

HONG KONG / JUDGMENT

LO SIU NING v. CHAN KAI HING AND ANOTHER

COURT

Court of First Instance

DECIDED

31 August 2007

CASE / FILE NUMBER

HCPI301/2004

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bjbj HCPI 301/2004 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE PERSONAL INJURIES ACTION NO. 301 OF 2004

BETWEEN LO SIU NING Plaintiff CHAN KAI HING 1st Defendant LING KA KUI 2nd Defendant

Coram : Before Master K.H. Hui in Court Date of Hearing : 4 and 5 July 2007 Date of Judgment : 31
August 2007

ASSESSMENT OF DAMAGES

Introduction

1. By the Statement of Claim filed on 2 April 2004, the Plaintiff claimed against the Defendants for damages for personal injury, loss and damages arising out of the negligent driving of a light goods vehicle bearing registration number EU7122 by the 1st Defendant, servant and/or agent of the 2nd Defendant, on 21 November 2002 at Aberdeen Reservoir Road near Yue Kwong Road, Wong Chuk Hang, Hong Kong.
2. Interlocutory judgment on liability was obtained on 20 May 2004 with damages to be assessed. The Plaintiff's case
3. The Plaintiff was born on 5 November 1962. She was 40 years old by the time of the accident. She was 45 at the date of the assessment.

4. On 21 November 2002, the Plaintiff was on her way to work walking uphill along the pedestrian pavement by the side of Aberdeen Reservoir Road, Wong Chuk Hang, Hong Kong. The 1st Defendant's light goods vehicle was traveling up the road. Suddenly, it lost control, rolled backwards and mounted onto the pavement after knocking down 7.5 metres of iron railing. It knocked down the Plaintiff and trapped the Plaintiff under the rear wheel. 4.8 tons of stone and pebbles which were loaded on board of the vehicle fell down and covered the lower body of the Plaintiff. At that time, the Plaintiff was conscious and alert. It was only 15 minutes afterwards that firemen arrived and rescued her out. The Plaintiff was then sent to the Accident and Emergency Department (A & E Department) of the Queen Mary Hospital (QMH) for medical treatment.
5. According to the medical report of Dr. Peter CHEE (medical officer, A & E Department, QMH) dated 29 August 2003, the Plaintiff complained of pain over her right chest wall, right hip and right thigh upon admission. There were tenderness at her right chest wall, right groin and right anterior thigh regions. Skin bruises were also detected at her right groin and right anterior thigh. X rays of the Plaintiff's cervical spine, chest, right femur and pelvis shown no fracture.
6. The Plaintiff was transferred to the surgical intensive care unit for further treatment. Dr. LEUNG (medical officer of the Department of Orthopaedic Surgery, QMH) in his medical report dated 26 August 2003 noted that the Plaintiff complained of right lower limb numbness and weakness on admission. Physical examination shown weakness of right lower limb muscle. Power of right hip flexion and knee extension was about 4/5, while that of right ankle dorsiflexion, plantiflexion, extensor and flexor hallucis longus (EHL & FHL) were about 1/5. There was also decrease in pinprick sensation over right lower limb especially at the L5/S1 dermatome. Anal tone was present but weak. Reverse supinator reflexes and Hoffmann sign were positive over both upper limbs. An X ray examination of the left clavicle shown suspected crack at distal one-third.
7. The Plaintiff was treated conservatively and she achieved gradual recovery in the lower limbs, with the power of EHL and FHL improved to 3/5. Examination on 30 November 2002 shown that the power of right lower limb was about 5/5 at and above knee and about 3/5 below knee level. There was hyperaesthesia over right L5/S1 dermatome. Anal tone was present but weak.
8. On 1 December 2002, the Plaintiff was transferred to MacLehose Medical Rehabilitation Centre (MMRC) for further rehabilitation. The Plaintiff received physiotherapy and occupational therapy. The Plaintiff had acute stress reaction to the trauma.
9. The nerve conduction test on 7 December 2002 shown features suggestive of sacral plexus injury. The test was subsequently repeated on 4 September 2003 and shown that the previous abnormality had returned to normal.

