

200F1985

APPEAL NO. 139 of 1984

In the Privy Council

32/85

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

LAU HO WAH - - - - - *Appellant*
(Applicant)

AND

YAU CHI BIU - - - - - *Respondent*

RECORD

DIRECTOR OF LEGAL AID
Solicitors for the Appellant (Applicant)

HAMPTON, WINTER & GLYNN
Solicitors for the Respondent

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL OF HONG KONG

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LAU HO WAH - - - - - *Appellant*
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ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

Civil Appeal No. 139 of 1984

*(On Appeal from Victoria District Court
of Hong Kong Employees' Compensation
Case No. 140 of 1983)*

BETWEEN

LAU HO WAH - - - - - *Appellant
(Applicant)*

AND

YAU CHI BIU - - - - - *Respondent*

RECORD

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**In the Victoria District Court of
Hong Kong**

(Employees' Compensation Case No. 140 of 1983)

FORM 1 (APPLICATION BY INJURED EMPLOYEE)

*In the
Victoria
District Court
of Hong Kong
Employees'
Compensation
Case*

Form 1 (Application by Injured Employee with
respect of the Compensation Payable to him.)

Rule 16. Cap. 282

No. 1
Form 1
(Application
by Injured
Employee)

IN THE DISTRICT COURT OF HONG KONG

HOLDEN AT VICTORIA

EMPLOYEES' COMPENSATION CASE NO. 140 OF 1983

IN THE MATTER OF AN APPLICATION BETWEEN :

10

LAU HO WAH Applicant

and

YAU CHI BIU Respondent

1. On the 24th day of September, 1982,
personal injury by accident arising out of and in
the course of employment was caused to Lau Ho Wah,
an employee employed by Yau Chi Biu (or
by-----a-contractor-with-----for
the-execution-of-work-undertaken-by-him):

2. A question has arisen as to the liability
20 of the said Respondent to pay compensation under
the Ordinance in respect of the said injury.

*In the
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District Court
of Hong Kong
Employees'
Compensation
Case*

3. An application under the Ordinance is hereby made by the said Lau Ho Wah for the determination of the said question and for the following relief or order :

Employees' Compensation under Sections 9 & 10 of the Ordinance.

No. 1
Form 1
(Application
by Injured
Employee)

PARTICULARS

4. Particulars are hereto appended :-

(1) Name and address of Applicant :

Lau Ho Wah
16, North Street, 5th floor, Flat A,
Hong Kong.

10

(2) Name, place of business, and nature of business of Respondent :

Yau Chi Bui,
Block 2, Room 406,
Wong Chuk Hang Estate,
Hong Kong.
(Telephone No. 5-528056)

(3) Nature of employment of applicant at time of accident and whether employed under respondent or under a contractor with him. (If employed under a contractor who is not a respondent, name and place of business of contractor also to be stated.): 20

The applicant was employed by the Respondent as a delivery worker.

(4) Date and place of accident, nature of work on which employee was then engaged and nature of accident and cause of injury : 30

On 24th September, 1982 at Pokfulam Road near Ebenezer School for the

Blind, the Applicant fell down from a goods vehicle and sustained a head injury in the course of his employment.

*In the
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(5) Nature of injury :

Head injuries.

(6) Particulars of incapacity for work, whether temporary or permanent, and if permanent whether total or partial, and if temporary, estimated duration of incapacity :

No. 1
Form 1
(Application
by Injured
Employee)

10

Total incapacity from 24.9.1982 to date and continuing.

(Continued)

(7) Average monthly earnings of the employee with the employer at the time of the accident causing incapacity or death, or if, by reason of the shortness of the time during which the employee has been in the employment of the employer, it is impracticable to compute the average monthly earnings, then the amount which the employee claims should be taken as his average monthly earnings and the ground upon which that amount is claimed :

20

\$1,900.00 per month.

(8) Average monthly amount which the applicant is earning or is able to earn in some possible employment after the accident :

30

Unknown.

(9) Payment, allowance, or benefit received from employer during the period of incapacity :

\$2,500.00.

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Victoria
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No. 1
Form 1
(Application
by Injured
Employee)

(Continued)

(10) Amount claimed as compensation :

To be assessed by Court.

(11) Date of giving notice of accident to respondent :

No formal notice given to the Respondent.

(12) If notice not given, reason for omission to give such notice : 10

The Respondent was fully aware of the accident.

The name and address(es) of the Applicant (and his Counsel or Solicitor) are :-

Of the Applicant : Lau Ho Wah
26, North Street,
5th floor, Flat A,
Hong Kong.

Of his Counsel or Solicitor : Director of Legal Aid,
Legal Aid Department, 20
Sincere Building, 19/F.,
173 Des Voeux Rd., C.,
Hong Kong.

The name and address of the Respondent to be served with this application are :

Yau Chi Bui,
Block 2, Room 406
Wong Chuk Hang Estate,
Hong Kong.
(Telephone No. 5-528056) 30

Dated this 4th day of October, 1983.

(Sgd.)
(R.A. Davies)
for Director of Legal Aid
on behalf of the Applicant

FORM 4 (NOTICE TO RESPONDENT)

TAKE NOTICE that, if you intend to oppose the application of which a copy is served upon you herewith, you must lodge with me, within twenty-one days after the service of this notice upon you, a written answer thereto containing a concise statement of the extent and grounds of your opposition.

10 AND FURTHER TAKE NOTICE that Wednesday the 23rd day of November, 1983 at 10.00 a.m. or so soon thereafter as the application can be heard at the Victoria District Court at Victoria has been fixed as the time and place for the hearing of the application and that in default of your lodging with me within the time aforesaid a written answer as herein required, or of your appearing at the said time and place fixed for the hearing of the application, such order may be made as the Court deems just and expedient.

20 Dated this 8th day of October, 1983.

(Sgd.)
(Y.Y. Pau)(Mrs.)
for Deputy Registrar
Victoria District Court

*In the
Victoria
District Court
of Hong Kong
Employees'
Compensation
Case*

No. 2
Form 4
(Notice to
Respondent)

*In the
Victoria
District Court
of Hong Kong
Employees'
Compensation
Case*

JUDGE'S NOTES

23rd November, 1983.

