

49/84

No. **22** 1984

**In the Privy Council**

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**ON APPEAL**

*FROM THE COURT OF APPEAL OF HONG KONG*  
(Civil Appeal No. 53 of 1983)

---

**BETWEEN**

LI PING SUM . . . . . Plaintiff (Respondent in this appeal)  
and  
CHAN WAI TONG . . . . . 1st Defendant (1st Appellant in this appeal)  
WONG SHOK TING . . . . . 2nd Defendant (2nd Appellant in this appeal)  
WONG PING . . . . . 3rd Defendant

(An appeal by the 1st and 2nd Defendants only)

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**RECORD OF PROCEEDINGS**

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Stephenson Harwood,  
Saddlers' Hall, Gutter Lane,  
London. EC2V 6BS

**Solicitors for the 1st and 2nd  
Defendants (Appellants)**

**JOHNSON, STOKES & MASTER,**  
**Solicitors for the Plaintiff (Respondent)**

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**In the Privy Council**

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(An appeal by the 1st and 2nd Defendants only)

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**RECORD OF PROCEEDINGS**

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**GALLANT Y.T. HO & CO.**  
Solicitors for the 1st and 2nd  
Defendants (Appellants)

**JOHNSON, STOKES & MASTER,**  
Solicitors for the Plaintiff (Respondent)

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# In the Privy Council

## ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

### BETWEEN

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and  
CHAN WAI TONG . . . . . 1st Defendant (1st Appellant in this appeal)  
WONG SHOK TING . . . . . 2nd Defendant (2nd Appellant in this appeal)  
WONG PING . . . . . 3rd Defendant

(An appeal by the 1st and 2nd Defendants only)

## RECORD OF PROCEEDINGS

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	Other documents:	
P1A-D	Medical receipt issued by Drs. Anderson & Partners Medical receipt issued by Dr. Harry S.Y. Fang Medical receipt issued by Dr. Tony T. Loy Medical receipts issued by Dr. Francis Ma	24th December 1982 28th December 1982 18th January 1983 11th February 1983
P2	3 Government receipts for hospital fees: (1) covering the date of 30.1.1981 (2) covering the period from 16.2.1981 to 18.2.1981 (3) covering the period from 18.2.1981 to 24.2.1981	Undated 17th March 1981 24th February 1981
P3	Bundle of Out-Patient Treatment Receipts each for \$3.00 bearing the following numbers and dates (in bracket) all issued by Kowloon Rehab. Centre (Physiotherapy Dept.):  C733527 (22.4.1981), C733881 (24.4.1981),  D172715 ( 1.5.1981), D173003 ( 4.5.1981), D533955 (22.7.1981), D533477 (20.7.1981), D532198 (13.7.1981), D533152 (17.7.1981), D531331 ( 8.7.1981), D531838 (10.7.1981), D530918 ( 3.7.1981), D530288 (29.6.1981), D525422 (12.6.1981), D525756 (15.6.1981), D529145 (23.6.1981), D524987 (10.6.1981), D524487 ( 8.6.1981), D524240 ( 5.6.1981), D179355 ( 1.6.1981), D179848 ( 3.6.1981), D179029 (29.5.1981), D178140 (25.5.1981), D178642 (27.5.1981), D177828 (22.5.1981), D176466 (13.5.1981), D177496 (20.5.1981), D173807 ( 8.5.1981), D173431 ( 6.5.1981),  E832686 (7.10.1981), E833519 (12.10.1981), E834514 (16.10.1981), E835349 (21.10.1981), E834844 (19.10.1981), E835844 (23.10.1981), E168501 (19.8.1981), E168242 (19.8.1981), E168985 (21.8.1981), E169779 (26.8.1981), E173189 ( 4.9.1981), E173525 (7.9.1981), E176010 (21.9.1981), E174713 (11.9.1981), E175675 (18.9.1981), E174238 (9.9.1981), E176445 (23.9.1981), E176893 (25.9.1981), E177230 (28.9.1981), E832441 (5.10.1981), E833213 (9.10.1981), E169288 (24.8.1981), E172216 (28.8.1981), E167766 (17.8.1981),	

Exhibit Mark	Description of Documents	Date
	<p>E167979 (17.8.1981), E167209 (12.8.1981),  E166746 (10.8.1981), E166420 (7.8.1981),  E163898 (5.8.1981), E162675 (27.7.1981),  E162400 (24.7.1981),</p> <p>F515360 (11.12.1981), F516453 (18.12.1981),  F112186 (26.10.1981), F514807 (9.12.1981),  F113458 (undated), F112738 (28.10.1981),  F116785 (9.11.1981), F117831 (13.11.1981),  F119237 (20.11.1981) F118157 (16.11.1981),  F514286 (7.12.1981), F512410 (27.11.1981),  F119571 (23.11.1981), F512746 (30.11.1981),  F862036 (11.1.1982), F118698 (18.11.1981),  F517249 (23.12.1981), F858596 (4.1.1982),  F515652 (14.12.1981), F516777 (21.12.1981),</p>	
P4	X-ray Laboratory Receipt	20th February 1981
P5	Medical certificate issued by a bone-setter	4th April 1981

In the Supreme Court of Hong Kong

High Court

Action No. 810 of 1982





Amended as in red pursuant  
to an order of Mr. Registrar  
Wilson dated this 1st day  
of April 1982.

1982 No. 810

Registrar (L.S.)

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

No. 1  
Amended Writ  
of Summons  
& Statement  
of Claim  
2.2.1982

BETWEEN

LI PING SUM

Plaintiff

and

10

CHAN WAI TONG

1st Defendant

WONG SHOK TING

2nd Defendant

WONG PING

3rd Defendant

To the 1st Defendant CHAN WAI TONG of Block C, 7th floor, 687 Nathan Road, Kowloon.

To the 2nd Defendant WONG SHOK TING of Room 17, Tung Chau Mansion, 280 Tung Chau Street, Shamshuipo, Kowloon.

To the 3rd Defendant WONG PING of Room 9, Tai Wing Bldg., 11/F., Tai Tung Sun Chuen, Kowloon.

20 THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claims set out on the back.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Registry of the Supreme Court the accompanying ACKNOWLEDGEMENT OF SERVICE stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued from the Registry of the Supreme Court this 2nd day of February 1982.

30

N.J. BARNETT  
Registrar, (L.S.)

Note: This Writ may not be served later than 12 calendar months beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

AMENDED STATEMENT OF CLAIM

1. On 30th January 1981 at about 9:40 a.m. the Plaintiff, then aged 25, was lawfully travelling as a passenger on board a 14 seater public light bus bearing registration prefix and number AU2603 (hereinafter called "the PLB") which was travelling along Prince Edward Road heading east. When the PLB, which had been travelling in the middle lane of Prince Edward Road, passed the Pak Ho Restaurant it suddenly pulled out to its right into the outer lane of Prince Edward Road directly in front of a goods vehicle bearing registration prefix and number AV7100 which was also heading east along Prince Edward Road. As a result, the said goods vehicle AV7100 hit the rear off-side of the PLB causing it to lose control and resulting in the PLB crashing through the iron railings dividing the East and Westbound carriageways of Prince Edward Road. The PLB overturned and came to a halt on the central dividing reservation. 10

2. At the time of the accident referred to in paragraph 1 hereof, the vehicle was owned by the 2nd Defendant and was being driven with her consent by her servant or agent the 1st Defendant in the course of the 1st Defendant's employment with the 2nd Defendant or alternatively, within the scope of the 1st Defendant's agency with the 2nd Defendant. 20

3. At the material time the said goods vehicle AV7100 was owned and driven by the 3rd Defendant.

4. The accident referred to in paragraph 1 hereof was caused by the negligence of the 1st Defendant and/or the 3rd Defendant.

Particulars of Negligence of the 1st Defendant

- a) Failing to keep any or any proper lookout before moving out into the outer lane;
- b) Failing to heed the presence of the said goods vehicle AV7100;
- c) Failing to stop, slow down, steer clear or otherwise control or manoeuvre the vehicle so as to avoid colliding with the said goods vehicle AV7100; 30
- d) Driving at a speed which was excessive in the circumstances;
- e) Driving in such a manner so as not to be able to take any action in the event of any emergency which might, and did arise;

- f) Failing to give any or any sufficient warning of his intention to move out into the outer lane.

No. 1  
Amended Writ  
of Summons  
& Statement  
of Claim  
2.2.1982

The Plaintiff intends to adduce evidence that in the North Kowloon Magistracy (Case No. NKS29431/81) on the 4th day of June 1981 the 1st Defendant was charged with, pleaded guilty to and was convicted of careless driving contrary to Section 14(1) of the Road Traffic Ordinance Cap. 220, such charge, plea and conviction being relevant to establishing or tending to establish that the 1st Defendant was driving the said vehicle at the time and place aforesaid, that the collision occurred at the time and place hereinbefore alleged and that the 1st Defendant's driving was negligent as hereinbefore alleged.

