such warning. As for the timing when that warning was given to him, initially the plaintiff said that it was given to him around 2004 or
2005. Later he said that the warning was given to him before he was first examined by Dr Lai (i.e. in December 2002). AUTONUMOUT Secondly, in his witness statement which was dated 8 December 2005, it was stated by the plaintiff that he was unemployed since the accident. However, during cross-examination the plaintiff admitted that he was employed by the Tseung Kwan O Hospital to sweep the floor of its grounds in February 2004, a time before that witness statement was made. AUTONUMOUT Thirdly, according to all the medical reports, the plaintiff had told all the experts involved in this matter, Dr Lai, Dr Kwok as well as Dr Lam that his pain was persistent since the injury and in evidence, the plaintiff said his pain had never improved. However there is evidence that the plaintiff had stopped seeking further treatment for his pain at the Anaesthetic Assessment Clinic of UCH since 16 July 2002 and no further sick leave given to him beyond that date. The plaintiff also admitted in evidence that he is not taking any pain relief medication anymore. There is

also the evidence of Dr Lam that normally the pain should gradually decrease with the passage of time. AUTONUMOUT These are but three examples in his evidence which show the unsatisfactory nature of the evidence given by the plaintiff and I believe that there has been some exaggeration on the part of the plaintiff as to the severity of the pain which he still experiences. AUTONUMOUT Having said that, what is inescapable factually and which can provide some support for the plaintiff's complaint as to the pain he still suffers now are as follows :

- (a) when admitted to the UCH the plaintiff was in shock with abdominal distention and the plaintiff was recorded to be in great pain;
- (b) emergency laparotomy was carried out;
- (c) torn mesenteric vessels and perforated small bowel were found during the operation;
- (d) repair of the perforation of small bowel and partial colectomy were performed;
- (e) the plaintiff was discharged from UCH with medication and follow up treatment after nine days of hospitalization;
- (f) after the operation there was a long abdominal incision with multiple scars over his abdomen; and
- (g) when examined jointly by Dr Lai and Dr Kwok in September 2005 they detected tenderness on the right side abdomen and when examined by Dr Lam in 2006, he detected tenderness in the left side abdomen. AUTONUMOUT Turning now to deal with the expert medical evidence in this case. AUTONUMOUT Initially, the plaintiff had instructed Dr Edward Lai as his medical expert. In his first medical report dated 1 May 2003, Dr Lai opined that the plaintiff's performance in his pre-accident job is definitely compromised by the accident, and is considered fit to take up positions which do not require heavy weight lifting. AUTONUMOUT However, in the joint report together with the defendant's expert, Dr Kwok, Dr Lai agreed with Dr Kwok that the plaintiff's working ability was not impaired but gave no reason for changing his previous view. AUTONUMOUT In a supplemental medical report, Dr Lai indicated that he was wrong to have changed his opinion which was a mistake. AUTONUMOUT Although Dr's reports were put in evidence as a condition to leave being granted to the plaintiff to change experts, the defendant did not see fit to cross examine Dr Lai on the contents of his reports. AUTONUMOUT take the view that the conflicting opinion expressed by Dr Lai cancels out each other and I do not intend to put any weight on either of his conflicting opinions. AUTONUMOUT In the circumstances, in so far as the expert evidence goes, what remains is for me to assess the difference in the expert evidence expressed by Dr Lam (for the plaintiff) and that of Dr Kwok (for the defendant). AUTONUMOUT Whilst Dr Lam did say that he was relying on the plaintiff's complaint as to the pain in his abdomen in coming to the opinion that he took, it does not follow from that that there was no objective evidence to support the complaint of pain by the plaintiff. In my view, the background as to the accident and the emergency operation, the operational scar

and the tenderness found by the doctors upon palpitation are all objective evidence which can support the complaint of pain by the plaintiff. AUTONUMOUT Quite apart from the pain, Dr Lam further concluded that there was still residual weakness of the anterior abdominal wall which would make it difficult for the plaintiff to strain his abdominal muscles. The need for considerable force and to carry heavy object in his pre-accident work is expected to cause strain and therefore pain in his abdominal wall. AUTONUMOUT It is for this reason that Dr Lam took the view that the plaintiff is only fit to take up work that does not require heavy weight lifting and force, and that the pain and weakness in the anterior abdominal wall will compromise his ability to return to his pre-accident work. AUTONUMOUT On the other hand, Dr Kwok dismisses the plaintiff's complaint of pain in his abdomen mainly for the following reasons :