Coram: H. Wong, D.J. in Court.

Mrs. Lauder of D.L.A. for Applicant.

Respondent, YAU Chi-biu appears in person.

Hearing commences at 11 a.m.

Mrs. Lauder (for Applicant) :

No. 3
Judge's Notes

I ask for (a) judgment to Applicant against Respondent on liability, (b) a statement of the Applicant's earnings from the Respondent, to be supplied within 14 days from to-day, (c) costs to the Applicant against Respondent to be taxed on Upper Scale in accordance with Legal Aid Regulation, if not agreed and (d) a date to be fixed by Deputy Registrar for assessment of compensation (1/2 day is required). 10

Note : The Court explained the position to Respondent.

Respondent :

I went to Legal Aid Department and saw a solicitor there. The Accused fell off my vehicle which was insured. I have no money and leave the matter to the Court to decide, although I admit that the Applicant received his injuries while working for me. 20

Court : (a) Judgment to Applicant against Respondent on liability.
(b) Costs to Applicant against Respondent to be taxed on Upper Scale in accordance with Legal Aid Regulations, if not agreed. 30
(c) Respondent to supply Applicant's counsel with a statement of the Applicant's earnings, within 14 days from to-day.

(d) Deputy Registrar to fix hearing
date for assessment of
compensation. (1/2 day).

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Sgd.
(H. Wong)
District Judge
(11.10 a.m.)

No. 3
Judge's Notes
(Continued)

In the
Victoria
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No. 3
Judge's Notes

(Continued)

20th June, 1984.

Coram : H. Wong, D.J. in Court.

Mr. Davies of D.L.A. for Applicant.

Mr. Neil Owen of Hampton Winter & Glynn for
Respondent.

(Re: Assessment of Compensation.)

Hearing commences at 12.35 p.m.

Davies (For Applicant) :

I'll deal with medical evidence first and
produce :-

10

- 1) certificate of payment for hospitalization
- Exh. A1 -
- 2) copy of Form 2 - Exh. A2 -
- 3) certificate of hospital fees - Exh. A3 -
- 4) sick leave certificates - Exh. A4 -

A.W.1 Dr. Fali J. SHROFF - Affirmed in English :

My qualifications are: MBBS, FRCS (Ed.). I
have practised as a neuro-surgeon for 15 years, of
which 5 years were spent in London and 10 years in
Hong Kong.

20

I have examined the Applicant and have
prepared 2 reports in respect thereof. I now
produce them. - Exh. A5/A6 -

As a result of a clinical examination of
the Applicant's condition, I decided to perform a
highly specialised investigation called computerized
tomography of the brain. A scanning test showed
definite damaged to the Applicant's right frontal
lobe of the brian which is consistent with trauma.

That scanning also showed a slight dilation of the ventricle of the brain. It could mean a brain damage of a defused manner and is in addition to the localized damage to the frontal lobe. My opinion of the revelation from the scanning is that, in conjunction with the loss of consciousness by the Applicant for a long time, there was a brain damage and a defused (opposite to localized) brain damage taken as a whole. I
10 produce 3 sets of X-Ray. - Exh. A7a/c -

In p.2. of my report dated 9/8/84 I made reference to Professor B. Jennett on a scale which is almost universally adopted nowadays.

I had occasion to compile another report on 1/10/84 after I had the advantage of reading a report on the Applicant by Mrs. Lee. I say that the Applicant would need a period of sick leave of 6 to 9 months from the accident. I would add that up to 4 years after the accident the Applicant's
20 chance of having epilepsy is 5%. Since the Applicant had some weakness at his left limb when I examined him, I feel that he could engage himself in light work.

As to the loss of earning capacity I would say that it should be between 60% and 70%.

Cross-examination - Owen

Q. When you said that "it could mean some brain damage of a defused manner", could it mean something else as well?

30 A. Yes.

The dilation of the ventricle was slight. the weakness of the left limb would account for 30% and the balance of 30%-40% of loss of earning capacity would be due to psychological effect. In p.2 of my first report I said "it is possible ... ameliorate". By that I meant that up to a period of 3 years one could see some improvement on the post-concussional symptoms, such as head-ache, dizziness etc. I have not examined the Applicant

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No. 3
Judge's Notes

(Continued)

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—
No. 3
Judge's Notes
(Continued)

since August 1983, so that there may be some post-concussional improvement since then. My examination of the Applicant was a clinical one. Mrs. Lee would confirm what I initially suspected, although she might have gone more into detail on the psychological aspect.

It might be possible for the Applicant to take up work on part-time basis in March 1983, which was 6 months after the accident. Any person can have or develop epilepsy but the main causes for it would be at birth, head injury, old-age etc. 10

I examined the Applicant at some 11 months of the accident. The 5% chance of his developing epilepsy would last for 4 years from the date of accident. A person suffering the trouble suffered by the Applicant would not be able to work as a coolie in a fruit market because of the danger of epilepsy developing. He would thus not be able to push a trolley, because he might top it over and hit someone. All I know is that the Applicant was a poster at a fruit market at the material time. 20

Re-examination - Davies

I got a report from Mrs. Lee in September, 1983 from which I drafted my second report of 1/10/83.

A.W.2 LEE TAM Oi-chun - Affirmed in English :

My qualifications are MSc (Ed. Psychology) from London University, B.A. (Hrs) D. Ed. I have practised psychology since 1973 and started my private practice as a psychologist 7 years ago in Hong Kong. 30

I had examined the Applicant, who was referred to me by Dr. Shroff, and have prepared a report on him. I now produce that report. -
Exh. A8 -

In p.3 of my report I list a variety of tests that I used, including intelligence, conceptional functioning and metality control. On intellectual functioning I found that the Applicant was on the borderline of intellectual ability which would, from the brain or I.Q., be from 70 to 79. My estimation of his intelligence before the accident was on low average, because of his low education and his work as a farmer in China. His present level compared to his pre-accident level would represent a deterioration of 10 I.Q. points (the average I.Q. of a normal person is 95 - 105 I.Q. points).