10. The Plaintiff was discharged from MMRC on 24 December 2002 and she received follow-up treatments at Duchess of Kent Children s Hospital (DKCH). The Plaintiff continued to suffer from stiffness in left shoulder, persistent low back pain and bilateral lower limb numbness.
11. The Plaintiff was readmitted to QMH on 18 September 2003 and discharged on 22 September 2003 because of post-traumatic disorder and depression. From 6 June 2004, the Plaintiff was hospitalized for a week at QMH for assessment of her ongoing low back pain. Physical examination shown bilateral lower limb weakness and sensory deficit.
12. MRI performed on 12 July 2004 shown a neurofibroma involving the right T12 exiting nerve root at the right T12/L1 intervetebral foraman. There was also minimal degenerative spondylosis present in the cervical spine. The doctors opined that the said findings could not fully explain her continuous complaint of severe weakness and numbness in the lower limbs.
13. The Plaintiff was first seen by the doctor of the Pain Clinic of DKCH on 27 August 2004. She complained of persistent back pain and parathesia over both limbs since injury; poor sleep quality because of the pain; and problems in controlling the bowel opening and urination.
14. The MRI examination of the thoracic spine on 4 November 2004 also shown neurogenic tumour involving the right T12 nerve root. Neurological assessment done on 6 December 2004 indicated that neurosurgical intervention was not necessary as the weakness and numbness of the lower limbs could not be explained by the tumour.
15. The Plaintiff continued to receive orthopaedic treatment for the persistent low back pain and bilateral lower limbs weakness and numbness.
16. In fact, since the discharge from MMRC, the Plaintiff reported deteriorated mental state with increasing anxiety symptoms. She developed phobia towards the vehicles on the street and did not manage to go out alone. Her anxiety was triggered by all kinds of noise, including the noise from electrical appliances or human. These various noises triggered her memory of the accident and these recollections or flashbacks of the accident made her feel very distressed. In addition, she suffered from hyper-arousal symptoms like palpitation, hand tremor, sweating and woken up in the middle of the night because of vivid nightmares of the accident.
17. The Plaintiff received follow up treatment at Western Psychiatric Centre after her discharge from QMH in September 2003. The treatments appeared helpful. The Plaintiff could function well at home though she was still afraid of going out alone at that time.
18. However, in late July 2004, the Plaintiff was admitted into the Department of Psychiatry of QMH, because of sudden deterioration of mental state precipitated by financial crisis (she was forced to sell her home) and persistent back pain. She suffered from depression and had suicidal idea. Upon admission, she was diagnosed to have adjustment disorder while the post-traumatic stress disorder was in partial remission. She was hospitalized for 4 days.

19. After discharge, the Plaintiff continued to receive follow up treatments at Western Psychiatric Centre.
20. Three months later on 4 November 2004, the Plaintiff was again admitted into the Psychiatric Ward of QMH, and was hospitalized for 19 days. She was anxious after she had moved to her new flat. She was disturbed by the noisy environment of the new home and the braking noise of bus reminded her of her road traffic accident. She became hepervigilant and worried that a road traffic accident might happen again. She had worthless thinking as she was a burden to her family. She was diagnosed to have post traumatic stress disorder as the principal diagnosis and adjustment disorder as the secondary diagnosis. The Plaintiff received follow up treatments at Western Psychiatric Centre after discharge.
21. The Plaintiff gave evidence in court. She adopted the contents of her witness statement as her evidence in chief. She told the court that she had tried to return to her pre-injury work as a health care worker on 4 different occasions. However, because of her physical disability, poor concentration and slow in responding to emergency situation, she quitted the jobs.
22. She is still receiving out patient treatments at Western Psychiatric Centre and MMRC etc. The Plaintiff is now working as a security guard earning \$4,500 per month.
23. Under cross examination, the Plaintiff told the court that she ceased using walking stick since April 2006 as the power of her right leg almost resumed normal. At around that time, she also recovered from phobia of vehicle.
24. Mr. Ma Kwok Ki, the husband of the Plaintiff, also gave evidence. He adopted the contents of his witness statements as evidence in chief. He quitted his job in August 2004 so as to take care of the Plaintiff. Notwithstanding the fact that the Plaintiff returned to work in May 2006, Mr. Ma was unable to find a new job until October 2006.
25. Dr. Wong Chung Kwong, an expert in psychiatry for the Plaintiff, examined the Plaintiff on 27 April 2004. In his report dated 23 June 2004, he was of the view that the Plaintiff suffered from post-traumatic stress disorder and major depressive disorder.
26. Dr. Wong saw the Plaintiff again on 20 May 2005. In his report dated 30 May 2005, he maintained his previous views as mentioned above. He further opined that the Plaintiff shown the phenomenon of abnormal sick role behaviour. The doctor was of the view that the reasons for abnormal sick role were often multiple and might not always be conscious. It was usually precipitated by a genuine illness or accident. Patients often believed they had not recovered from the illness or accident. They continued to suffer from symptoms and limitation of functioning due to the symptoms. In the present case, the Plaintiff believed that she was severely traumatized in her back, and as a result she was worried and unhappy. The anxiety and unhappiness sensitized her to the residual back pain, and thus a vicious circle generated quickly. Trapped in the pain and the erroneous belief, the Plaintiff was unable to pull herself out and return to work again. The longer she did not work, the deeper she would be in the abnormal sick role. Dr. Wong further stated that patients would have exaggerated