10

Particulars of Negligence of the 3rd Defendant

- a) Failing to keep any or any proper lookout or to observe or heed the presence or approach of traffic generally or of the PLB;
- b) Failing to have sufficient regard for the traffic conditions;
- c) Failing so to steer, control and manage the said goods vehicle AV7100 so as to avoid the collision;
- d) Failing to apply his brakes in time or at all;
- e) Failing to slow down or stop when dangers arose;
- f) Running into the rear of the PLB;
- g) Driving at a speed excessive in the circumstances;
- h) Failing to say any or sufficient heed to the right turn indicator given by the 1st Defendant.

5. So far as may be necessary the Plaintiff will rely upon the doctrine of res ipsa loquitur to establish that the collision was caused by the negligence of the 1st Defendant and/or the 3rd Defendant.

6. As a result of the accident referred to paragraph 1 hereof and the negligence of the 1st Defendant and/or the 3rd Defendant as hereinbefore particularised, the Plaintiff suffered personal injury, underwent pain and suffering and sustained loss and damage.

30

Particulars of Plaintiff's Injuries

- i) On admission to Queen Elizabeth Hospital on 30th January 1981 physical examination of the Plaintiff revealed :-
  - a) tenderness of the lower thoracic spine
  - b) compression fracture of the 11th and 12th thoracic vertebrae and the 1st lumbar vertebra.

No. 1  
Amended Writ  
of Summons  
& Statement  
of Claim  
2.2.1982

- ii) The Plaintiff was discharged from hospital on 31st January 1981 but was admitted two weeks later with persistent back pain.
- iii) The Plaintiff received physiotherapy treatment for one week and underwent follow-up physiotherapy.

Particulars of Special Damage

i) Loss of earnings	\$ 5,200.00	
ii) Hospital fees	\$ 45.00	
iii) Travelling expenses	\$ 880.00	
iv) Doctor's fees	\$ 3,500.00	
v) Bone-setter's fees	\$ 1,000.00	10
vi) Tonic and nourishing food	\$ 2,000.00	
	<u>\$12,625.00</u>	
	=====	

And the Plaintiff Claims

- a) damages;
- b) costs; and
- c) interest thereon.

~~Dated the 2nd day of February, 1982.~~

~~(D. N. Whitley)  
Asst. Director of Legal Aid  
acting on behalf of the Plaintiff~~

20

Amended as in red dated the 29th day of March, 1982.

(D. N. Whitley)  
Asst. Director of Legal Aid  
acting on behalf of the Plaintiff

IN THE SUPREME COURT OF HONG KONG  
HIGH COURT

No. 2  
Amended  
Defence of  
1st & 2nd  
Defendants  
17.4.1982

BETWEEN

LI PING SUM

Plaintiff

and

CHAN WAI TONG

1st Defendant

WONG SHOK TING

2nd Defendant

WONG PING

3rd Defendant

10

AMENDED DEFENCE OF THE 1ST AND 2ND DEFENDANTS

1. Save that it is admitted that :-

(a) on the date and at the time a collision occurred between a public light bus bearing registration No. AU2603 and a goods vehicle bearing registration No. AV7100 along Prince Edward Road;

(b) at the material time, the registered owner and driver of the said goods vehicle bearing registration No. AV7100 was ~~one Wong Ping (hereinafter called the "Third Party")~~ the 3rd Defendant.

20 (c) the said public light bus bearing registration No. AU2603 was travelling along the outer lane of the said Prince Edward Road when the said goods vehicle bearing registration No. AV7100 collided into its nearside near bumper;

no admission is made as to Paragraph 1 of the Amended Statement of Claim.

2. Save that it is admitted that at the material time, the said public light bus bearing registration No. AU2603 was driven by the 1st Defendant and owned by the 2nd Defendant, Paragraph 2 of the Amended Statement of Claim is not admitted.

3. Paragraph 3 of the Amended Statement of Claim is admitted.

~~3.~~ 4. It is denied that the 1st Defendant was guilty of the alleged or any negligence or at all and Paragraph ~~3-4~~ of the Amended Statement of Claim together with all particulars of negligence pleaded therein of the 1st Defendant are denied.

30 4. 5. Further or in the alternative, the said collision was caused wholly or in part by the negligence of the ~~Third Party~~ 3rd Defendant.

PARTICULARS OF NEGLIGENCE

a. Failing to keep any or any proper lookout or to observe or to heed the

No. 2  
Amended  
Defence of  
1st & 2nd  
Defendants  
17.4.1982

presence of approach of traffic generally or of the Defendants' public light bus;

- b. Failing to have any or any sufficient regard for traffic conditions;
- c. Failing to so steer control and manage the said goods vehicle so as to avoid the collision;
- d. Failing to apply his brakes in time or at all;
- e. Failing to slow down or stop when danger arose;
- f. Running into the rear of the Defendants' public light bus;
- g. Driving at a speed excessive in the circumstances;
- h. Failing to pay any or sufficient heed to the "RIGHT TURN" indicator signal given by the 1st Defendant. In this connection, the Defendants intend to rely pursuant to Section 7 of the Road Traffic Ordinance Cap. 220, on the ~~Third Party's~~ 3rd Defendant's failure to observe the provision of the Highway Code which provides, inter alia :- "Watch out for other drivers' signals and act on them promptly". 10

5. 6. The 1st and 2nd Defendants admit that the 1st Defendant was convicted of the offence mentioned in Paragraph 4 of the Amended Statement of Claim but deny that the same is relevant to any issue in this action.

6. 7. Accordingly, the 1st Defendant says that the doctrine of res ipsa loquitur does not apply as alleged. 20

7. 8. Paragraph 6 of the Amended Statement of Claim and the alleged injuries, pain and suffering, loss and damage are denied and the Plaintiff is put to strict proof thereof.

8. 9. Save as hereinbefore expressly admitted, each and every allegation contained in the Amended Statement of Claim is denied as if the same were herein set out in full and traversed seriatim.

~~Dated this 3rd day of March 1982.~~

Dated this 17th day of April 1982.

~~Gallant Y.T. Ho & Co.~~  
~~Solicitors for the 1st and 2nd Defendants~~ 30

Gallant Y.T. Ho & Co.  
Solicitors for the 1st, 2nd Defendants.

IN THE SUPREME COURT OF HONG KONG  
HIGH COURT

No. 3  
Defence of  
the 3rd  
Defendant  
7.5.1982

BETWEEN

LI PING SUM Plaintiff

and

CHAN WAI TONG 1st Defendant

WONG SHOK TING 2nd Defendant

WONG PING 3rd Defendant

10

DEFENCE OF THE 3RD DEFENDANT

1. (a) Subject to the matters pleaded hereinafter, paragraph 1 of the Amended Statement of Claim is admitted.

(b) It is denied that the goods vehicle bearing registration no. AV7100 (hereinafter called "the said goods vehicle) hit the rear offside of the PLB. The 3rd Defendant avers that the PLB suddenly and without warning cut into the 3rd Defendant's lane along which the said goods vehicle was lawfully travelling at the material time, and the rear offside of the PLB caught the nearside bumper of the said goods vehicle and caused the said nearside bumper to bend (hereinafter called "the first collision").

20

(c) After the first collision, it is denied that the losing of control, the crashing through the iron railings dividing the east and westbound carriageways of Prince Edward Road, the overturning and the final halting on the central dividing reservation of the PLB referred to in paragraph 1 of the Statement of Claim (hereinafter called "the accident") was caused by the negligence of the 3rd Defendant or by the first collision.

2. Paragraphs 2 and 3 of the Amended Statement of Claim are denied.

3. Paragraphs 4 and 6 of the Amended Statement of Claim are denied insofar as they relate to the 3rd Defendant. It is denied that the 3rd Defendant was guilty of the alleged or any negligence. The 3rd Defendant avers that the alleged or any injury loss and damage of the Plaintiff were caused by or resulted from the accident. The accident was caused wholly or in part by the negligence of the 1st Defendant as servant or agent of the 2nd Defendant.

30

PARTICULARS OF NEGLIGENCE OF THE FIRST DEFENDANT

(a) Failing to keep calm and to react properly after the 1st collision;

(b) Losing control of his PLB;



- (c) Failing to stop, slow down in time or at all or so to steer manage or control the PLB after the 1st collision so as to avoid the accident.

4. Further or alternatively, if, which is denied, the accident was linked up to or caused by the 1st collision, the 3rd Defendant says that the 1st collision was caused wholly or in part by the 1st Defendant's negligence.

PARTICULARS OF NEGLIGENCE OF THE FIRST DEFENDANT

- (a) Failing to keep any or proper lookout to heed or observe the presence or approach of the said goods vehicle on the outer lane;
- (b) Causing the PLB to cut from the middle lane into the outer lane without regard for the vehicles lawfully travelling along the outer lane and when it was unsafe to do so; 10
- (c) Failing to give any or any sufficient warning of his intention to change into the outer lane;
- (d) Driving at a speed which was too fast in the circumstances;
- e. Failing to steer clear or so to manage or control the PLB so as to avoid the 1st collision with the said goods vehicle;
- f. Failing to stop, slow down in time or at all or so to steer, manage or control the PLB after the 1st collision so as to avoid the accident.