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Judge's Notes

(Continued)

In term of intellectual functioning the Applicant was found to be deficient in abstract conceptual ability, i.e., to see in the abstract or to understand things through a principle, e.g. chair and table are furniture. A person deficient in abstract symbolic functioning would not say that those 2 items are furniture. The Applicant was not able to change things into conceptual scheme as an ordinary man would. In other words, he does not have the flexibility to categorize things and would stick to the same views on things.

At present the Applicant can only do mechanical manual work which does not require thinking. I did not carry out a test on symbolic functioning of the Applicant.

After the accident, the Applicant had lost memory of it and the subsequent hospitalization. Testing revealed that his memory ability for both short and long term reproduction is weaker than average. He would thus have difficulty in obtaining new knowledge.

Spatial relationship deals with relationship in space. Perception has to be learned. For example, a horizontal article might be seen as slanting by a person with brain damage. At the test the Applicant was at first surly and brusque, but improved later. In fact, before I carried out a test, I had to make the person to be tested feel at home and comfortable, as that he could put up

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Judge's Notes

(Continued)

his best performance. With loss of memory the Applicant would be absent-minded.

Cross-examination - Owen

When I was asked to test the Applicant I was not looking at how his work would be affected but to find his mental ability deficit. Naturally, mental ability deficit would affect his work. In other words, I tried to determine how his function were affected by the inquiries. Also, I endeavoured to find how the symptoms he suffered would affect his ability to earn a living. The mental deficit suffered by the Applicant could only come from brain damage. I myself had my primary schooling in Hong Kong. 10

I was told by the Applicant that he worked at a collective farm in China and had used an abacus then. The fact that the Applicant worked as a farmer and was of primary school level does not necessarily mean that he had pre-accident low I.Q.. At his present level of mental functioning he would not have been able to finish primary school anywhere. I have no personal experience of primary school in China but I have knowledge of it from reading. 20

It would not be difficult for the Applicant to go back to his job, by pushing a trolley from point A to point B or by assisting people doing similar work. The difficulty to him now is to take care of himself in relation to others and to life generally, rather than to his normal work. 30

There are certain behavioural aspects which are due to brain damage, and which a normal person would not display. When I tested the Applicant, I found certain defects in him on that day. I had not seen him before then, so that I had to presume that he was normal before the accident.

Q. Would you agree that he could be sick before the accident?

A. I cannot say whether I agree or disagree.

Q. Do you agree that there is no way for you to say categorically that the Applicant had not exhibited those defects before the accident.

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A. I would say that the onus is on you to prove that before the accident he had those defects.

Q. Could it be impossible that the Applicant feigned some defects to obtain compensation?

*No. 3
Judge's Notes*

10 A. He could do so on certain points, such as the name of the governer, but not on spatial conceptional functioning, examples of which are so simple that people cannot expect to feign. In the Applicant's case I say that he did not feign at all.

(Continued)

Owen (for Respondent) :

I ask for leave to call a doctor first in order to have him released early.

Davies (for Applicant) :

20 No objection.

Court: Agree.

R.W.1 Dr. NG Shi-hon - Affirmed in English :

My qualifications are MBBS (HK) MRCP (HK). I am a neurologist and have practised as such for 6 years, five of which with Government and one in private practice. I am a past President of the Society of Neurologists.

30 I have examined the Applicant and have prepared a report on him. I now produce my report.
- Exh. R1 -

"Primitive reflexes' came from bedside examination, as compared with one by expensive equipment. At p.2 para. (c) of my report. I say that damage to the right frontal lobe that the

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(Continued)

Applicant suffered would be less sever than the left one. That menas that there is a chance that high mental function could be compensated with the passage of time up to 3 years.

In the majority of cases involving brain damage there is a possibiltiy of development of 5% of epilepsy. However in the Applicant's case, there was no instance of epileptic attacks since the incident to the date that I saw him over a year later. This means that the chance of his having epilepsy would be much less. I would say that the period in which epilepsy could develop would be up to even 10 years.

10

The impairment of the Applicant's motor power of the upper and lower limbs in permanent. I estimate that it would account for 30% at loss of earning capacity. The Applicant's high mental deficit would add another 20% - 30% to that loss and is attributable to the post traumatic syndrome complex. Some patients may recover from this syndrome within 3 years. If there is improvement in the Applicant's condition, that would be about 5% - 10% within 3 years of the accidnet.

20

I have experience in the type of psychometric test carried out by Mrs. Lee, because in the course of my work I have to read reports thereon. All I can say is that such tests are not absolute, though I do not wish to comment on the work of another profession.

Cross-examination- Davies

30

I have read Dr. Shroff's report. I agree with him about the partial loss of function of the Applicant's limbs. In the past post-traumatic syndrome was on psychological aspect, whilst now it is in the majority of cases on organic side.

Court to R.W.1 :

What is the difference between the work of Dr. Shroff and yours?

R.W.1: Dr. Shroff is a neuro-surgeon and operate on patients, whereas I am a neurologist and treat people who are affected with organic nervous system disease.

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Further Re-examination - Owen

There is some overlapping between Dr. Shroff's work and mine.

No. 3
Judge's Notes

(Continued)

10 Court : Short adjournment (3 p.m.)

Case resumes at 3.05 p.m.

Appearance as before.

Davies (for Applicant) :

I'll call the Applicant.

A.W.3 LAU Ho-wah (Applicant) - Affirmed in Puntí :

20 I resumed employment in July 1983 as a cleaning worker. I put up 10 to 20 days' work a month and am paid \$50 - \$60 in daily wages. On average I now earn \$1,800.00 a month, whereas before the accident my monthly income was \$1,900. I am from Tungkoon and could not fully understand what the Interpreter said in Cantonese.

Tse (Interpreter) :

To my knowledge, Tungkoon is more or less Cantonese with a slightly different accent and I doubt that there is a Tungkoon Interpreter within the Judiciary.

Davies :

30 In view of what the Applicant has said, i.e., he wishes to speak in Tungkoon and have the questions put to him in that dialect, I ask for an

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Judge's Notes

(Continued)

adjournment now to have a Tungkoon Interpreter available at the resumed hearing.