symptoms and/or symptoms that cannot be explained by the original illness or accident.

27. Dr. Wong opined that the Plaintiff should be granted sick leave until the completion of a 4 month treatment. She would be in the position to resume working on a full time basis after completion of the entire course of treatment lasting for 16 months.
28. Dr. Chung See Yuen, a specialist in psychiatry for the Defendant, examined the Plaintiff on 1 September 2004. He was also of the view that the Plaintiff suffered from post-traumatic stress disorder. However, the Plaintiff was just suffering from depression but not major depressive disorder. The doctor said that the depression was caused to a large extent by the Plaintiff's financial problems and the need to sell her flat. The Plaintiff was capable of returning to her pre-accident job by late 2003.
29. Dr. Chung was of the view that signs of severe depression like psychomotor, decreased energy, difficulty in thinking, concentration or making decisions were not present. The Plaintiff's concentration was not affected. There was no hallucination or delusion. The Plaintiff was oriented in time, place and person. Her intelligence was within normal limits. Her memory function was intact. Yet, Dr. Chung was of the view that the Plaintiff needed continue treatment up to one year after the conclusion of the litigation.
30. The Plaintiff was examined by her doctor, Dr. Tsoi Chi Wah, a specialist in Orthopaedics and Traumatology, on 2 July 2004. The Plaintiff complained
 - (i) left shoulder pain even at rest; worse after left arm excessive movement; (ii) numbness over left shoulder on mornings; (iii) sometimes the left shoulder pain radiated up to involve neck and head; back pain radiated down to both hips; the pain sometimes radiated down to left knee and right ankle; weakness of both lower limbs with fluctuating intensity; unable to walk for 5 minutes; difficult in passing urine, constipation; numbness of both lower limbs, worse on right side and back pain during sexual intercourse, loss of sexual interest.
31. Physical examination found that the Plaintiff
 - (i) appeared depressed, nervous and anxious; (ii) walked with mild limping when aided with a stick; limping became more severe when walked unaided; could not squat down; could not perform tip toe walking and poor balance on heel walking.
32. Examination of the shoulder shown
 - (i) diffuse tenderness over anterior, lateral and posterior aspect of shoulder; (ii) distal clavicle was tender on percussion; flexion (left - 160 ; right - 180); extension (left - 40 ; right - 50); abduction (left - 160 ; right - 180); and generalized weakness (5-/5) of shoulder motion towards all planes.
33. Examination of the neck shown left paraspinal and left trapezius muscles were tender.