5. At the trial hereof, the 3rd Defendant intends to adduce evidence of the fact that the 1st Defendant was charged with and convicted on a guilty plea of the offence of careless driving on the 4th day of June, 1981 at the North Kowloon Magistracy under Case No. NKS29431/81. The said conviction is relevant to establish that :- 20

- a. The 1st Defendant was the driver of the PLB at the material time and that
- b. The 1st collision and the accident was caused by the negligence driving of the 1st Defendant.

6. It is denied that the doctrine of res ipsa loquitur applies in these proceedings insofar as the Plaintiff's claim against the 3rd Defendant is concerned.

7. No admission is made as to the alleged or any injuries loss or damage.

8. Save as hereinbefore expressly admitted, each and every allegation in the Amended Statement of Claim is denied as if the same were set out herein and traversed seriatim. 30

Dated the 7th day of May, 1982.

Stevenson & Co.,  
Solicitors for the 3rd Defendant.

IN THE SUPREME COURT OF HONG KONG  
HIGH COURT

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No. 4  
Order of  
Master  
Wilson  
17.11.1982

BETWEEN

LI PING SUM Plaintiff

and

CHAN WAI TONG 1st Defendant

WONG SHOK TING 2nd Defendant

WONG PING 3rd Defendant

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10 BEFORE MASTER WILSON OF SUPREME COURT IN CHAMBERS

ORDER

UPON THE APPLICATION of the Plaintiff, the 1st and 2nd Defendants and the 3rd Defendant and by consent IT IS ORDERED that :—

1. Interlocutory Judgment be entered for the Plaintiff against the 1st and 2nd Defendants for 75% of the Plaintiff's claim and against the 3rd Defendant for 25% of the Plaintiff's claim;

2. Damages to be assessed by a Master of the Supreme Court in Chambers; and

20 3. The 1st and 2nd Defendants shall pay 75% of the Plaintiff's costs and the 3rd Defendant shall pay 25% of the Plaintiff's costs, such costs to be taxed if not agreed.

Dated the 17th day of November 1982.

N.J. BARNETT  
Registrar



IN THE SUPREME COURT OF HONG KONG  
HIGH COURT

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No. 5  
Notes of  
Master  
Hansen  
7.2.1983

BETWEEN:

LI PING SUM	Plaintiff
and	
CHAN WAI TONG	1st Defendant
WONG SHOK TING	2nd Defendant
WONG PING	3rd Defendant

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Notes of evidence taken by Master Hansen

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Coram: Master Hansen in Chamber  
Date: 7th February 1983

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Bundle of agreed documents put in  
– memo of Dr. M.L. Leung  
PW1 Li Ping Sum affirmed in punti.

20 I was injured in accident on 30.1.81. I suffered financial losses. As a result of  
accident I was off work for 4 months. It was because I couldn't sit up and move.  
Need assistance to go to toilet even. It was because my back waist and thighs were  
painful. It was mid back and lower back pain. Never had such pain before the accident.  
I work in K.T. as an accountant. Work for United Overseas Enterprises Co. Ltd. I'm  
paid monthly. Earned \$1,950 p.m. at time of accident. For Feb. and March I got  
full pay, April 2/3 and May none at all. In June I only worked ½ days and this  
continued till mid Sept. and during this period I was paid 2/3 of my salary. After  
mid Sept. I returned to full work except for Mondays. I went to physiotherapy.  
I received treatment 3 times a week until and mid Jan. 82. Every time I went I paid  
\$3. There was no salary deduction. Received physiotherapy at Kln. Hospital. I travelled  
there from home by bus and sometimes taxi. Bus trip costs \$1.40 and taxi was \$11  
– \$12. Both round trips. Shifted Tai Po to Wong Tai Sin in June, to travel Tai Po  
to hospital cost \$110 for round trip by taxi. I had to travel by taxi I couldn't use  
30 the bus. From Wong Tai Sin I took taxis once a week. I went to hospital 3 times a  
week from my release from hospital until Jan. 82. I'd taken a taxi when I suffered  
from back pain. Other than physiotherapy I received other medical treatment. I  
went to see a bone-setter. It was Feb. 81 to April 81. Went 25 times. I actually started  
travelling to Kln. Hospital for physiotherapy in April. I went to the bone-setter because  
there was pain in my back. I'm not receiving treatment now for my back injury.  
I attended other doctors who were specialist in bones. One was Dr. Mah Kin-lung.  
I went because of back pain. He was introduced to me by others. I spent \$1,000

seeing him. Another was Dr. Ng Shek Pui. Went to him as a friend recommended me. Spent \$1,000 approx. with him. Another was Dr. Fong Sun Yuen and I paid \$200. I got his opinion on my illness. I went to Anderson & Partners and paid them \$100. Also went to Dr. LIN Tuen-tak and I paid \$280. I still suffer back pain. The pain is continuous. It is better and it is improving. There was improvement until last year. When I sit I need a cushion and can't sit for more than 1 hour and it has to be a straight back chair. I can't walk for. At work I need to stand up and walk around to relieve the pain. I can't play badminton or go hiking or to skating or bowling. I was sportingly inclined. I produce doctors' receipts (Ex P1A - D).

11.15 Adj. 15 minutes.

11.30 witness reminded of a.

XXD Miss Mok

10

Q : Aged 26? 27.

Q : Injured 30.1.81? Yes.

Q : One day in hospital? Yes.

Q : Told by Dr. to have good rest at home?

Told me to go to Kln. Hospital or stay at home.

Q : You chose to stay at home? Yes.

Q : Went to bone-setter immediately or discharge? He came to my house.

Q : Bone-setter receipt says treatment commenced on 1.2.81? Yes.

Q : Dates in receipt correct? Yes from 1.2.81 to 4.4.81.

Q : Don't trust Dr. in Q.E.H. so saw bone-setter?

When I left hosp. I didn't get any medicine.

Q : On 11.2.81 went to get an X Ray at private clinic? Yes.

Q : For urine examination? Yes.

Q : Because distrust Q.E.H. Dr? Bone-setter told me to do it.

Q : While attended by bone-setter returned to Q.E.H. on 16.2.81? Yes.

Q : Hospitalised for 9 days? Up to 24.2.81.

Q : AFter discharge back to bone-setter. At same time attended Dr. Mah? Not yet.

Q : When see him? In April/May.

Q : Attend how many times? At least 10 times.

Q : Did he ask you to return after 10th time ? He didn't.

Q : He remarked you had fully recovered correct? No.

Q : Did he say pain would disappear and all you needed to do was rest? No.

Q : When attend Dr. Fong? Dec. 1982. It was 28th.

Q : Nearly 2 years after accident? Yes.

Q : Some with Anderson & Partners 24.12.82? Yes.

Q : What was his comment? He said no improvement about my pain.

Q : Say what's wrong with you? Said illness was stable.

Q : Believe him? I have to.

20

30

40

Q : Why 4 days later go to Dr. Fong? I want to know how serious I am and I have to consult lots of Drs.

Q : You consider in your mind that this is a very serious accident? Yes.

Q : Some reason went to Dr. Lui in Jan. 83? Yes.

Q : To confirm Dickenson's opinion? Yes.

Q : Got physio at Dr. Mah's? Yes.

Q : Attended him in April & May 1981? Yes.

Q : From April/May 81 didn't attend Kln. Hosp. for physio? Not correct.

Q : Physio at both places? Yes.

10 Q : How much physio at Mah's? Went to him for about 10 times.

Q : Consultations or physio? For physio.

Q : Some period attended Kln. Hosp. for physio? Yes.

Q : When attended Kln. Hosp. had a card? Yes.

Q : Date of attendance chopped on card? It was kept by hospital.

Q : Work U.O.E. Ltd.? Yes.

Q : Accountant? Yes.

Q : Hours of work? 9 a.m. to 1 p.m. and 2 p.m. - 6 p.m.

Q : 8 hrs work? Yes.

Q : Situation at time of accident? Yes.

20 Q : Current hours the same? Yes.

Q : Still an accountant? Yes.

Q : Spend lot of time sitting down? Yes.

Q : H. P. Chan examined you in August 82? Yes.

Q : At that time your condition greatly improved compared to time of accident?  
Not greatly.

Q : June 81 only walk a short distance? Yes.

Q : August 82 walk for approx 3 hours? Yes.

Q : So a great improvement? I don't quite agree.

Q : That is not an improvement? It's an improvement.

30 Q : Complaint today is back discomfort? Not simply discomfort.

Q : Have severe pain? It's pain.

Q : Every day? From time to time. But recently it is all the time.

Q : How frequently is that? Continuous.

Q : Pain on whole of back? From shoulder blades to knees.

No re-examination.

(By consent medical expenses produced as P. 2 and bundle of visiting cards to Kowloon Hospital as P. 3).

Two untranslated documents interpreted into record -

1. Certify that patient Li Ping Sun came to this lab to have 3 X-ray photos taken and urine tested on 11/2/81. Total cost being \$170. (Ex P. 4).

2. This is to certify that Li Ping Sun came to me for treatment of pain in her back because of fracture of bone, from 1/2/81 to 4/4/81. Total expense would be \$1,500. Each treatment \$60 and she came for a total of 25 times. (Ex P. 5).