Owen (for Respondent) :

I have no objection to an adjournment but would ask for costs, because if the case were to proceed now there might be a chance of seeing the end of it to-day.

Davide (for Applicant) :

I leave the matter to the Court.

Court :

10

We have sat continuously and through lunch hours in the hope of completing the case to-day. However it so happened that the Applicant asked for an Interpreter in Tungkoon which, although I gather, is a dialect not greatly dissimilar to Cantonese, yet it is his right which has to be complied with for justice to be done and seen to be done. I therefore grant the application for adjournment and will see if a Tungkoon Interpreter could be obtained.

20

Owen (for Applicant) :

I have 2 witnesses and suggest that half day be reserved for the completion of this case.

Davies (for Applicant) :

I agree.

Court :

- (a) Adjourned to a date to be fixed by Deputy Registrar in consultation with counsel.
- (b) No order as to costs of this adjournment.

30

(c) Tungkoon Interpreter to be required.

Sdg.
(H. Wong)
District Judge
(3.50 p.m.)

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(Continued)

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24th July, 1984.

Case resumes at 10.20 a.m.

Appearances as before.

Mr. CHAN Wun-chi, Tungkoon Interpreter is present.

No. 3
Judge's Notes

Note : CHAN WUn-chi was sworn as Tungkoon
Interpreter.

(Continued)

Note : A.W.3 (Applicant) was recalled and re-
affirmed in Tungkoon.

Examination-in-chief (continued)

10

The scope of my current job consists of
cleaning the floor and wiping tables. I began
duty in August 1983 and presently earn \$1,000 -
\$2,000 a month. Before August 1983 I did not work.

As a result of the accident from a fall I
suffered injury at the head and weakness at the
left leg. I also had frequent headache and that
ache still remains. I cannot read newspaper or
watch television.

Before the accidnet I pushed handcarts
loaded with fruits and also went on board delivery
vans. I then worked every day without holiday and
my average wages were \$1,900 a month.

20

Cross-examination - Owen

Respondent paid my medical bills, which
consisted of \$150 to Queen Mary Hospital. As
regards brain scanning fees of \$1,500 my brother
should know about that.

Q. Did Respondent continue to pay you \$1,266.00
a month to 30/1/83?

30

A. I don't know how much I was paid by Respondent but got the impression that I received \$3,000 from Respondent as sick leave pay.

After the accident I had taken sick leave certificates to Respondent but can't remember how much I got. All I can say is that it seems that I received \$3,000 from Respondent in all in that regard.

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(Continued)

10 Q. SUGGEST - Respondent paid you sick leave pay totalling \$6,000?

A. I disagree.

I know that I should be paid 2/3 of wages during my sick leave and had gone back to see Respondent to get money for my living.

Q. Do you remember that in January 1983 you went to see Respondent and were offered a job in his office because you could not lift heavy weight?

20 A. He did not make that offer.

Q. SUGGEST - You put up 23 or 24 days' work a month during your employ with Respondent?

A. Not so.

Q. SUGGEST - Your average wages from Respondent were \$1,500 - \$1,600 a month?

A. Not so.

Q. Were your daily wages at \$64?

A. They were.

30 Q. Were you examined by a medical board on 14/3/83?

A. I can't recall.

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No re-examination - Davies

A.W. 4 LAU Kun-tong - Affirmed in Tungkoon :

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Judge's Notes

I reside at No.26, Butt Street, 5/F., Hong Kong and am a collie. I have lived with Applicant for 3 or 4 years and am his cousin. We have known each other since childhood.

(Continued)

After the accident, both the Applicant's mentality and behaviour have changed. For instance (a) if I asked him to pick up bowls and chopsticks to wash after meal he would ignore me altogether; (b) on occasions he picked up a razor to cut his hand and used the blood to write words; (c) he held newspaper upside down while trying to read them and (d) he sat in front of a T.V. and each time dozed off. At present, when the Applicant was not feeling well I would stand in for him at his job.

10

Q. Did you help the Applicant to get a job?

A. No. I don't know what he could and whether people would employ him.

20

Q. When did he resume work after the accident?

A. I can't remember, although I took care of him when he rested at home after the accident.

Cross-examination - Owen

I don't know the Applicant's present wages. If I stood in for him wages would still be paid to him by his employer.

Q. Do you remember that about 6 months after the accident, the Applicant was examined by a medical board?

30

A. I accompanied him to that examination but can't remember the date thereof. I was present during that examination but was not told anything by the doctors about that test. What I overheard from those doctors was that the Applicant's brain was normal.

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I also accompanied the Applicant to see Dr. Shroff. In fact I went with him whenever he had to see a doctor. I further was in his company
10 when he consulted the Legal Aid Department for compensation.

—
No. 3
Judge's Notes
(Continued)

A.W.5 YAN Chung-sum - Affirmed in Punti :

I reside at No. 99 Hennessy Road, 13/F., Flat D, Hong Kong and am a cleansing worker. The Applicant is in my employ and was hired by me in April 1983. It was through an introduction of a remote relative that I recruited the Applicant.

20 Between April and August 1983 the Applicant was employed by me but had a relief worker to stand in for him most of the time. So, although his wages were at \$2,000 a month, his share thereof came to \$800 and the rest went to his substitute. In August 1983 the Applicant's wages were the same as before, i.e. at \$2,000 a month.

30 In my business I normally sent my staff to various locations to work on their own. That applied to the Applicant and although he worked hard, he would often mess up after August 1983. For instance, when we had to clean a room, we would begin with the air-conditioning duct, the exhaust fan, the windows before cleaning the floor, whereas the Applicant would do the reverse and begin with the cleaning of the floor instead. Another example is that the Applicant was supposed to push a vacuum but rather kicked it forward. On some occasions I instructed him to teach a new workman but he instead scolded his assistant and kicked the rubbish onto the floor.

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The reason for my keeping the Applicant on my payroll is because he works very hard under supervision. I would say that the trouble with him is that there is something wrong with his brain.