34. Dr. Tsoi also found that there was diffuse tenderness over whole lumbar and both gluteal region; generalized weakness (4/5) of both lower limbs involving all joints; and generalized reduced sensation affecting whole lower limb on both sides and included perineal region.
35. Dr. Tsoi noted that the Plaintiff suffered from crack fracture over distal one third of the left clavicle which was treated conservatively and good union was achieved. There was residual pain and stiffness around the left shoulder because the surrounding soft tissue were also traumatized in association with the clavicular fracture. The residual inflammation and scarring of the injured tissues could explain the pain and residual stiffness. Nevertheless, the degree of pain and area of involvement were more than that can be explained by orthopaedic means. The disproportional symptoms may be related to the associated mental disorder.
36. Dr. Tsoi also formed the view that the Plaintiff suffered from rather severe soft tissue crushed injury of her back and pelvis during the accident. He believed that the Plaintiff suffered from lumbar plexus nerve injury (neuropraxia). The doctor opined that it was always possible to have residual numbness and pain that may last for years though the severity of pain and weakness is less than what the Plaintiff described. Such symptom magnification may also be related to her mental disorder.
37. Dr. Tsoi also opined that the Plaintiff would have difficulty in performing strenuous manual work and thus may not be able to resume her pre-injury job that involved a lot of heavy lifting. However, the Plaintiff was still fit to perform lighter duty nursing work. Regarding the left shoulder, lower back and pelvic contusion, sick leave up to 18 months was acceptable.
38. The Plaintiff was examined by Dr. Lam Kwong Chin, a specialist in Orthopaedics and Traumatology, for the Defendant, on 21 October 2004.
39. Dr. Lam noted that the Plaintiff could walk in a normal gait unaided; there was diffuse tenderness claimed at midline and both sides of whole neck; the backward extension, sideward flexion and rotation of the neck were below normal; the Plaintiff complained of tenderness at left outer clavicle and bicipital groove; there were some limitations in shoulder movement; the Plaintiff complained of numbness of whole left upper limb, worse at outer arm, forearm and thumb; the Plaintiff complained of tenderness at midline from lower lumbar to sacrum, maximum at lumbar-sacral junction; there were some limitations in back movement; and the Plaintiff complained of numbness of whole right lower limb; worse at upper thigh.
40. Dr. Lam opined that

- (i) the neck pain should not be a severe one in the light of normal alignment (preservation of cervical lordosis) and absence of muscle spasm; (ii) the magnitude of the complained tenderness at the left outer clavicle and bicipital groove was not proportional to the injury suffered; and (iii) the complaints of numbness at upper and lower limbs and the back pain could not be explained from orthopaedic view.
- 41. Dr. Lam observed that as far as orthopaedic injury is concerned, there should be little physical problem for the Plaintiff to resume her pre-injury work although these might be some residual pain. He further stated that sick leave for 6 months should be adequate.
- 42. The Plaintiff was jointly examined by Dr. Tsoi and Dr. Lam on 3 November 2005. On that day, the Plaintiff complained that there was lower back pain mainly over the lumbo-sacral region; she cannot lie in one position for long period of time and has to change posture. The back pain will wake her up after sleeping for 2 to 3 hours; sometimes the pain radiated down to the right leg and heel; the right lower limbs was weak; she can walk up to 30 minutes unaided; she had fear and anxiety when hearing traffic noise; she still has headache; there was mild left shoulder discomfort; and she can sit up to 15 to 30 minutes.
- 43. The doctors concluded that the neurogenic tumor at the right side T12 nerve root can explain the Plaintiff's right groin and buttock sensory discomfort (including pain, numbness and impaired sensation). It was however unrelated to the accident.
- 44. In their supplemental report dated 19 December 2005, Dr. Tsoi opined that the Plaintiff was able to return to her pre-injury job if duties involving extreme weight lifting can be exempted. Dr. Lam was of the view that although there might be some residual pain, it was not a strong barrier preventing the Plaintiff to resume her work as a health assistant.
- 45. Dr. Tsoi then stated that the Plaintiff would be able to resume her pre-injury job 2 years after the accident. Dr. Lam maintained his view that 6 months sick leave should be adequate. It can be seen that there is no big difference between the views of Dr. Tsoi and Dr. Lam in so far as the physical injury sustained by the Plaintiff is concerned. The only difference is whether the Plaintiff can resume her pre-injury job and the duration of sick leave. The Defendants case
- 46. The Defendants did not call any witness. Nevertheless, 2 surveillance tapes were produced as exhibit. The footages were taken on 1 September 2004, 3 September 2004, 4 September 2004, 6 September 2004, 7 September 2004, 30 September 2006, 4 October 2006 and 10 October 2006 respectively. I am of the view that there is nothing significant in the tapes. Pain, Suffering and Loss of Amenities
- 47. Mr. Lam, Counsel for the Plaintiff, submitted that the Court should consider the followings:
 - (a) the Plaintiff was admitted into hospital on 6 different occasions for a total of 71 days;
 - (b) the Plaintiff was granted sick leave for more than 2 years until end of 2004 (except from December 2003 to March 2004);

