

HONG KONG / JUDGMENT

SZE CHIU PAN v. ABLE ENGINEERING CO LTD

COURT

Court of First Instance

DECIDED

3 July 2007

CASE / FILE NUMBER

HCPI747/2005

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bjbj HCPI 747/2005 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE PERSONAL INJURIES NO. 747 OF 2005

BETWEEN SZE CHIU PAN Plaintiff and ABLE ENGINEERING COMPANY LIMITED Defendant

Before: Hon Saunders J in Chambers (Open to Public) Dates of Hearing: 28 June 2007 Date of
Judgment: 3 July 2007

RULING ON COSTS

Mr Sze was employed by Able Engineering as a construction site labourer at a site in handling. In the course of his work, on 7 September 2002, Mr Sze suffered a back injury. He was diagnosed to have suffered a sprained back. In September 2003, Mr Sze underwent a laminectomy. The writ was issued on 10 August 2005. The claim has now been settled in the sum of \$850,000. The question now arises as to the scale at which cost should be paid. Mr Sze's solicitors contended that cost should be on the High Court scale. Able Engineering's solicitors contended the scale should be District Court. The principal is clear. The question to be asked is, ignoring all questions of contributory negligence, did the plaintiff have a reasonable prospect of recovering a sum of money in excess of the High Court jurisdiction: see *Lai Ki v B + B Construction Co Ltd* [2003] 3 HKLRD 192. At the date of the accident Mr Sze was aged 55. At the date of issue of the writ he was aged 57. He had suffered a previous back condition. Mr Sze says that he would have gone back to work, if he could have got work as a security guard or the like, but he could not have gone back to work as a construction work. It was argued for the defendant that the pre-existing condition was such that both PSLA and post-trial earnings loss should be substantially reduced, the post-trial

earnings loss to zero. Whether they would have been reduced was a matter for trial and for the assessment of Mr Sze. His position was that he would have worked until 65, and that if he had not been able to return to work on a construction site he would get work as a security guard. The statement of damages sought \$600,000 for PSLA. Having regard to the fact the injury was a back injury and that surgery had been required that was not an unreasonable starting point, although I have no doubt that Mr Sze would have been advised that that sum might well be reduced in the course of resolving the claim. The defendant asserts \$300,000. It would not be unreasonable to argue for \$450,000. The defendant accepts a pre-trial loss of earnings and MPF of \$350,000. Those advising Mr Sze argued for a pre-trial earnings loss of \$450,000. That is not unreasonable. Mr Sze was earning \$14,500 a month as a construction worker. On the basis that he could not return to work as a construction worker after the notional date trial, but could obtain work as a security guard or the like at \$7,000 per month, his monthly loss is \$7,500. It is certainly arguable on behalf of a construction worker that he could work until the age of 65. Having regard to the pre-existing condition and Mr Sze's age a multiplier of 5 is not unreasonable. On that basis post-accident earnings loss could reasonably be argued at \$450,000. To those sums must be added special damages, loss of MPF on future earnings, and interest on PSLA, a total sum in the order of \$100,000. In any calculation Mr Sze must give credit for a total sick leave payment of \$212,000 received at the time of settlement, however at the time of the issue of the writ he had received only \$196,000. Weighing these figures I am satisfied that Mr Sze had, at the time the writ was issued, a reasonable prospect of recovering, before giving credit for the payment already received, \$1,450,000. It follows that Mr Sze had a reasonable prospect of recovering a sum of money in excess of the High Court jurisdiction, and that, applying the established principle, he is entitled to his costs on the High Court scale. The defendant must pay Mr Sze's costs in the action, including the argument on costs, to be taxed on a party and party basis in accordance with the High Court scale. The cost will also be taxed on Legal Aid Regulations. (John Saunders) Judge of the Court of First Instance High Court Mr Lam Chi Hung, of Messrs Cheung, Yeung & Co, assigned by DLA for the Plaintiff Mr Chan Chi Fung, of Messrs Chan & Chan, for the Defendant

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Prepared on 26 October 2026 · Esheria