Cross-examination - Owen

No. 3
Judge's Notes

(Continued)

The Applicant's substitute during April - August 1983 was either his elder cousin LAU Kun-tong or someone recruited by me on his behalf and at his request. LAU Kun-tong shared half of the substitution fees involved. From August 1983 onward the Applicant needed no substitute but sometimes absented himself from work without notice to me. In some months he stayed away from work every Monday but was paid his full monthly wages of \$2,000 a month because he claimed that he was ill. As far as physical appearance is concerned I consider him to be as normal as anyone. 10

No re-examination - Davies

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Davies (for Applicant)

That is Applicant's case.

Court : Short adjournment (11.30 a.m.)

Case resumes at 11.45 a.m.

Appearances as before.

D E F E N C E

R.W.1 YAU Chor-yick - Sworn in Puncti :

I reside at Room 406, Block 2, Wong Chuk Hang Estate and work for Respondent who is my father. The company that we operate is registered 30

in Respondent's name and deals with transportation matters. Our duty is thus to deliver fruits from the wholesale market to the clients' addresses.

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10 We don't have fixed numbers of workers because if ships loaded with fruits arrive we would hire additional workers. So, only my two younger brothers are permanent helpers, whereas other are temporary and casual workers. Wages are calculated at so much per month and paid on the basis of actual working days. This practice was also adopted in September 1982. Among casual workers, 4 or 5 were regularly employed because they knew the fruit stalls. The Applicant was among those 4 or 5 workers but sometimes did not report for duty. On average he put up 24-25 days' work a month and his income was calculated on the basis of \$1,900 for the full month's work. The Applicant's job was to push a handcart loaded with fruits. He also had to load fruits from stalls
20 and unload them onto a lorry.

—
No. 3
Judge's Notes
(Continued)

30 On 24/9/82 the Applicant was involved in an accident and was hospitalized for a month. His cousin and I collected him on his discharge and I paid the hospital bill \$150, which was at \$5 a day. Following that discharge I had occasions to see him at my place of work when he came with medical certificates. On these occasions I paid him 2/3 of wages in respect of authorized sick leave. I now produce those 8 certificates. -
Exh. R2 -

40 The last of the Applicant's sick leave ended with 30/3/83, after which the Applicant has not asked me for more sick leave pay. At sometime before 30/1/83 the Applicant requested me to give him \$10,000 for his accident which neither of us wanted to happen. I told him that if he worked on board the truck he could not have fallen down and that it was reported to me that he fell because he was sleeping. In any event I offered to pay him \$5,000 but would deduct \$2,000 that he had borrowed from my younger brother. I further suggested that he could re-join us to do some

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No. 3
Judge's Notes

(Continued)

light work, such as to receive invoices. I added that if he agree to my suggestion he should come back to sign a paper in that respect. Later, he informed me that he had sought assistance from Legal Aid Department.

Apart from wages the Applicant would only be entitled to double pay or a proportion thereof on the basis of the working days of the month before New Year.

Cross-examination - Davies

10

I don't keep records of wages of my workers.

Q. How many days can you say that the Applicant worked each month?

A. I asked him about that when I paid wages to him.

Q. In those circumstances would it be possible that the Applicant put up 27 or 28 days' work in a month?

A. it is so possible.

I had, with my father's assistance, filled up a form for submission to the Labour Department. In it we said that the Applicant's wages were \$1,900 a month, which were his basic pay rather than his actual income. I know that he had some brain injuries. 20

Q. Why did you trust him with an offer to him to work at your office?

A. Because I thought that he was normal. That is because when his cousin and I went to the hospital to visit him, his cousin tested him by giving him a poker hand and found that he was then able to set out that hand properly. Even if he had brain trouble, I gather that he could receive the invoices at my office. 30

No re-examination - Owen

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Case*

Owen (for Respondent) :

That is Respondent's case.

No. 3
Judge's Notes

FINAL SUBMISSION

(Continued)

Owen (for Respondent) :

The accident occurred on 24/9/82. The Applicant's claim is (a) for sick leave pay under S.10 for the period from 24/9/82 to 30/3/83, i.e., about 6 months' pay of 2/3 of normal monthly wages. Here I say that the Applicant worked for 24 or 25 days a month at the rate of \$64 a day or \$1,550 a month, including a portion of double pay; (b) compensation under S.10 for the months of April to July 1983. There is evidence that during that period the Applicant was paid \$800 a month by his employer. I submit that if he had worked as before at \$1,550 a month his loss of earnings would be \$750. Under S.10 2/3 of \$750 would be \$500 and (c) compensation under S.9 beginning from August 1983. It is my contention that the Applicant has suffered no loss, giving the fact that he obtained a job with an increase in salary to \$2,000 a month. In other words, the Applicant is capable of returning to full employment so that, notwithstanding the figures provided by doctors, the Applicant has suffered no loss of earnings at present.

30 As regards disability I ask the Court to accept the evidence of Dr. Ng who is more suitable than Dr. Shroff to testify in this case. I would add that Dr. Shroff relied on Mrs. Lee's report on the assessment of the Applicant's mental ability. I submit that Mrs. Lee misunderstood her task in that she dealt with the Applicant's mental rather than his physical ability. Dr. Shroff's findings

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No. 3
Judge's Notes

(Continued)

are therefore less accurate than those of Dr. Ng. I thus submit that the degree of the Applicant's disability should be 50%. I therefore say that the Applicant should not be compensated anything under S.9 because he has resumed at wages which are even greater than before. In other words, S.9 was designed for compensation on loss of capacity to work and not for pain or suffering. If the Court is against me on this aspect, then compensation should be at 50% of either \$1,550 or \$1,900 multiplied by 96 months' wages as laid down in S7(1)(a). 10

Davies (for Applicant) :

We agree that the Applicant should be entitled to 6 months' sick leave pay. His wages were \$1,900 for a full month's pay but I am prepared to concede that the Applicant did not work 30 days a month. I thus suggest a mesne figure of $\$1,725 \times \frac{2}{3} \times 6 \text{ months} = \underline{\$6,900}$.