- (c) the Plaintiff was still receiving specialist treatments from psychiatrist and clinical psychologist at Western Psychiatric Centre; the Plaintiff's problems adversely affected her family; the Plaintiff had to sell her matrimonial home as the Plaintiff was unable to work by reason of the accident and thus unable to pay the monthly mortgage loan; and the Plaintiff was unable to sit the nurse qualifying examination.
48. Mr. Lam had referred me to the following authorities and submitted that an award of HK\$600,000 is appropriate. Post-traumatic Stress Disorder and Depression
- (a) Yan Kwok Yue v Dong Shu Kei Beau (High Court Personal Injuries Action No. 923 of 2000, Deputy High Court Judge Longley, 22nd January 2002, [2002] HKLJ 213) an award of HK\$500,000;
- (b) Tsui Ho and Others v The Incorporated Owners of Albert House and Others (High Court Personal Injuries Action No. 828 of 1997, The Hon. Suffiad J., 17th September 2001, [2001] HKLJ 534) an award of HK\$525,000;
- (c) Ng Pak Mui and Others v The Incorporated Owners of Albert House and Others (High Court Personal Injuries Action No. 828 of 1997, The Hon. Suffiad J., 17th September 2001, [2001] HKLJ 532) an award of HK\$430,000;
- (d) Joan Carol Boivin v Wong King Yin and Another (High Court Personal Injuries Case No. 195 of 2000, The Hon. Suffiad J., 14th February 2001, [2001] HKLJ 171) an award of HK\$475,000;
- (e) Yu Heung Yuk v Ho Man and Others (High Court Personal Injuries Action No. 57 of 1998, The Hon. Longley Deputy J., 12th August 1999, [1999] HKLRD 386) an award of HK\$440,000; Orthopaedic Injury
- (f) Yu Pun Yuen v Ng Kwok Man trading as East Mountain Engineering Company (Bankrupt) and Others (High Court Personal Injuries Action No. 293 of 2002, The Hon. Suffiad J., 9th May 2003, [2003] HKLJ 494) an award of HK\$450,000;
- (g) Li Kwok Lo v Caf de Coral Holdings Limited (High Court Action No. 804 of 2001, The Hon. Day Deputy J., 5th November 2002, [2002] HKLJ 723) an award of HK\$360,000; and
- (h) Chow Wai Ming v Chan Yuk Charm (High Court Personal Injuries Action No. 1111 of 1996, The Hon. Woolley Deputy J., 13th October 1999, [1999] HKLJ 492) an award of HK\$300,000.
49. Mr. Lin, Counsel for the Defendant, referred the Court to the following authorities:
- (i) Chan Sui Youn v Ng Kam Man (HCPI 533/1999, Recorder Ronny Wong, SC, 28 July 2000); (ii) Chiu Wing Sze Karby v Chan Ying Wai (HCPI 616/1999, Deputy Judge Muttrie, 2 April 2001); and (iii) Yung Wun v Kum Shing (K.F.) Construction Company Ltd (HCPI 679/2004, Deputy Judge Muttrie, 27 June 2007). Mr. Lin submitted that the award under this head should not exceed \$150,000.