Mr Murray

General damages 3 medical reports. All subject hearsay notice – no counter notice put in

Pain suffering etc – 10 days in hospital permanent disability ranges from 15% – 25%.

Authorities

10

1. Leung Yiu Ki v. Lai Ping Sun
2. Yu Kam So v. Leung Hee
3. Lawrence v. China Motor Bus Co.
4. Wheeler v. Remis
5. Childs v. Crawly B.C.

Hunter v. Travenol Laboratories

Submit consider 3 H.K. authorities and take into account first one was 25% disability. General level and award figure around \$35,000.

Miss Mok.

1. Accept Chan report. Dickinson's report 9 months after accident and one year before Chans. No further medical evidence to contradict Chans report.

20

2. Plaintiff is undoubtedly exaggerated pain and suffering. Complaint to Chan is sore back and no complaint of pain in hips and thighs.

Authorities

Lawrence v. C.M.B. Ltd. referred to – This is much more serious injury.

Leung Yiu Ki also more serious. Submit \$25,000 – \$30,000 is appropriate.

Specials

Evidence doesn't supports 2 months loss of earning.

April she suffered \$650 and May \$1,950 and August to September half day so \$600 p.m. Her evidence shows loss of \$4,850.

30

Submit not entitle to all this Government Dr. recommended 2 months sick leave. I concede another 2 months. Her loss I submit is April \$650 + May \$1,950 = \$2,600. This should be award.

Travelling expenses 78 physio slips – urge Court to give \$1.40 per trip which is \$109.20. Doctor's fees – went from Doctor to Doctor for no real reason – not entitled to anything Bonesetter – not entitled to anything.

No. 5  
Notes of  
Master  
Hansen  
7.2.1983

See : Yu Shee Pui v. Urban Council  
Nourishing food – no evidence.  
Wong Ting v. Yuen Hing Kwan

Assessment reserved

Cost reserved.

Certificate for Counsel

10 Not necessary for Counsel to attend to uplift award.

Certified correct  
(Signed) J.W. Hansen





IN THE SUPREME COURT OF HONG KONG  
HIGH COURT

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No. 6  
Decision  
of Master  
Hansen  
7.3.1983

BETWEEN

LI PING SUM	Plaintiff
and	
CHAN WAI TONG	1st Defendant
WONG SHOK TING	2nd Defendant
WONG PING	3rd Defendant

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10

ASSESSMENT OF DAMAGES

Coram : Master J.W. Hansen in Chambers

Appearances : Mr. Murray instructed by D.L.A. for Plaintiff

Miss A. Mok instructed by Gallant Y.T. Ho & Co for 1st  
Defendant and 2nd Defendant

Stevensons & Co for 3rd Defendant – absent

Date : 7th March, 1983

20

The Plaintiff Li Ping Sum was injured on the 30th of January 1981 when the Public Light Bus in which she was travelling lost control and overturned in Prince Edward Road. According to the medical reports she suffered from compression fractures of the T11, T12 r L1 vertebrae. She was discharged from Queen Elizabeth Hospital the following day. She was readmitted on the 16th February 1981 and hospitalised for 9 days. A medical report from Dr Dickinson of Anderson & Partners was produced on behalf of the Plaintiff. He assessed her permanent disability at 25%. On the other hand a medical report by Dr Chan produced on behalf of the defendant put the permanent disability at 15%.

30

In her evidence the Plaintiff stated she still suffered from pain and she could not sit in the same position for long. She said this was particularly difficult for her as her employment as an accountant required her to sit for long periods. She also gave evidence of having seen no fewer than 5 different doctors and a bone setter since the accident. This was in addition to the medical staff of Q.E.H. I am quite satisfied that the Plaintiff, perhaps understandably, has greatly exaggerated her condition. I have no doubt she does suffer pain but her situation is not as bad as she tried to convince me it was.

Pain Suffering & Loss of Amenities

Mr Murray urged me to award a figure in the region of \$35,000. He said this

was supported by the H.K. authorities. He cited Leung Yui Kin v Lai Ping-sum HCA 2579/76 where \$30,000 was awarded; Yu Kam So v Leung Hee where the award was \$25,000; Lawrence v China Motor Bus HCA 885/80 where \$40,000 was awarded. Mr Murray also referred me to 3 English cases where awards ranged from £3,500 – £8,500. However, the quantum of damages here is to be found in the H.K. cases – Lee Ting-lam v Leung Kam Ming [1980] HKLR 657 at 659. Miss Mok on the other hand submitted that all the cases cited by Mr Murray dealt with injuries that, whilst similar in nature to those suffered by the Plaintiff, were of far greater severity than hers. She submitted an award of \$25,00 – \$30,000 is appropriate in all the circumstances. I uphold that submission. Repeating what I said earlier the Plaintiff has clearly exaggerated her condition. Allowing for the fall in the value of money as I am bound to do (Lee Ting Lam v Leung Kam Ming (supra)) I award \$27,500.

10

### Special Damages

#### Bonesetter Fees

The Plaintiff claimed \$1,000. She first saw the bonesetter the day after she left hospital on the 31.1.81. She continued to see him for some time even though she was receiving physiotherapy at Kowloon Hospital at the same time. She has failed to justify the need to see the bonesetter. The claim is disallowed.

#### Hospital Expenses

This was agreed and I award \$45.00.

20

#### Doctor's Fees

The Plaintiff claimed \$3,500. Again, repeating what I said earlier, she attended 5 doctors besides those at Q.E.H. Clearly, it was not necessary for the Plaintiff to consult all these doctors. I accept, however, that she was entitled to seek a second opinion. In the circumstances I am placed in I can only decide on a figure arbitrarily. I award \$500.

#### Nourishing Food

The Plaintiff gave no evidence to support this claim. I accept that this claim should be allowed in part and award \$500.

#### Travelling Expenses

30

Miss Mok submitted that the Plaintiff was only entitled to \$109.20 not the \$580 claimed. She said this represented 78 return bus trips to Kowloon Hospital. She accepted the Plaintiff had 78 physiotherapy sessions at Kowloon Hospital. However, I think something should be allowed for taxis especially during the early part of the treatment. I award \$250.

#### Loss of Earnings

The Plaintiff claimed \$5,200. Her evidence was she earned \$1,950 p.m. at that

time. She said she was off work 4 months but she got full pay for February and March, 2/3rds for April and none at all for May. She further stated she worked only ½ day from June until mid September. However, the medical report only recommended 2 months off work. Miss Mok conceded another 2 months, but, she said nothing more should be allowed. In the absence of medical evidence to support the time off work I accept her submission. The Plaintiff's loss therefore was \$650 April and \$1,950 for May. Accordingly I award \$2,600.

No. 6  
Decision  
of Master  
Hansen  
7.3.1983

Summary

10	General damages		\$27,500.00
	Special damages		
	Hospital expenses	\$ 45.00	
	Doctor's Fees	\$ 500.00	
	Nourishing Food	\$ 500.00	
	Travelling expenses	\$ 250.00	
	Loss of earnings	\$2,600.00	3,895.00
			<hr/>
			\$31,395.00
			=====

There will be interest on the general damages at the rate of 14% from the date of the service of the writ until judgment. The special damages will carry interest at the rate of 7% p.a. from the date of the accident until judgment.

20 At the request of the parties costs will be reserved with liberty to apply. There will be a certificate for counsel.

(Signed) J.W. Hansen  
Assistant Registrar

No. 7  
Certificate  
of Assess-  
ment of  
damages  
7.3.1983

IN THE SUPREME COURT OF HONG KONG  
HIGH COURT

BETWEEN

LI PING SUM

Plaintiff

and

CHAN WAI TONG

1st Defendant

WONG SHOK TING

2nd Defendant

WONG PING

3rd Defendant

MASTER'S CERTIFICATE AFTER ASSESSMENT OF DAMAGES

10

In pursuance of the Order of Master Wilson made in this action on the 17th day of November, 1982, I do find and certify that the damages to which the Plaintiff is entitled amount to the sum of \$31,395.00, as to \$27,500.00 being general damages and \$3,895.00 being special damages, together with interest at the rate of 14% per annum on \$27,500.00 from the date of the service of the writ until judgment and interest at the rate of 7% per annum on \$3,895.00 from 30th January, 1981 until judgment.

And I direct that final judgment be entered for the Plaintiff for the sum of \$31,395.00, as to \$27,500.00 being general damages and \$3,895.00, being special damages, together with interest at the rate of 14% per annum on \$27,500.00 from the date of the service of the writ until judgment and interest at the rate of 7% per annum from 30th January, 1981 until judgment.

20

And I further direct that costs of the assessment be reserved with liberty to apply.

And I also direct that there be certificate for Counsel.

Dated the 7th day of March, 1983.