As regards partial loss, if we deduce \$800 from \$1,725 and multiply it by $\frac{2}{3}$ by 4 months we would get $\underline{\$2,467}$. 20

Under S.7 (1)(a) if we multiply \$1,725 x 96 months we would get \$165,600. Respondent's counsel suggested that Dr. Ng's figure of 50% should be accepted, because Dr. Ng was more suitable to give an opinion on the Applicant's disability. Here I say that Dr. Shroof has more experience than Dr. Ng and ought to have his view accepted. 30

The Applicant has suffered from mental disability and ought to be compensated although he was lucky in obtaining employment. To sum up I suggest compensation of 60% of \$165,600 = $\underline{\$99,360}$.

Under the old S.13(3) for whatever the Respondent had paid to the Applicant, only \$1,000 could be deducted from the final compensation.

Owen (for Respondent) :

I agree with Mr. Davies's statement regarding S.13(3).

Court : Adjourned at 3.30 p.m. for decision.

Sdg.
(H. Wong)
District Judge
(1.05 p.m.)

*In the
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—
No. 3
Judge's Notes

(Continued)

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Case

Case resumes at 3:30 p.m.

Appearances as before.

Note : Oral judgment delivered on quantum of compensation (p.29/32).

Davies (for Applicant) :

I ask for costs on upper scale, payment of compensation within 21 days into court and payment out subject to Director of Legal Aid's first charge.

Owen (for Respondent) :

10

I agree. I ask that costs of today be to Respondent because it was the Applicant who requested the adjournment last time when the hearing could have been completed within one day.

Davies (for Applicant) :

The adjournment was a matter of contingency. Nevertheless, I leave it to the Court.

- Court :
- (a) Compensation is assessed and awarded in the total sum of \$98,665. 20
 - (b) Respondent to have 21 days from today to pay the award into Court.
 - (c) Costs of the hearing on 20/6/84 are to Applicant against Respondent to be taxed on upper scale in accordance with Legal Aid Regulation, if not agreed.
 - (d) No order as to costs for today's appearance. 30

- (e) Subject to Director of Legal Aid's first charge, payment out to Applicant from payment in.
- (f) The Applicant's own costs to be taxed in accordance with Legal Aid Regulation.

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Sdg.
(H. Wong)
District Judge
(4.10 p.m.)

No. 3
Judge's Notes

(Continued)

In the
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DECISION

The Applicant claims damages for both temporary incapacity and permanent partial incapacity under Sections 9 and 10 of the Employees' Compensation Ordinance, Cap. 282.

No. 3
Judge's Notes
(Continued)

It is common ground that the Applicant was employed by the Respondent as a delivery worker and, whilst being in the course of that employment, fell down from a goods vehicle on 24/9/82 and sustained injuries therefrom. 10
Liability is admitted and the remaining issue for determination by the Court is the quantum of compensation.

From evidence I hold the view that at the date of and immediately prior to the accident the Applicant put up about 25 days' work each month which, at the unchallenged monthly rate of \$1,900, would bring his average monthly wages to \$1,584. Based on three factors, viz. (a) this finding on earnings (b) the agreed period of sick leave of 6 months from 24/9/82 to 30/3/83 and (c) the interval of 4 months from April to July 1983 when the Applicant was at work for only part of the month and his monthly income came to \$800, compensation under S.10 is arrived at as follows :- 20

1) sick leave pay :-
\$1,584 x 2/3 x
6 months = \$6,336.00.

2) Loss of earnings :-
\$1,584 - \$800 x
2/3 x 4 months = \$2,091.00 30

\$8,427.00
=====

It is not in dispute that the Applicant was admitted to Queen Mary Hospital on 24/9/82 in a drowsy condition and so remained for a

considerable time. Following a radiological examination which revealed no fracture, a computerized tomography was performed. It was from the scanning and a detection of an area of brain atrophy in the Applicant that Dr. Shroff neuro-surgeon who testified for the Applicant, recommended the Applicant to undergo a psychometric test on intellectual performance. Mrs. Janie Lee, Educational Psychologist was entrusted with that task. She found that the Applicant's intellectual ability deteriorated by 10 I.Q. points and that the Applicant had difficulty in concentrating, which made him easily irritable. In short, she concluded that the Applicant had suffered loss of memory, personality change, worsened behaviour, poor vision etc. All these symptoms are confirmed by the Applicant's cousin, who has lived with the applicant for 4 years, and also partly by the Applicant's present employer. Mrs. Lee was thus of the view that the Applicant's said defects co-related with one another or were derived from brain injury.

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20

30

40

From Mrs. Lee's report and his own examination of the Applicant, Dr. Shroff came to the conclusion that the Applicant (a) had severe amnesia, (b) suffered from concussion syndrome regarding headache and dizziness, (c) was incapable of taking up employment which did not entail continuous supervision and (d) stood a chance of developing epileptic convulsions. Items (a)/(c) of Dr. Shroff's remarks are again corroborated in one way or another by the Applicant's cousin and the Applicant's current employer, whom I believe to be truthful witnesses.

Dr. Ng, neurologist, who was called by the Respondent disclosed more or less the same findings as those of Dr. Shroff and Mrs. Lee. He put the Applicant's loss of capacity to work in the order of at least 50%, whereas Dr. Shroff estimated it at between 60% and 70%. In spite of those experts' estimations, counsel for the Respondent maintained that since the Applicant was

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—
No. 3
Judge's Notes

(Continued)

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No. 3
Judge's Notes

(Continued)

able to assume work anew from August 1983 at slightly higher pay than before the accident, compensation to him under S.9 for permanent partial incapacity should be reduced to 'nil'. Having considered evidence on this aspect I find it as a fact that the Applicant had suffered from brain injury which led to his personal and behavioural changes. I also say that, although he is able to obtain employment which pays him a little more than what he earned before the mishap, the adverse effect of the accident on his mental and physical abilities ought to be duly compensated. In this connection I consider that 60% disability is a fair and reasonable percentage. Assessment under this heading and also under S.7(1)(a) is worked out as follows : -

Monthly wages of \$1,584 x 60% x 96 months =
\$91,238.00.