50. It should be noted that, from orthopaedic view, the Plaintiff had made a good recovery from her physical injury though there is residual pain for the soft tissue injuries of the back and lower limbs.
51. While Dr. Wong and Dr. Chung were of the view that the Plaintiff suffered from post-traumatic stress disorder, they differed about the seriousness of depression that the Plaintiff was suffering.
52. I noted that Dr. Wong examined the Plaintiff twice in April 2004 and May 2005 respectively. Dr. Chung only examined the Plaintiff once in September 2004. Further there is nothing from the Defence to contradict the views of Dr. Wong as stated in his 2nd medical report dated 30 May 2005 and in particular, his views on abnormal sick role .
53. The Plaintiff was admitted to psychiatric ward in QMH for 19 days in November 2004, 2 months after Dr. Chung examined her. This piece of fact demonstrated that the mental conditions of the Plaintiff fluctuated, sometimes better and sometimes worse. This may help to explain why Dr. Wong and Dr. Chung came to different conclusion as stated above. Indeed, what is more important is the actual conditions of the Plaintiff but not how it is termed medically: major depressive disorder used by Dr. Wong and depression used by Dr. Chung. Mr. Lin submitted that the Plaintiff was not a credible witness. He submitted that the plaintiff s evidence was contradicted by that of her husband: the Plaintiff said that she used walking stick from the time of first discharge until April 2006 while Mr. Ma said that the Plaintiff used the stick for a few months after discharge and there was a gap in between when she had to use the stick again because of onset of weakness to the right leg. I do not think that it is a material discrepancy. Under cross-examination, Mr. Ma said he cannot really recall for how long did the Plaintiff use a walking stick. When being pressed, he accepted that the Plaintiff had ceased using the stick for a short period, around 1 to 2 months, before using a stick again. The only discrepancy is the short period during which the Plaintiff ceased to use a walking stick. I have carefully observed the Plaintiff s demeanour while she was giving evidence. I am of the view that she is a truthful and reliable witness. I accept her evidence. The disabilities suffered by the Plaintiff tallied with the findings and observations of Dr. Wong. For the reasons aforesaid, I accept Dr. Wong s views and diagnosis.
55. I have considered the authorities cited by counsel and the disabilities suffered by the Plaintiff. In all the circumstances of this case, the reasonable and fair award under this head is \$400,000. Pre-trial loss of earnings
56. The Plaintiff received 3 years full-time training in nursing care in Mainland between 1979 to 1982. Thereafter she worked as a nurse for 15 years before she came to Hong Kong. At the time of the accident, the Plaintiff worked as a health care worker at Yi Lok Adult Training Centre managed by Fu Hong Society and earned a monthly salary of \$11,205.

57. Mr. Lam submitted that but for the accident, the Plaintiff would have continued to work as a health care worker. Information from Fu Hong Society shown that the monthly salary of one of their employees who had similar experience and qualification like the Plaintiff earned \$11,540/month in 2003, \$11,850/month in 2004, \$12,180/month in 2005 and \$12,510/month in 2006.
58. I fully accept Mr. Lam's submission in the light of the Plaintiff's previous satisfactory performance and the invitation from Fu Hong Society to return to work for them. What I cannot accept is the projection of salary increase in 2007. That is not supported by evidence at all. I will assume that the salary in 2007 remains at \$12,510/month for the purpose of this assessment.
59. Dr. Lam opined that although the Plaintiff might have suffered from some residual pain, she should be able to return to her pre-injury work. It may be the case that if the Plaintiff bears the residual pain, she can return to her previous job. However, it is unreasonable to expect or to ask the Plaintiff to do this. I see no reason why the Plaintiff should do this.
60. In fact, I am of the view that it is the mental conditions of the Plaintiff rather than her physical disabilities that prevent her from returning to work. Dr. Wong was of the view that the Plaintiff should be able to take up full-time employment after receiving further treatment lasting for 16 months.
61. Having said these, the fact is that since May 2006, the Plaintiff had tried to work as a health care worker on 4 different occasions but eventually quit the jobs as she was unable to cope with them for the reasons set out hereinabove. The particulars of the duration and income earned are as follow:
- | | | |
|-----|--|----------|
| (a) | May 2006 (1/2 month) | \$4,000 |
| (b) | July to September 2006 (3 months) | \$28,950 |
| (c) | December 2006 to January 2007 (1.5 months) | \$12,000 |
| (d) | March 2007 (3 months) | \$20,400 |
62. In the light of the matters aforesaid, I accept that the Plaintiff subjectively would like to return to her previous job but her conditions do not permit her to do so.
63. The average earning for the period of 57 months from December 2002 to August 2007 is $(\$11,205 + \$12,510)/2 = \$11,858$. The total earnings that the Plaintiff could have earned but for the accident is $\$11,858 \times 57 \text{ months} = \$675,906$.
64. The total award under this heading including MPF is $(\$675,906 - \$65,350) \times 1.05 = \$641,084$.
Post-trial loss of earnings
65. The Plaintiff was 40 years old at the time of the accident and is now almost 45 years old.