(J.W. Hansen)  
Master

**IN THE SUPREME COURT OF HONG KONG**

**IN THE COURT OF APPEAL**

**CIVIL APPEAL NO. 53 OF 1983**



In the Court of Appeal  
 On appeal from High Court  
 Action No. 810 of 1982

No. 8  
 Notice of  
 Appeal  
 15.4.1983

Between

	LI PING SUM	Plaintiff
	and	
	CHAN WAI TONG	1st Defendant
	WONG SHOK TING	2nd Defendant
10	WONG PING	3rd Defendant

Notice of Appeal

TAKE NOTICE that the Court of Appeal will be removed so soon as the Plaintiff in person can be heard on appeal from the judgment of Master Hansen given on the 7th day of March, 1983 whereby it was adjudged that

	General damages	\$27,500.00
	Special damages	
	Hospital expenses	\$ 45.00
	Doctor's Fees	\$ 500.00
	Nourishing Food	\$ 500.00
20	Travelling expenses	\$ 250.00
	Loss of earning	\$2,600.00
		3,895.00
		\$31,395.00

There will be interest on the general damages at the rate of 14% from the date of the service of the writ until judgment. The special damages will carry interest at the rate of 7% p.a. from the date of the accident until judgment. At the request of parties costs will be reserved with liberty to apply. There will be a certificate for counsel

for an order that the said judgment be set aside and that judgment be entered in the abovementioned action for the Plaintiff for \$565,376.00

30 And for an order that the Respondent pay to the Appellant the costs of this appeal.

AND FURTHER TAKE NOTICE that the grounds of this appeal are

General Damages

(1) Award for Pain, Suffering & Loss of Amenities is too low.

(a) The learned registrar admitted Miss Mok's wrong submission that all the cases cited by Mr. Murray dealt with injuries that, whilst in nature to those



suffered by the Plaintiff, were of far greater severity than me. It was obviously contrary to the fact. We can find that there are a great difference in age and difference in number of compressed fractures of vertebrae with higher degree of permanent disability (Appendix I).

The learned registrar did not look into the future and consider what is the probability of my condition worsening and how this may affect my future loss of earnings. Lord Reid in *British Transport Commission v Gourley* (1956) AC 185 stated ‘. . . . . damages must be assessed as a lump sum once and for all, not only in respect of loss accrued before the trial but also in respect of prospective loss’.

There is a material fact which was held back in the medical report dated 3/8/1982 (Document 1) by Dr. K. P. Chan, produced on behalf of the defendant, about degeneration of my thoracic spine. This degenerative condition was told by a doctor in Queen Elizabeth Hospital on 4th December, 1982 and was confirmed verbally by Dr. Tony T. Loy. Furthermore, Dr. Dickinson of Anderson & Partners on 24th December, 1982 and Dr. Harry S. Y Fang on 28th December, 1982, both told me that my condition will not be improved any further. A written medical evidence issued by Queen Elizabeth Hospital in proving the degenerative thoracic spine is attached herewith for reference. (Docuemnt 2)

10

20

Hence, part of opinion in his report is visionary, especially, he commented ‘. . . . . the patient is a young individual whose power of adaptation should be great; thus with good remedial exercises, good postures and with time, further improvement may still occur.’ This might make an unstable impression to the parties. This expression is similar to the case, *Yip Hoi-Kwai v Yau For-Choi*, HCA No. 2997 of 1977, the learned registrar considered ‘unless the plaintiff had done something quite unreasonable, which was not the case here, the defendant had to accept the situation.’

I had a miserable time for few months after accident. I could not move my body without assistance. I was discharged home (in Tai Po Market) from Queen Elizabeth Hospital by an ambulance because I needed my mother to look after me. I was readmitted two weeks later with persisting back pain. I received physiotherapy treatment for 78 times and am still receiving. Degree of my mobility was reduced and limited. I can not sit continuously more than one hour without feeling discomfort and little pain even if I sit on a back-chair with cushion. I was advised by the doctors not to climb, not to jump, not to run and not to sleep on spring-bed. It is difficult for me to bend my body downward and upward at greater degree, to walk and to stand for a long time. I embarrass I may suffer more pain during pregnancy. Some indoor and outdoor activities I did before are prevented from pursuing, i.e. Hiking, Badminton, Climbing, Bowling, Rowing, Ice-skating, Majong, Knitting and Dancing. I feel myself less than a complete. It affects gravely quality of my life and future marriage.

30

40

Owing to the bad fractures leaving me recurrent pain, I apply the guideline set out by the Court of Appeal in the case, *Lee Ting Lam v Leung Kam*

Ming, Civil Appeal No. 11 of 1980, it falls within the first category – Serious Injury, the range was from \$60,000 to \$80,000. In consideration of my age, the upper end of the bracket is applied and 20% is added to reflect the fall in the value of money, Wong Pak v Ng Po Chiu, HCA No. 5463 of 1981; totaling \$96,000.

10

In case there is a medical report to prove the condition of the degenerative thoracic spine which will have no improvement and will result in behavioural changes in future, the third category of the guideline will be applied. The range was from \$100,000 to \$150,000. In considerations of my age and fall in value of money, the amount will be \$180,000.00

(b) I had developed a Phobia towards motor vehicles, especially public transports. On the basis of the English authorities an award should be made for the Phobia. \$5,000 is claimed. Yip Hoi Kwai v Yau For-Choi, HCA No. 2997 of 1977.

(2) Loss of Earning Capacity / Future Earning Capacity

I lost a chance to take up a new accounting post from a company for salary of \$3,200.00 per month. I was declined when the employer knew that I suffered from back pain and could not sit continuously more than one hour without feeling tired and discomfort.

20

According to my experience\* and qualification\*\* I would have been earning in excess of \$3,000 per month if there had been no injury to me. \$352,800 is claimed being the multiplier of 28 (expected working life up to 55) and the multiplicand of \$1,050 per month (\$3,200 – \$2,150 (present salary)). Leung Yiu Keung v Tse Fung Ping, HCA No. 4633 of 1979; Law Kun Mee v Lai Bun, HCA No. 1546 of 1974; Tse Po Chi v Fung Hon Tung, HCA No. 3254 of 1978.

\* Experience – 8 years experience in accounting field.

\*\*Qualification – Secondary education

– Certificate in Factory Accounting & Finance  
(Hong Kong Polytechnic)

30

– Certificate in Higher Accounting  
(London Chamber of Commerce & Industry)  
– Certificate in Higher Costing  
(London Chamber of Commerce & Industry)

# Wha Dah Tape Mfy Ltd.

I reserve the right to revise the claim for loss of future earning capacity, in case there is a medical report to prove the condition of the degenerative thoracic spine which will have no improvement; and it will affect my future earning capacity.

(3) Loss of Future Care and Attention

40

For proper medical attention by consulting doctors, \$6,600 is claimed being

the multiplier of 33 (60 (expected life) – 27 (present age)) and the multiplicand of \$200 per annum. Wong Shing Chuen v Tang Hing Yuen, HCA No. 773 of 1979.

(4) Loss of Expectation of Life

Shortened by 30%, \$10,000 is claimed. Chiu Shing Wai v Fung Ping Tong, HCA No. 6593 of 1981.

Special Damages

(1) Bonesetter Fees

The learned registrar rejected unreasonably to allow me bonesetter fees for the sum of \$1,500. (Document 8)

10

It was beneficial to me for seeing bonesetter and there was no arrangement for physiotherapy from 1st February 1981 to 4th April, 1981. I was arranged for physiotherapy only starting from middle of April 1981. There was no more bonesetter fees after receiving physiotherapy.

Roberts CJ said ‘. . . . I regard it as reasonable for any person of Chinese race to decide at any stage that Chinese herbal medicine or the attentions of a bonesetter are likely to be beneficial, whether or not he has previously sought conventional medicine and treatment, or is still receiving it. If he does so, he should be entitled to the reimbursement of reasonable fees for the Chinese treatment as well as for conventional treatment.’ (1981) HKLR 419 at 422.

20

(2) Hospital Expenses

There is no appeal

(3) Doctor’s Fees

I claim \$1,420.00 and reserve the right to revise the amount if necessary.

being	X-Ray Fees	on 11/2/1981	\$170 (Document 9)
	Dr. Francis Ma	on 11/2/1982	\$420 (Document 10)
	Dr. Dickinson (A & P)	on 24/12/1982	\$100
	Dr. Harry S. Y. Fang	on 28/12/1982	\$200
	Dr. Tony T. Loy	on 18/1/1983	\$280
	– ditto –	on 10/3/1983	\$250

30

I must consult more doctors for more opinions in order to know what is the state of the compressed fractures of vertebrae and how this may affect my future. I consulted more doctors only after I was told by a doctor of Queen Elizabeth Hospital on 4th December 1982 about the degeneration of the thoracic spine. This material fact was held back in the medical report (Document 1) by Dr. K. P. Chan, produced on behalf of the defendant.

(4) Nourishing Food

There is no appeal

(5) Travelling Expenses

There is no appeal

(6) Loss of Earnings

The learned registrar rejected unreasonably to award in full of \$5,200.00 for loss of earnings.

10

There were medical reports for sick leave recommended by medical officers for the period from 30th of January, 1981 to 14th of October, 1981, (Documents 3, 4 & 5), and my employer's letter certified deduction of my salary for the same period (Document 6). Salary for months of Feb. 1981 and Mar. 1981 was adjusted in May 1981.

(7) Pre-trial Care and Attention

Pre-trial Care and attention provided by my mother, \$1,800 is claimed; being \$450 per month x 4 months (from February 1981 to May 1981). Wong Shing Chuen v Tang Hing Yuen, HCA No. 773 of 1979.