To recapitulate, compensation is assessed
and awarded : -

1) under S.9	= \$91,238.00
2) under S.10	= \$ 8,427.00
	<u>\$99,665.00</u>

Less : agreed credit of
\$1,000 under
S.13(3) for
payment made
by Respondent
to Applicant

= \$ 1,000.00

Net total award

\$98,665.00
=====

Sdg.
(H. Wong)
District Judge
(4.00 p.m.)

MEMO - JUDGMENT TO THE APPLICANT ON LIABILITY

*In the
Victoria
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Your memo of the _____ refers.

2. On the 23.11.83 His Honour Judge H. Wong made the following orders :-

- a) Judgment to Applicant against Respondent on liability.
- b) Costs to Applicant against Respondent to be taxed on Upper Scale in accordance with Legal Aid Regulations.
- c) Respondent to supply Applicant's counsel with a statement of the Applicant's earnings, within 14 days from to-day.
- d) Deputy Registrar to fix hearing date for assessment of compensation (1/2 day)."

No. 4
Memo—
Judgment to the
Applicant on
liability

10

(Sgd.)
(Y.K. CHAN)
for Deputy Registrar

*In the
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of Hong Kong
Employees'
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Case*

No. 5
Certificate
of Award

CERTIFICATE OF AWARD

THIS IS TO CERTIFY that the determination of compensation in the above-mentioned case, which was heard before His Honour Judge H. Wong on the 23rd day of November, 1983, was as follows :- "Judgment for the Applicant on liability."

AND on the 24th day of July, 1984, the question of quantum of compensation was dealt with and determined by His Honour Judge H. Wong as follows :-

- "a) Compensation is assessed and awarded 10 in the total sum of \$98,665.00;
- b) Respondent to have 21 days from the 24th day of July, 1984 to pay the award into court;
- c) Costs of the hearing on 20/6/84 are to Applicant against Respondent to be taxed on upper scale in accordance with Legal Aid Regulations, if not agreed;
- d) No order as to costs for to-day's 20 appearance.
- e) Subject to Director of Legal Aid's first charge, payment out to Applicant from payment in; and
- f) The Applicant's own costs to be taxed in accordance with Legal Aid Regulations."

Dated this 24th day of July, 1984.

(Sgd.)
(C.W. CHAN) 30
Deputy Registrar.

**In the Supreme Court of
Hong Kong**

Appellate Jurisdiction

Civil Appeal No. 139 of 1984

**(on Appeal from Victoria District
Court of Hong Kong**

Employees' Compensation Case No. 140 of 1983)

NOTICE OF APPEAL

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

CIVIL APPEAL No. 139 OF 1984

IN THE COURT OF APPEAL
ON APPEAL FROM THE DISTRICT COURT OF HONG KONG
EMPLOYEES' COMPENSATION CASE NO. 140 OF 1983

No. 6
Notice of
Appeal

BETWEEN

LAU HO WAH	Applicant
and	
YAU CHI BIU	Respondent

10

NOTICE OF APPEAL

20 TAKE NOTICE that the Court of Appeal will be moved so soon as counsel can be heard on behalf of the abovenamed Respondent on appeal from so much of the Judgment herein of His Honour Mr. Justice H. Wong, given at the trial of this action on the 24th day of July, 1984, as adjudged that compensation is assessed and awarded to the applicant in the sum of \$91,238.00 in respect of the applicant's claim pursuant to Section 9 of the Employees' Compensation Ordinance Cap. 282 for an Order that such part of the Judgment as aforesaid may be set aside and costs of the said action be the Respondent's.

In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction

And for an Order that the Applicant pay to the Respondent the costs of this Appeal to be taxed.

And further take notice that the grounds of this Appeal are that :

No. 6
Notice of
Appeal

(Continued)

1. The learned Judge erred in awarding compensation to the Applicant in respect of his claim brought under Section 9 of the Employees' Compensation Ordinance Cap. 282 in view of the fact the evidence revealed that the Applicant has been in employment since the relevant date (August 1983) earning more than his pre-accident rate of earnings. 10
2. That the learned Judge failed to address himself to or to give sufficient consideration to the fact that the Applicant's current rate of earnings exceeds his pre-accident rate.

Dated this 23rd day of August, 1984.

20

Sgd.
HAMPTON, WINTER & GLYNN

To : The Clerk of Court,
Court of Appeal,
Hong Kong.

and

Director of Legal Aid
Legal Aid Department,
Hong Kong.

JUDGMENT OF THE COURT OF APPEAL

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

Coram : Roberts, C.J., McMullin, V.-P., Silke, J.A.
Date of hearing : 8th November, 1984.
Date of judgment : 21st December, 1984.

No. 7
Judgment of
the Court of
Appeal

McMullin, V.-P. :

The appellant, LAU Ho-wah, runs a small transportation company. The respondent, YAU Chi-biu, was regularly employed by him in work which
10 involved pushing a hand cart loaded with fruit and occasionally in helping to load the fruit on to lorries.

The respondent received injuries resulting from an accident while he was in the employment of the appellant on the 24th July, 1984.

Proceedings were subsequently commenced on his behalf in the District Court for compensation under the Employees' Compensation Ordinance Cap. 282 (The Ordinance). On the 24th July, 1984 Judge
20 Henry Wong made an award in a sum of \$98,665.00 in his favour. This figure includes \$6,336.00 in respect of sick leave pay for the six months between the 24th September, 1982 and the 30th March, 1983 and also a sum of \$1,584.00 for loss of earnings for four months from April 1983 to July 1983. These two sums totalling \$8,427.00 are not in dispute. The disputed award is the balance of \$91,238.00 which was awarded by the District
30 Judge under Section 9 Sub-section 1(b) upon evidence which persuaded him that the respondent had sustained a 60% permanent partial incapacity for work within the meaning of the Ordinance.

This sum was calculated upon the basis of pre-accident monthly earnings of \$1,584.00. This

sum, although not the sum originally claimed by the respondent, was conceded by his Counsel to be the correct figure on the evidence actually placed before the Court. He also conceded that the sum awarded was derived from a proper application of the formula supplied by Sections 7 and 9 of the Ordinance to this basic monthly wage.