66. Mr. Lam submitted that the court should adopt a multiplier of 10 and refer the court to the following authorities:
- (a) Kwan Shek Sang v Chan Kam Wah trading as Wing Wah Air-Conditioning Engineering (a firm) (HCPI 872/2000, Suffiad J, 9 June 2003)
 - (b) Ho Shu Yau v Lo Siu Ling (formerly trading as Chi Wo Civil Engineering Company) and another (HCPI 1336/2000, Master M. Yuen, 31 January 2002)
 - (c) Luk Chi Yin v Wong Fung Shing (HCPI 496/1997, Deputy Judge Jackson, 6 November 1998)
 - (d) Sung Fuk Wah v Lam Wai Leuk (HCA 3676/1994, Master O Donnell, 13 March 1995)
67. I am of the view that a multiplier of 9 is appropriate in all the circumstances of this case.
68. I accept Mr. Lam's submission that the Plaintiff could earn at the most \$6,000/month by reason of her disability and the conditions of the current labour market.
69. I make an award including MPF at the sum of \$738,234 under this head $(\$12,510 - \$6,000) \times 9 \times 12 \times 1.05$. Loss of Earning Capacity
70. The Plaintiff claims a sum of \$72,000 $(\$6,000 \times 12)$ under this head.
71. As Browne LJ said in *Moliker v A Reyrolle & Co Ltd* [1977] 1 WLR 132, 142 A-C The consideration of this head of damages should be made in two stages. (1) Is there a substantial or real risk that a Plaintiff will lose his present job at some time before the estimated end of his working life? (2) If there is (but not otherwise), the court must assess and quantify the present value of the risk of the financial damage which the Plaintiff will suffer if that risk materialize, having regard to the degree of the risk, the time when it may materialize, and the factors, both favourable and unfavourable, which in a particular case will, or may, affect the Plaintiff's chances of getting a job at all, or an equally well paid job.
72. It is clear that the Plaintiff is handicapped to certain extent by reasons of her residual disabilities and mental problems. I make a global award of \$50,000 under this head. Loss of earnings of the Plaintiff's husband
73. Mr. Ma, who was a delivery worker earning \$9,000/month, quitted his work on 18 August 2004 in order to take care of the Plaintiff and to prevent her from killing herself. Mr. Ma returned to work in October 2006.
74. The Plaintiff only claimed such loss for 18 months totaling \$162,000 $(\$9,000 \times 18)$.
75. I accept the evidence of Mr. Ma and find that it is reasonable for him to adopt the course as he did in order to take care of the Plaintiff.
76. I make an award of \$162,000 as claimed. Special damages
77. The Plaintiff claimed a total of \$31,782 under this head: (a) Loss of property \$2,000 Medical expenses

- (i) in patient treatment \$5,852 (ii) out patient treatment \$2,090 (iii) consulting Dr. Ben Tay (pain expert) \$800 (iv) Chinese medicine and treatment \$1,040 Traveling expenses \$10,000 Tonic food \$10,000 \$31,782
78. The Defendants only accepted a global award of \$16,000.
79. The Plaintiff has failed to demonstrate why she had to seek treatment from Chinese medicine practitioners. I do not allow this claim.
80. As to the other items, I accept the submission of the Plaintiff and I do allow them. The award under this head is \$30,742. Future medical expenses
81. Both Dr. Chung and Dr. Wong opined that the Plaintiff needs further psychiatric medical treatment.
82. I see no reason why the Plaintiff should not be entitled to treatment in private sector though all along she received treatments in public hospitals.
83. The estimation of Dr. Chung for the treatment is \$48,000. The estimation of Dr. Wong is between \$60,000 to \$120,000 as the hourly rate charged by private practitioner ranges from \$2,500 to \$5,000.
84. I am of the view that a global award of \$60,000 under this head is reasonable.
85. To sum up, I make the following award: PSLA \$400,000 Pre-trial loss of earnings \$641,084 Post-trial loss of earnings \$738,234 Loss of earning Capacity \$50,000 Loss of earnings of the Plaintiff's husband \$162,000 Future medical expenses \$60,000 Special Damages \$30,742 \$2,082,060 Interest
86. Interest at half judgment rate will be awarded for special damages from the date of the accident to the date of judgment and thereafter at judgment rate until payment. Interest at 2% will be awarded for PSLA from the date of the writ to the date of judgment and thereafter at judgment rate until payment. Costs
87. I make an order nisi, to become absolute 14 days after the handing down of this judgment, that the Defendants do pay the Plaintiff costs of this assessment to be taxed if not agreed. Certificate to Counsel. (K.H. Hui) Master Mr. A. Lam instructed by Messrs C. L. Chow & Mackison for the Plaintiff Mr. P. Lim instructed by Messrs Kenneth C. C. Man & Co. for the Defendants - 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 ^U"FW T & 6" Normal.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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