(8) Physiotherapy Fees

There was no award by the learned registrar as I had 78 physiotherapy sessions at Kowloon Hospital.

20

I claim \$261 and reserve the right to claim additional fees as I am still receiving physiotherapy.

being     \$3 x 78 = \$234 (before the assessment)  
           \$3 x 3 = \$ 9 (after the assessment)  
           \$6 x 3 = \$ 9 (after the assessment and fees increased)

=====  
\$261  
=====

Interest

There is no appeal

AND FURTHER TAKE NOTICE that the Appellant proposes to apply to set down this appeal in the List of Appeals.

30

Dated the 15th day of April, 1983.

(Signed) Li Ping Sum  
Plaintiff in person.



IN THE COURT OF APPEAL

No. 9  
1983, No. 53  
(Civil)  
Decision of  
Roberts, C.J.,  
Barker J.A.  
& Baber J.  
13.10.1983

BETWEEN

LI Ping Sum	Appellant
and	
CHAN Wai Tong	1st Respondent
WONG Shok Ting	2nd Respondent
WONG Ping	3rd Respondent

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10 Coram: Roberts, C.J., Barker, J.A. & Baber, J.

Date : 13th October 1983

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J U D G M E N T

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Barker, J.A.:

The judgment I am about to deliver is the judgment of the Court.

This is an appeal by Miss Li Ping Sum from an Assessment of Damages made by the Master in Chambers on the 7th March 1983.

Miss Li might well be forgiven if she feels somewhat disenchanted with lawyers and the legal system.

20 Following the Master's decision, she applied to the Director of Legal Aid for legal aid to appeal against it. For reasons which are not known to us that application for legal aid was refused. She thereafter appealed to a Master against the refusal to grant her legal aid, and for reasons which, again, are not known to us, the Master disallowed her appeal.

This matter came before another Division of this Court on the 2nd June of this year. That Division took a different view and purported to grant a Legal Aid Certificate to the appellant.

30 When this decision was referred to the Acting Director of Legal Aid he, very properly, pointed out that this Court has no power, under the Legal Aid Ordinance, to grant a Legal Aid Certificate in a civil matter and, the Master having disallowed the appellant's appeal from a refusal to grant her legal aid, the Acting Director of Legal Aid did not, in those circumstances, feel able to accord to the appellant the benefit of legal assistance. Consequently she comes before us in person.

It will be apparent from what I am about to say that this Court shares the view of the previous Division of this Court that she should have been legally aided.

Her claim was for damages for personal injuries sustained by her on the 30th January 1981, when the public light bus in which she was travelling overturned. She suffered from compression fractures of thoracic vertebrae 11 and 12 and lumbar vertebra No. 1.

The medical evidence in this case was agreed. It is difficult to see why it ever was agreed because there was a difference between the two doctors who had reported, one for the appellant and one for the respondents.

According to a report from Dr. Dickinson who examined the appellant on her own behalf: 10

“She used to work full time as an accountant but since the accident she finds that she is unable to sit for long periods and now she can only manage to work half days. Her walking distance is limited to half an hour because of back pain and she is also unable to carry heavy shopping. I would not expect her symptoms to improve at this stage and feel she will have a permanent disability as regards ability to lift, sit and walk.”

And in a subsequent letter dated the 28th December 1981, the same doctor said:

“Because of the degree of her incapacity, as regards activities she was able to undertake prior to the accident. I would assess her permanent disability at 25%.” 20

There was a later medical report dated the 3rd August 1982 from Dr. K.P. Chan who examined the appellant on behalf of the respondents. He was of the view that there had been some improvement in the appellant's condition in that she could then work full days and her walking distance was, as he put it, approximately three hours. He was of the view that further improvement may still occur. But even so, he thought that there would be a permanent disability, which he expressed as follows:

“I think the amount of permanent disability should perhaps be reduced to 15%.”

Dr. Chan did not dissent from the view expressed by Dr. Dickinson that there would be permanent inability to lift heavy weights and permanent disability so far as sitting or walking were concerned. 30

These are serious difficulties in the case of a young woman such as the appellant. She was at the time of the accident twenty five years of age and is still unmarried. She cannot henceforth engage in her pre-accident vigorous hobbies. She is going to find it difficult when she goes shopping. It may be that her prospects of marriage will be reduced. If she does get married it may be that there will be difficulty over sexual intercourse and, of course, her inability to lift weights will make it difficult for her if ever she should have children.

The Master, when assessing general damages for pain, suffering and loss of amenities, arrived at a figure of \$27,500.

We were reminded in argument by Miss Mok, who appeared on behalf of the respondents, of the principle enunciated in the case of Davies and Another v. Powell Duffryn Associated Collieries, Limited(1) that an Appellate Court should be slow to interfere with an assessment of damages, (such assessment in every case being a matter of opinion), unless the assessment was wrong in principle, or for some other reason was a wholly erroneous estimate of the damages.

In our view, the Master's assessment of the general damages for pain, suffering and loss of amenities was a wholly erroneous assessment of damages.

10 We were referred to the case of Lee Ting-Lam v. Leung Kam-ming(2) . That was a decision of the Court of Appeal in which the Court laid down general guidelines as to the amount of damages which should, in May 1980, be awarded for various categories of injuries. Before we deal with those injuries, we cannot refrain from quoting from one passage in Mr. Justice Cons' judgment at page 659 wherein he said this:

"We think it is now accepted without question that in this jurisdiction the appropriate standards are to be found in the decisions of the courts of this Colony and not in those of England and Wales or any other jurisdiction."

20 We respectfully but profoundly disagree with that observation. We think it is helpful in considering what kind of awards should be given in Hong Kong that the Court's attention should be drawn to decisions of other jurisdictions and, in particular, England. For it then rapidly becomes apparent that the awards for general damages for pain and suffering in England are of the order of three times as great as they are in Hong Kong. We are, of course, fully aware and accept that it is not correct to take an English decision and simply translate that from sterling into Hong Kong dollars but it is difficult to understand why there should be such a startling disparity between the level of awards in the two jurisdictions.

Be that as it may, and we return now to Lee Ting Lam(2) , the first category dealt with by Mr. Justice Cons is headed "Serious Injury" and it reads:

30 "This is the lowest category. It covers those cases where the injury leaves a disability which mars general activities and enjoyment of life, but allows reasonable mobility to the victim, for example, the loss of a limb replaced by a satisfactory artificial device, or bad fractures leaving recurrent pain. The general range of awards is from \$60,000 to \$80,000."

Immediately prior to that sentence, there appeared in the judgment these words:

"Finally we should say that in order to bring out the pattern we have updated the awards as best we can in relation to the fall in value of money. The figures at which we have arrived paint the picture as it is today. As time passes they too will have to be updated."

(1) (1942) A.C. 601

(2) (1980) H.K.L.R. 657



In our judgment the time has come when those figures do have to be updated.

If one looks at the Hong Kong Monthly Digest of Statistics for August 1983, it will be seen that the value of money has fallen between May of 1980, which was the date of Lee Ting Lam's<sup>(2)</sup> decision, and today by well over 40% and in our judgment the figures set out in Lee Ting Lam<sup>(2)</sup> should now be increased by about 50%.

It was strenuously argued by Miss Mok that the injuries which the appellant sustained did not come within the category of "Serious Injury" as set out in Lee Ting Lam's case<sup>(2)</sup>. We disagree.

In our view, these were "Serious Injuries" which will leave their mark on a young lady for the rest of her life and will mar her general activities and enjoyment of life. 10

On the other hand, we are of the view that these injuries come at the bottom of the bracket in Lee Ting Lam's case, and so, for general damages for pain, suffering and loss of amenities, we consider that the correct figure is \$90,000.

The appellant then seeks to claim before us a further figure for loss of future earning capacity. This was something that was not pleaded. It would have been better if it had been pleaded. But since there are no special circumstances relied on, which, if not pleaded, would have taken the respondents by surprise, we do not think that the absence of pleading is any bar to the point being taken.

It was further argued before us that this was a matter not pursued or argued before the Master. This may well be so. But if, on a perusal of the evidence which was before the Master, it becomes obvious that there is a loss of future earning capacity, we do not think that this prevents us from considering the matter. 20

Finally, Miss Mok argued that, even if she be wrong on both those previous points, there was no evidence on which any finding of loss of future earning capacity could properly be made. This is a submission which we find ourselves unable to accept.

There was evidence before the Master that the appellant from time to time was away from work altogether and then was off work for half days. This is a situation which, in our judgment, is likely to continue in the future.

The difficulty is to put a figure on this loss. The appellant's present income is admitted by the respondents to be \$3,000 a month. One doctor assessed the appellant's incapacity or disability at 25%, the other at perhaps 15%. We think a reasonable way of assessing loss of future earning capacity would be to take a midway percentage figure, namely 20% and say that her loss of earning capacity will be of the order of \$600 a month, that is one fifth of her present salary. That means that the loss of future earning capacity is \$7,200 a year and we see no reason to apply a multiplier of less than 15 to that sum. Therefore the total sum for loss of future earning capacity is \$108,000. That deals with the item of general damages. 30

(2) (1980) H.K.L.R. 657

I now turn to the special damage. The Master assessed the special damage for loss of earnings at \$2,600. Miss Mok, who has conducted this appeal on behalf of the respondents with great fairness, as one would expect of her, agrees that the proper sum for loss of earnings should be \$5,200.