- (a) the plaintiff was able to climb up to a three feet high bed without difficulty;
- (b) the plaintiff was able to raise his head and body from a lying position without difficulty which shows that he has no pain in his abdominal wall even when the abdominal muscles are strained when used in that way; and
- (c) examination showed that he had good and strong abdominal muscle and the abdominal wound had healed well with no complication. AUTONUMOUT In so far as climbing up the examination couch is concerned, it is the plaintiff's evidence that there was a stool by the side of the examination couch and it was with the assistance of the stool that enabled him to climb up to the examination couch without much difficulty. AUTONUMOUT When cross-examined on there being a stool by the side of the examination couch which the plaintiff used to assist him to get on the couch, Dr Kwok answered saying that he could not remember the stool since the joint examination took place in the clinic of Dr Lai. However he did say that in his own clinic and in other doctor's clinic there would usually be a stool to assist a patient. AUTONUMOUT The other mention in the medical reports of the plaintiff climbing onto a three-feet bed without much difficulty was in the report of Dr Lam, but on that occasion, Dr Kwok was not present. AUTONUMOUT therefore find it strange, to say the least, that Dr Kwok would rely on the plaintiff being able to climb onto the examination couch easily as one indication of the plaintiff having strong abdominal muscle when he could not even remember if the plaintiff had the assistance of the stool. If Dr Kwok was to rely on that, I would have expected him to have paid particular attention to all the details (including whether or not the plaintiff had any stool to assist him in climbing up the couch) even though that occurred in the clinic of Dr Lai. AUTONUMOUT Secondly, as to the plaintiff being able to raise his head and body from a lying position, again when Dr Kwok was cross examined on this point, he said that it came about inadvertently because the plaintiff was only asked to raise his head (and not his entire body) but because of language difficulty (plaintiff being a Putonghua speaker) or due to a misunderstanding, the plaintiff raised his entire body and not just his head. AUTONUMOUT Kwok also said that this test was designed to test the muscle weakness and pain but that was not fully stated in the joint report. AUTONUMOUT Under cross examination Dr Kwok conceded that it was possible that the

plaintiff may have performed this action with a slight bending of the knees without him noticing it. The implication being that the plaintiff may not have only used his abdominal muscle in sitting up from the lying position. AUTONUMOUT On the other hand, there is the evidence from Dr Lam that when the plaintiff was examined by him in February 2006, the plaintiff had to use his hand to assist him when sitting up in bed from a lying position. AUTONUMOUT Even if Dr Kwok was correct that the plaintiff could sit up in bed without any assistance, I would be very slow to come to the conclusion that such a one-off test of the plaintiff sitting up from a lying position would show that the plaintiff can go back to his pre-accident job which is a full time job involving 8 to 10 hours of heavy manual work such as climbing up scaffold inside lift shafts and carrying heavy loads. Given the kind of injury and operation that the plaintiff had gone through, even without the medical experts evidence, I would say that there is more than a prima facie case that it would appear that the plaintiff's ability to resume heavy manual work would likely be compromised. AUTONUMOUT Such a view seems also to be supported by the Medical Assessment Board in the related ECC proceedings in this matter making the assessment that the plaintiff has suffered 9.5% loss of earning capacity permanently caused by inter alia his abdominal injury and bowel perforation. AUTONUMOUT For these reasons, I have no hesitation in accepting the medical expert evidence of Dr Lam that the plaintiff cannot resume his pre-accident work but should take on manual work of a less heavy nature. QUANTUM Pain suffering and loss of amenities AUTONUMOUT In so far as the claim under this head of damage is concerned, the parties have agreed that a sum of \$350,000 should be assessed and awarded. Accordingly, such an amount will be awarded by consent of the parties. Other special damages AUTONUMOUT Special damages (other than pre-trial loss of earnings) are also agreed between the parties at \$10,062.00 and the same will be awarded. Pre-trial loss of earnings AUTONUMOUT There is no dispute that during the sick leave period from the accident until 16 July 2002, the plaintiff was entitled to loss of earnings in the amount of \$140,903.23. That was calculated on the pre-accident earnings of \$13,000 per month which is common grounds between the parties. AUTONUMOUT In the light of my findings above, as to the plaintiff's inability to return to his pre-accident work, there will also be partial loss of earnings for the following 56 months of the pre-trial period after the expiry of the sick leave. AUTONUMOUT There is some evidence before me that the plaintiff had attended interviews for the post of security guard during the pre-trial period after the expiry of his sick leave. It follows therefore that the plaintiff must have thought himself able to carry out such work. Moreover, the work of being a security guard was in the opinion of Dr Lam suitable to the plaintiff in the condition that he was in. AUTONUMOUT Government statistics as to the average earnings of a security guard in the field of real estate management was put in evidence by the defendant. Those statistics show that the average earnings per month of a security guard in June 2002 to be \$7,749. The same statistics for the corresponding figure in September 2006 gives \$7,453 as being the average monthly earnings for a security guard also in the real estate field. No similar statistics beyond September 2006 was adduced in evidence presumably because such statistics were not available yet. AUTONUMOUT On the evidence before me, I would take the mean between the two figures to give the mean earnings of a security guard as being \$7,601 for the

