

HONG KONG / JUDGMENT

LO KAM MUI v. O PUI YIU

COURT

District Court

DECIDED

18 December 2007

CASE / FILE NUMBER

DCPI1813/2007

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bjbj DCPI1813/2007 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION PERSONAL INJURIES ACTION NO. 1813 OF 2007 (Transferred from HCPI No. 996 of 2006) BETWEEN LO KAM MUI, the Administratrix Plaintiff of the estate of MO WAI FUNG, the deceased and O PUI YIU Defendant Before: H H Judge Lok in Court Date of Hearing: 18 December 2007 Date of Judgment: 18 December 2007 A S S E S S M E N T O F D A M A G E S This is a tragic case. The deceased, who was aged 18 at the time of the accident, came from a low-income family. As his father fell ill, the family had to rely on social welfare assistance for their living. The deceased, not yet completed his Form 3 education, then took up the job of a kitchen apprentice with a view to improve the living standard of the family but, unfortunately, he was killed in a fatal traffic accident on the first day of his work. On 11 April 2007, by consent and with the approval of the court, interlocutory judgment on liability to the extent of 50% was entered in favour of the Plaintiff against the Defendant who was the driver of the vehicle at the material time. The matter now comes before the court for assessment of damages. Background of the deceased At the trial, the Plaintiff, who was the mother of the deceased, testifies in support of the claim. Most of her evidence is not in dispute. At the time of the accident, the deceased was living with his father aged 54, mother aged 44, and young brother aged 15 in the same household. The family was then living on public assistance. The father was suffering from ill health and had no work. In fact, he died on 12 April 2005 because of his illness, about 3 months after the deceased's accident. The mother was also suffering from ill health and had no work. The younger brother was a full-time student studying at Form 1. The deceased was 18 years old at the time of the accident. The accident happened on the first day of his work as a kitchen apprentice and his monthly income was \$5,000 by that time. The wages statistics produced by the Plaintiff show that a junior cook employed by a fast-food shop can earn about \$8,458 per month. It is the Plaintiff's case that but for the accident, the deceased would have been able to qualify to work as a junior cook earning this monthly income in 2 years time. This is not seriously disputed by the Defendant. At the time of the accident, the average monthly expenditure of the family was about \$10,278, including \$500 as the personal expenses of the father and \$1,000 each as the personal expenses of the mother, the deceased and the younger brother. At this present moment, the average monthly expenditure of the family is about \$6,520, including \$1,900 as the personal expenses of the mother and the younger brother. It is the Plaintiff's case that the deceased was a

diligent young man who did not want his family to rely on public assistance. He was also a loving and caring child, and there is no reason for me to doubt the Plaintiff's evidence in this regard.

Pre-trial loss of earnings With his income of \$5,000 per month, the deceased would have \$4,750 per month left after deducting 5% of his income for paying his Mandatory Provident Fund contribution. Deducting his share of common household expenditure in the sum of \$1,694.50 per month and his personal expenditure of \$1,000 per month, he would have about \$2,055.50 left in each month to support his father, mother and younger brother. On the basis that the amount of \$2,055.50 was shared among the 3 dependants equally, each of the dependants would be dependent on the deceased's earnings to the extent of: $\$2,055.5 \div 3 = \685 per month.

3 The father died because of his illness on 12 April 2005, about 3 months after the deceased's accident. As such, he would be dependent on the deceased's earnings for only 3 months. Thereafter, the sum of \$685 per month that would have been used to support the father would be spent for the support of the mother and the younger brother after 3 months, thus increasing the value of the dependency on the deceased to \$1,027.50 per month each. This would have continued for a period of about 2 years until the deceased had his income increased to \$8,458 per month when he qualified as a junior cook and would be able to contribute more for the financial support of the mother and the younger brother. It is probable that the monthly financial contribution to the mother and the younger brother would have been increased by \$1,500 per month from \$1,027.50 to \$2,527.50. According to Mr Daniel K K Chan, counsel for the Plaintiff, 35.39 months have now lapsed since the deceased's death. The pre-trial loss of dependency suffered by the dependants should therefore be as follows:

- (a) the father: $\$685 \times 3 \text{ months} = \$2,055$
 - (b) the mother: $\$685 \times 3 \text{ months} + \$1,027.50 \times 21 \text{ months} + \$2,527.50 \times 11.39 \text{ months} = \$52,421$
 - (c) the younger brother: $\$685 \times 3 \text{ months} + \$1,027.50 \times 21 \text{ months} + \$2,527.50 \times 11.39 \text{ months} = \$52,421$
- The total amount of the pre-trial loss of dependency suffered by the dependants can therefore be summarised as follows: $\$2,055 + \$52,421 + \$52,421 = \$106,897$. The Defendant is not seriously contesting the Plaintiff's claim for pre-trial loss of earnings and I therefore assess such loss accordingly.
- Post-trial loss of earnings** At the time of the accident, the deceased was 18 years old, and the mother and the younger brother were respectively 44 and 15 years old. After considering the facts in the case of *Chan Yi Hung*, administrator for and on behalf of the estate and dependants of *Chan Chak Kam v Yeung Chun Pong Andrew*, unreported, HCPI 1496 of 2000 (decision of Master de Souza on 23 April 2002), I am of the view that the circumstances surrounding the claim for loss of dependency by the parents there are very similar to those in the present case. In that case, the father and the mother were respectively aged 50 and 43 at the time of the deceased's death, the trial took place about 2 years after the accident and a post-trial multiplier of 12 was adopted. As a common multiplier was adopted for both the older father and the younger mother in the *Chan Yi Hung* case, I am of the view that a slightly higher multiplier of 14 should be adopted for the younger Plaintiff mother in the present case. The younger brother is now 18 years old and a Form 3 student, and it is likely that the younger brother would continue his studies in the