The Master refused to allow any item for the cost of seeing a bonesetter. It is not disputed that the appellant did see a bonesetter and that she saw him for twenty five times at a cost of \$60 each time. The Master merely said with regard to that head of claim:

“She has failed to justify the need to see the bonesetter.”

10 In the case of Yu Ki v. Chin Kit-lam and Another<sup>(3)</sup> the Chief Justice said this at page 422:

“I do not think that a plaintiff, whether he is claiming recompense for the cost of treatment by conventional medicine or by Chinese medicine, must show that the treatment was ‘beneficial’. It is sufficient, in my view, if it is established that the cost of treatment was reasonable, that the plaintiff had some faith in its possible efficacy and that the money claimed was in fact spent.”

Shortly after that decision was arrived at, Mr. Justice Liu, in the case of Yu Shee Pui v. Urban Council<sup>(4)</sup> a decision of 19th May 1981, said this at page 8, with regard to bonesetters:

20 “I cannot subscribe to the view that reasonable bone-setter’s fees and reasonable expenses for Chinese herbs dispensed are not claimable items. But in this case, no expert evidence was tendered on the nature of these treatments and the effect of the herbs, none of which brought proven result. There is every indication that they were unwarranted duplicate expenses. For these reasons, I do not allow such apparently overlapping expenditure.”

And Miss Mok urges us to follow the latter case. That, again, is a submission which we are unable to accept.

30 In our view, the proper approach to this matter is that set out by the Chief Justice in the Yu Ki’s case<sup>(3)</sup>. We see no reason to suppose that these fees were not properly and reasonably undergone nor do we think it necessary, nor indeed desirable that there should be expert evidence as to the nature of the treatment, or of its proven result. For that reason, we shall allow the bonesetter’s expenses of \$1,500.

The only other item of special damage which was contested was the doctor’s fees. The appellant claimed \$1,402 for doctor’s fees. What the Master said about that was as follows:

“Again, repeating what I said earlier, she attended 5 doctors besides those at Q.E.H. Clearly, it was not necessary for the Plaintiff to consult all these doctors.

(3) (1981) H.K.L.R. 419

(4) High Court Action No. 252 of 1979

No. 9  
Decision of  
Roberts, C.J.,  
Barker J.A.  
& Baber J.  
13.10.1983

I accept, however, that she was entitled to seek a second opinion. In the circumstances I am placed in, I can only decide on a figure arbitrarily. I award \$500.”

We can see nothing wrong with the approach of the Master to that item. Clearly, a person suffering from injuries is entitled to a second opinion. He cannot however go on having a third, fourth, fifth and sixth. We therefore leave that part of the award undisturbed.

The remaining items are not disputed: \$250 for travelling expenses, \$500 for nourishing food and \$45 for hospital expenses.

The result is, if my arithmetic is correct, that the total sum to which the appellant is entitled is the sum of \$205,995.

10

Accordingly, we allow the appeal.

In view of the decision of the House of Lords in Wright v. British Railways(5), the interest on the general damages for pain suffering and loss of amenity will be at the rate of 2% from the date of service of the writ until the date of judgment. There will be no interest on the sum awarded for loss of future earning capacity. Wright's case(5), however, dealt solely with non-economic loss. Accordingly, we award interest on the special damage at the rate of 7% from the date of the accident to the date of judgment.

Appellant in person.

Miss Alice Mok instructed by Messrs. Gallant Y.T. Ho & Co. for 1st and 2nd Respondents.

20

3rd Respondent absent.

(5) (1983) 3 W.L.R. 211

IN THE COURT OF APPEAL, HONG KONG  
(ON APPEAL FROM HIGH COURT ACTION NO. 810 OF 1982)

Judgment  
of Court  
of Appeal  
13.10.1983

BETWEEN:

LI PING SUM

Plaintiff  
(Appellant)

and

CHAN WAI TONG

1st Defendant  
(1st Respondent)

10

WONG SHOK TING

2nd Defendant  
(2nd Respondent)

WONG PING

3rd Defendant  
(3rd Respondent)

BEFORE THE HONOURABLE SIR DENYS ROBERTS, CHIEF JUSTICE THE  
HONOURABLE MR. JUSTICE BARKER, JUSTICE OF APPEAL, AND THE  
HONOURABLE MR. JUSTICE BABER, IN COURT

J U D G M E N T

Dated and entered the 13th day of October, 1983

20 Pursuant to the order of the Court of Appeal dated the 13th day of October, 1983 whereby it was ordered upon the Plaintiff's appeal from the Judgment of Master Hansen dated the 7th day of March, 1983, that the said appeal be allowed and that the judgment of the said Master Hansen dated the 7th day of March, 1983 be set aside and that:—

- (a) the award of general damages be increased to \$90,000.00 with interest at the rate of 2% from the date of service of the writ until the date of this judgment.
- (b) the award of special damages be increased to \$7,995.00 with interest at the rate of 7% from the date of accident until the date of this judgment.
- (c) there be damages for loss of future earning capacity in the sum of \$108,000.00.

30 It is this day adjudged that the judgment of Master Hansen dated the 7th day of March, 1983, be set aside.

And it is further adjudged that the Defendants do pay the Plaintiff's costs of this appeal and the costs before Master Hansen, such costs before the Master to be taxed in accordance with the Legal Aid Regulations.

No. 10  
Judgment  
of Court  
of Appeal  
13.10.1983

And it is further adjudged that the sum of \$45,000.00 now in Court be paid out to the Appellant without further order, in partial satisfaction of the Judgment sum.

And it is further adjudged that balance of the Judgment sum be paid directly to the Appellant by the Respondents within 21 days from the date hereof.

N. J. Barnett  
REGISTRAR

6

IN THE COURT OF APPEAL  
ON APPEAL FROM HIGH COURT  
ACTION NO. 810 OF 1982

BETWEEN

LI PING SUM Plaintiff

and

CHAN WAI TONG 1st Defendant

WONG SHOK TING 2nd Defendant

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WONG PING 3rd Defendant

NOTICE OF MOTION

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TAKE NOTICE that the Court of Appeal will be moved on Thursday the 24th day of November 1983 at ten o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel for the 1st and 2nd Respondents for an order that the said Respondents be at liberty to appeal to the Privy Council notwithstanding that the time limited by the Order In Council Regulating Appeals from the Court of Appeal for Hong Kong to his Majesty in Council for so doing has expired from the order herein of the Court of Appeal on the 13th day of October 1983.

Dated the 9th day of November 1983

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Messrs. Gallant Y.T. Ho & Co.  
Solicitors for 1st & 2nd Defendant

IN THE COURT OF APPEAL  
ON APPEAL FROM HIGH COURT  
ACTION NO. 810 OF 1982

BETWEEN

LI PING SUM	Plaintiff
and	
CHAN WAI TONG	1st Defendant
WONG SHOK TING	2nd Defendant
WONG PING	3rd Defendant

10

NOTICE OF MOTION

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TAKE NOTICE that the Court of Appeal will be moved on Thursday, the 24th day of November 1983 at ten o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel for the above-named 1st and 2nd Respondents for an order that the said Respondents be granted leave to appeal to the Privy Council from the order of the Court of Appeal made on the 13th day of October 1983.

20

AND FURTHER TAKE NOTICE that the grounds of this application are that the following issues involved in the Appeal are of great general and public importance, namely :-

- (1) That the injuries sustained by the Appellant fall within the category of "serious injury" of Lee Ting-Lam v Leung Kam-Ming (1980) HKLR 657;
- (2) That awards should be increased to the same extent as the fall in the value of money;
- (3) That the Court's attention should be drawn to decisions of other jurisdictions, and, in particular, England;
- (4) That the Court of Appeal is not prevented from considering and awarding a claim for loss of future earnings although the said claim was not pleaded nor pursued nor argued before the learned Master;
- (5) That the multiplicand for the award of the loss of future earnings is

calculated by multiplying the appellant's impairment expressed in percentage against her present monthly income, despite the fact that there was no evidence that she had suffered any loss in her monthly income.

No. 12  
Notice of  
Motion  
9.11.1983

Dated the 9th day of November, 1982

Messrs. Gallany Y.T. Ho & Co.  
Solicitors for the 1st & 2nd  
Respondents

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IN THE COURT OF APPEAL, HONG KONG  
(ON APPEAL FROM HIGH COURT  
ACTION NO. 810 OF 1982)

BETWEEN	LI PING SUM	Plaintiff/Appellant
	and	
	CHAN WAI TONG	1st Defendant/ 1st Respondent
	WONG SHOK TING	2nd Defendant/ 2nd Respondent
	WONG PING	3rd Defendant/ 3rd Respondent

BEFORE THE HONOURABLE SIR DENYS ROBERTS, CHIEF JUSTICE AND  
THE HONOURABLE MR. JUSTICE KEMPSTER IN COURT 10

ORDER

UPON READING the notices of motion, both dated the 9th day of November 1983 on behalf of the 1st and 2nd Defendants for leave to appeal to Her Majesty in Council notwithstanding that the time for so doing has expired from the order of the Court of Appeal given on the 13th day of October 1983, whereby it was ordered that the Plaintiff's appeal be allowed and that the 1st, 2nd and 3rd Defendants do pay to the Plaintiff the sum of HK\$205,995.00 and costs.