pre-trial period. AUTONUMOUT The partial loss of earnings for the plaintiff for the 56 months after the expiry of his sick leave therefore comes to $(\$13,000 - \$7,601) \times 56$ giving \$302,344. AUTONUMOUT Total loss of earnings for the entire pre-trial period comes to $\$140,903 + \$320,344 = \$443,247$. AUTONUMOUT Adding to that figure a further 5% to take account of the loss of MPF gives \$465,409. Future loss of earnings AUTONUMOUT The plaintiff being 37 years old at the time of the trial, the parties have agreed on a multiplier of 13 as being appropriate in this case. AUTONUMOUT As for the multiplicand the pre-accident earnings of the plaintiff should be reduced by the earnings of a security guard at the time of the trial. However, since the closest figure given from the statistics only relates to average earnings of a security in September 2006, that figure will be used in the absence of anything better. AUTONUMOUT The loss of future earnings is therefore calculated as $(\$13,000 - \$7,453) \times 13 \times 12$ giving \$865,332. AUTONUMOUT Adding a further 5% to take account of loss of MPF gives \$908,598. Loss of earnings capacity AUTONUMOUT Loss of earnings capacity is intended to cover risks that at some future date during the plaintiff's working life, he will lose his employment and will then suffer financial loss because of his disadvantage in the labour market. AUTONUMOUT In those circumstances, a court must evaluate the present value of that future risk. AUTONUMOUT In the present case, the plaintiff's weakness and pain has prevented him from retuning to his pre-accident employment. The alternative employment that he has to undertake as a result is one which does not require the plaintiff to carry out heavy manual work and/or to climb up scaffold such that it will not risk any unnecessary strain on his abdominal muscles. AUTONUMOUT His disadvantage in the labour market is therefore minimized by such alternative employment. Also he has been compensated for his inability to take up heavy manual work as before the accident. AUTONUMOUT In all the circumstances of this case, his disadvantage in the labour market is not a very great risk and an award of \$50,000 would be reasonable compensation under this head of claim. Interest AUTONUMOUT Interest will be awarded at 2% p.a. on general damages for PSLA from the date of the Writ. AUTONUMOUT Interest on all special damages and loss of pre-trial earnings will be awarded at 5.467% (being half judgment rate) from the date of the accident. Summary of awards AUTONUMOUT The summary of awards is as follows : PSLA \$350,000 Agreed Special damages 10,062 Loss of pre-trial earnings 465,409 Loss of future earnings 908,598 Loss of earnings capacity 50,000 Interest on PSLA 18,666 Interest on special damages and pre-trial loss 146,456 Total \$1,949,191 Deduction for ECC payment AUTONUMOUT From the amount assessed above will need to be deducted the amount of the ECC payment of \$543,600 already received by the plaintiff, giving a final figure of \$1,405,591.

Conclusion

AUTONUMOUT Accordingly, there will be judgment for the plaintiff in the sum of \$1,405,591. Costs AUTONUMOUT There will be a costs order nisi that the defendant pays the plaintiff his costs of this action, to be taxed if not agreed. AUTONUMOUT The plaintiff's own costs to be taxed in accordance with Legal Aid Regulations. (A.R. Suffiad) Judge of the Court of First Instance High

Court Mr Charles Wong, instructed by Messrs Philip S.W. Chan & Co., for the Plaintiff Mr Herbert Au Yeung, instructed by Messrs C.K. Mok & Co., for the 1st and 2nd Defendants 4th and 5th Defendants in person, absent PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V t" (#AA t" (#AA t" (#AA & `#\$ apT& & 6" ABC.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=56871

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/kwok-hing-yuen-v-goodpoint-engineering-ltd-and-others-2007>

Prepared on 27 October 2026 · Esheria