near future. I am of the view that the post-trial multiplier of 2 as claimed by the Plaintiff is reasonable. The Plaintiff agrees that the younger brother would end his studies sometime in the future. After that, had the deceased not been killed in the accident, both the deceased and the younger brother would make contribution for the maintenance of the family. Obviously, the contribution by the deceased can be reduced by that time. According to the Plaintiff, a monthly contribution of \$4,000 would barely be sufficient. I have taken into account the possible increase in the medical expenses with the age of the mother, and that the existing monthly expenses of the household (excluding the personal expenses of the younger brother and a portion of the food expenses) would be in the region of about \$5,000, I am of the view that the 2 brothers would probably make a total monthly contribution of about \$5,000 to the mother. As I anticipate that the contribution would be equally borne by the 2 brothers, the share of the deceased's contribution is probably about \$2,500 a month. I therefore divide the post-trial loss of dependency into 2 periods. For the period when the younger brother is still studying, the loss would be as follows:

- (a) for the younger brother: $\$2,527.50 \times 12 \times 2 = \$60,660$
- (b) for the mother: $\$2,527.50 \times 12 \times 2 = \$60,660$ For the period after the younger brother becomes independent, the loss of dependency of the mother would be: $\$2,500 \times 12 \times (14 - 2) = \$360,000$. Pain, suffering and loss of amenities The deceased died in hospital 2 days after the accident. It is the Plaintiff's case that the deceased suffered pain before his death, and so the Plaintiff, on behalf of the deceased's estate, claims damages in respect of the same. However, according to the evidence of the Plaintiff, the deceased had all along been unconscious after the accident. As the deceased was probably unable to feel any pain before his death, no award should be made under this head of damages (see: Butterworth's Hong Kong Personal Injuries Service, volume 1, paragraph III [102]). It is true that in some of the cases where there was a long lapse of time between the accident and the death of the deceased and the deceased was mostly unconscious, an award for pain and suffering would still be made to reflect the possibility that the deceased might have felt some pain immediately after the accident and thereafter if the deceased was in fact conscious (see: the same paragraph in Butterworth's Hong Kong Personal Injuries Service, *ibid.*). However, since there was only a short lapse of time between the accident and the death in the present case, I do not make any award under this head of damages. Loss of accumulation of wealth The deceased was killed on the first day of his first job, and so it is very difficult to know whether the deceased would have been able to accumulate wealth by the time of his natural death. Obviously, the Plaintiff cannot establish any saving pattern on the part of the deceased, but it is now widely accepted that this is not an absolute prerequisite for an award for loss of accumulation of wealth. If the deceased's habits and lifestyle indicate a probability that he would accumulate wealth, then an award can still be made for such loss (see: *Ho Pang Lin & Anr. v Ho Shiu On & Anr.* [1994] 2 HKLR 313, *Kwan Yau Tai & Anr. v Eng Kong Container Services Limited & Anr.* [1998] HKLRD 329 and *Wong Yuk Fung v Lee Shu Yung & Anr.* [2002] 3 HKLRD 292). In the present case, the deceased was a young man of 18 years old when he had the unfortunate accident. He was then keen to start working so that

his family need not rely on public assistance. It is the Plaintiff's evidence that the deceased was a diligent and frugal young man and was a caring and loving son. At this young age, he was already minded to support the family and to reduce the dependency on public assistance. With such a responsible lifestyle and the possible advance in his career as a cook, it is probable that he would save up part of his earnings and accumulate wealth when he is in a position to do so. However, I cannot ignore the fact that the deceased received education only up to Form 3 level, and so I make a global award of \$100,000 for loss of accumulation of wealth in the present case. Loss of gratuity services The court would sometimes make an award for loss of gratuity services in a case of the death of a mother who spent most of the time in the family taking care of household duties. Although the deceased did assist in some household duties prior to his death, it would not be reasonable to expect him to make the same contribution once he started his work as a kitchen apprentice. The evidence shows that the deceased had long working hours. He left home early at about 9 am in the morning and finished work at 8 pm in the evening. In such circumstances, one cannot expect him to make much contribution to household duties. As I see it, even if the deceased had not been killed at the accident, it would be the mother and the younger brother who would be mainly responsible for all the household duties at home. In such case, it is not appropriate to make an award for such head of claim. Damages for bereavement and funeral expenses Damages for bereavement and the funeral expenses are agreed at the respective sums of \$150,000 and \$50,500.

Conclusion

The Plaintiff's claim can therefore be assessed as follows: Claim under the Fatal Accident Ordinance, Cap.22:

- (i) pre-trial loss of dependency: \$106,897 (ii) post-trial loss of dependency: \$481,320 (iii) damages for bereavement: \$150,000 Claim under the Law Amendment Reform (Consolidation) Ordinance, Cap.23: (iv) loss of accumulation of wealth: \$100,000
 - (v) funeral expenses: \$50,500 Total: \$888,717 Less 50% on liability: \$444,358.5 (David Lok)
- District Judge Mr Daniel K K Chan, instructed by Messrs Louis Chan & Co., for the Plaintiff
Mr K C Chan, instructed by Messrs Simon C W Yung & Co., for the Defendant PAGE - PAGE
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