AND UPON HEARING leading counsel for the 1st and 2nd Defendants and the Plaintiff acting in person. 20

AND UPON READING the affidavit of Pat Bobby Ying Ho filed herein on the 19th day of November, 1983 and the exhibits therein referred to.

IT IS ORDERED that the 1st and 2nd Defendants do have leave until the 24th day of November, 1983 to file application for leave to appeal to Her Majesty in Council, notwithstanding the time limited by the Order in Council regulating appeals from the Court of Appeal of Hong Kong to Her Majesty in Council for so doing has expired, from the order of the Court of Appeal given on the 13th day of October 1983.

AND IT IS FURTHER ORDERED that the 1st and 2nd Defendants do have leave to appeal to Her Majesty in Council from the order of the Court of Appeal given on the 13th day of October, 1983 on condition :- 30

- (i) that the 1st and 2nd Defendants shall within 14 days from the day hereof,

enter into good and sufficient security, to the satisfaction of the Court, in the sum of HK\$100,000.00 for the due prosecution of their appeal, and the payment of all such costs as may become payable to the Plaintiff in the event of the 1st and 2nd Defendants' appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the 1st and/or 2nd Defendants to pay the Plaintiff's costs of the appeal, and

No. 13  
Order of  
the Court  
of Appeal  
24.11.1983

- (ii) that the record of the appeal be prepared and despatched to England within three (3) months from the date hereof.

10 Dated the 24th day of November 1983.

N.J. BARNETT  
Registrar



# **EXHIBITS**



M E M O

<i>From</i> Dr. M.L. Leung, Ortho. 'B' Unit, Q.E.H.	<i>To</i> Medical Superintendent, Q.E.H.
<i>Ref.</i> (316) in QEH/OU/2 XXI	
<i>Tel. No.</i> 3-840111 Ext. 343	<i>Your Ref.</i> in M.R. No. 2240/81
<i>Date</i> 13 August 1981	<i>dated</i> 22.7.81

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Exhibit A  
Medical  
report of  
Dr. Leung  
13.8.1981

Ref : LEE Ping-sum F/25

The above named patient was victim of traffic accident and was admitted to Q.E.H. on 30.1.81 at 11:40 hrs.

10 Physical examination :

1. tenderness of lower thoracic spine
2. No bruises or wound
3. lower limbs, range of movement decreased, no neurological deficit

X-ray spine : compression fracture T11, T12, L1 vertebrae.

The above patient was again admitted on 16.2.81 for persistent back pain and physiotherapy treatment was given and finally discharged on 24.2.81.

No permanent disability is expected. She is recommend two months of sick leave.

(Signed)

Dr. M.L. Leung  
Medical & Health Officer

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Exhibit B  
Medical  
report of  
Doctor  
Dickinson  
7.11.1981

Drs. ANDERSON & PARTNERS

7th November 1981

Director of Legal Aid  
Legal Aid Department  
Sincere Building, 19th Floor  
Hong Kong

Attention: Mr. D.N. Whitley

Dear Mr. Whitley,

Re: Madam Li Ping Sum  
Your Ref: LU/RD/LA 201/81

10

This lady was apparently in a mini bus which rolled on 30th January 1981 and she was admitted to the Queen Elizabeth Hospital the same day. She had sustained compression fractures of the 11th and 12th thoracic vertebrae and the 1st lumbar vertebra collapse of about ¼ of the body in all three. I gather she was discharged home the next day and told to rest. She was then admitted two weeks later with persisting back pain and received physiotherapy treatment for one week and since then I gather she has been attending physiotherapy, on and off, as an out patient.

On examination, there is a slight kyphosis around the fractured vertebra and x-ray showed the fractures as mentioned.

Opinion: She used to work full time as an accountant but since the accident finds that she is unable to sit for long periods and now she can only manage to work half days. Her walking distance is limited to half an hour because of back pain and she is also unable to carry heavy shopping. I would not expect her symptoms to improve at this stage and feel she will have a permanent disability as regards ability to lift, sit and walk.

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Yours faithfully,

(Signed)  
Dr. P.J. Dickinson, FRCS (Ed)

Drs. ANDERSON & PARTNERS

Exhibit C  
Medical  
report of  
Doctor  
Dickinson  
28.12.1981

28th December 1981

Director of Legal Aid  
Legal Aid Department  
Sincere Building  
19th Floor  
Hong Kong

Dear Sir,

10 Re: Madam Li Ping Sum  
Your Ref: LU/RD/LA 201/81

With reference to your letter of 21st December 1981, beyond further intensive physiotherapy treatment, I do not think there is anything that can help this lady at this stage. Because of the degree of her incapacity, as regards activities she was able to undertake prior to the accident, I would assess her permanent disability at 25%.

Yours sincerely,

(Signed)  
Dr. P.J. Dickinson, FRCS (Ed)

PJD/pt



3/8/1982

Medical Report on Miss Li Ping Sum, 26 years old

(Your ref : 68-181-806-82 M32/82)

History

Passenger of mini-bus which overturned on the 30th Jan., 1981 was thrown to the door and sustained injuries to the back. Seen at the Queen Elizabeth Hospital and was supposed to be transferred to the Kowloon Hospital for rest & convalescence the next day; but patient chose to be discharged home for rest. However, pain and weakness of the back persisted and she was readmitted on the 16th Feb. 81. In addition to bed rest, she was taught exercises and was subsequently discharged on the 24th Feb. 81 followed by physical therapies, and later in Sept., 1981, hydrotherapies on an out-patient basis, until Jan., 82.

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Her main complaints were:—

1. soreback with weakness on sitting and walking.
2. the soreness would increase with wearing of high heel shoes & and during the periods of menstruation.

Clinical features and X 'rays

Rather short and small Chinese girl (4' 10"), pleasant and co-operative.

There was very mild increase of the normal curve at the dorsal-lumbar junction. Movements of the spine appeared free and full. Some vague tenderness of the low back and the dorsal-lumbar junctions. Straight leg raising were 80/80 with very mild pulling behind the knees. No definite neurological deficits;— no muscle wastings and no sensory disturbance.

20

X' rays showed healed compression fractures of D11, D12 & L1 vertebrae with anterior wedging of approx. 1/6 of the normal height. No scoliosis or listing to the sides. The lumbar-sacral spine was otherwise normal, with no narrowing of the disc spaces and no congenital anomalies.

Opinion.

This young girl sustained compression fractures of 3 vertebrae of the spine, at the most common region, i.e. dorsal-lumbar region, the junction of 2 opposite curves, with anterior wedging of approx. 1/6 of the normal height. This has changed the mechanic of the whole spine and has manifested in pain and soreness of the low back as well as the fractured site. As the wedging would always remain it would be fair

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to say she would be left with some permanent disability. However the following points should be taken into consideration for the assessment of such permanent disabilities:—

Exhibit D  
Medical  
report of  
Dr. Chan  
3.8.1982

1. The natural healing and adaptation process:—

10 Although in general fractures in the adult take approx. 3 month to heal, some of the finer process of healing such as better and more efficient arrangement of bony trabeculae, loosening up of soar tissues & strengthening of related muscles as well as certain adaptations may take quite some time to improve the function of the injured parts. These evidently have occurred since the patient was last seen by Dr. Dickinson, FRCS in Nov. 1981;— e.g. she can now work full days; and her walking distance is now approx. 3 hours.

2. The type of injury or deformity in relation to the site and the age of the patient :—

In this patient the injury produced wedging of 3 vertebrae in the dorsal-lumbar region where there is normally a kyphosis curve :— in other words the normal mechanics is not changed significantly. In addition the patient is a young individual whose power of adaptation should be great; thus with good remedial exercises, good postures and with time, further improvements may still occur.

Based on the above observations and reasonings I think the amount of permanent disability should perhaps be reduced to 15%.

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(Signed)

Dr. K.P. Chan, M.Ch. orth., F.R.C.S.  
Orthopaedic Surgeon.

JC/KPC

– THE END –

**In the Privy Council**

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**ON APPEAL**

**FROM THE COURT OF APPEAL OF HONG KONG**  
(Civil Appeal No. 53 of 1983)

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**BETWEEN**

LI PING SUM . . . . . Plaintiff (Respondent in this appeal)  
and  
CHAN WAI TONG . . . . . 1st Defendant (1st Appellant in this appeal)  
WONG SHOK TING . . . . . 2nd Defendant (2nd Appellant in this appeal)  
WONG PING . . . . . 3rd Defendant

(An appeal by the 1st and 2nd Defendants only)

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**RECORD OF PROCEEDINGS**

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GALLANT Y.T. HO & CO.  
Solicitors for the 1st and 2nd  
Defendants (Appellants)

JOHNSON, STOKES & MASTER,  
Solicitors for the Plaintiff (Respondent)

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