Mr. Bell for the appellant takes a single point upon this appeal. It is a novel point and it arises from the unusual circumstance that, ever since the conclusion of his period of sick leave, the respondent has been in employment with another employer at a monthly wage of \$2,000.00, i.e. over \$400.00 more than he was earning per month prior to the accident. 10

It is convenient at this point to refer to the nature of the accident and the injuries. On the 24th September, 1982 while he was helping to load one of his employer's lorries, the defendant fell from the lorry and struck his head upon the ground. He was taken to hospital where he remained as an in-patient for one month. The fall had caused damage to the brain which resulted in some impairment physical, mental, emotional and psychological and which, on the testimony of specialist witnesses, is likely to be permanent. 20

After discharge from hospital the respondent received out-patient treatment at Tang Chi Ngong Surgical Specialist Clinic between October 1982 and August 1983. At the trial, Dr. Shroff, a neuro-surgeon and Ms. LEE TAM Oi-chun, a qualified clinical psychologist, gave evidence for the respondent while Dr. NG Shi-hon, a neurologist, was called on behalf of the appellant. Each of these specialists had, prior to trial, carried out extensive examinations of the appellant and reports prepared by them were also submitted in evidence. 30

It is unnecessary to refer either to that evidence or to the substance of those reports in any detail. All three specialist witnesses were 40

of the opinion that the respondent had suffered a degree of permanent damage which would leave him less fit for work than he had been prior to the accident. The physical part of that damage was a mild weakness of the left arm and leg. The major part of the persisting damage was perceived by all three witnesses as falling into the category of mental and psychological effects including increased irritability, impaired memory and some
10 reduction in concentration and reasoning powers.

In October 1983 Dr. Shroff was of the opinion that it might be possible for the respondent to return to his former work provided it involved light physical duties and if he were subject to supervision all the time. Giving evidence at the trial, however, both he and Dr. Ng were of the opinion that this combination of effects, resulting in permanent damage, would also cause a permanent reduction in the respondent's
20 earning capacity. Dr. Shroff put the overall reduction at 60 to 70% while Dr. Ng placed it at 50 to 60%. Both gave 30% as the figure they would attach to loss of earning capacity due to the weakening of the left upper and lower limbs.

At the trial the solicitor for the appellant contended that since the respondent had been able to resume work at a rate of remuneration above that which he had enjoyed prior to the accident he was not entitled to claim under this head at all. This
30 argument was rejected by the trial judge. In his written judgment, he says :

"Having considered evidence on this aspect I find it as a fact that the Applicant had suffered from brain injury which led to his personal and behavioural changes. I also say that, although he is able to obtain employment which pays him a little more than what he earned before the mishap, the adverse effect of the accident on his
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No. 7
Judgment of
the Court of
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(Continued)

mental and physical abilities ought to be duly compensated. In this connection I consider that 60% disability is a fair and reasonable percentage."

No. 7
Judgment of
the Court of
Appeal

(Continued)

He went on to make his assessment arriving at the figure which has been set out above.

Mr. Bell has referred us to a number of English and Hong Kong decisions. The English cases were of course all decided under the former Workmen's Compensation Legislation and are now of merely academic interest in that jurisdiction. They include Irons v. Davis and Timmins Ltd. (1); Pomphrey v. Southwark Press (2) and some other cases from which, as Mr. Bell puts it, it is crystal clear that under the English legislation compensation was awarded only for such physical injury or impairment as resulted in a reduction in earning power, and further that where the power to earn wages at the same rate as prior to the accident was shown to exist, there could be no award of compensation at all. 20

Mr. Bell asks us to say that, although there are certain differences between the two bodies of legislation, the Hong Kong Ordinance is generally speaking modelled upon the English legislation and that these English cases should therefore be regarded as good authority for the interpretation of Section 9 which he asks us to adopt. He has referred us also to several District Court cases in which, following the English decisions, judges have held that compensation is for loss of earnings capacity and not for loss of physical or mental capacity. 30

The observations of Lord McNaghten in the English case of Ball v. William, Hunt & Sons Ltd. (3) to that effect were enlisted both by Deputy Judge Cheung in Victoria District Court case 44 of 1983, Show Chung Kai v. Gammon Building

(1) (1899) 2 Q.B.D. 330; (2)(1901) 1 Q.B.D. 86; 40
(3) (1912) A.C. 496 at 501

Construction Ltd., and Judge Eric Li in Victoria District Court case 17 of 1983 Tsang Lin v. Tong Ling Shipping Enterprises Co. Ltd.. A similar view of the local legislation was taken by Judge O'Connor in 1973 in the case of Leung Kam Mum v. Freedom Weaving & Dyeing Factory Ltd. (in Receivership), Case No. 150 of 1973.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

10 It may be said at once that the plain intention of this legislation is to compensate an injured employee for the loss of "earning capacity". This is clear not only from the wording of Section 9 of the Ordinance itself but also form the definition of "partial incapacity" which appears in Section 3. That goes as follows (omitting a fault in the spelling of the initial word):

No. 7
Judgment of
the Court of
Appeal

(Continued)

20 "'partial incapacity' means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of an employee in any employment in which he was engaged at the time of the accident resulting in the incapacity, and, where the incapacity is of a permanent nature, such incapacity (which may include disfigurement) as reduces his earning capacity in any employment which he was capable of under taking at that time:

30 Provided that every injury specified in the First Schedule, except such injury or combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries amounts to 100 per cent or more shall be deemed to result in permanent partial incapacity;"

The present respondent is an unskilled workman and the kind of work in which he is presently employed falls within the description of the concluding words in paragraph (b) of

subsection 1 of Section 9, viz: work "which the employee was capable of undertaking at that time" (that is to say at the time of the accident).

The relevant parts of Section 9 read as follows :

No. 7
Judgment of
the Court of
Appeal

"i. (1) Subject to subsection (1A), where permanent partial incapacity results from the injury the amount of compensation shall be -

(Continued)

(a) in the case of an injury specified in the First Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is specified therein as being the percentage of the loss of earning capacity caused by that injury;

..... 20

(b) in the case of an injury not specified in the First Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury in any employment which the employee was capable of undertaking at that time: 30

Provided that -

(i) in the case of injury to any part of the body specified in the First Schedule not amounting to the loss of that

part, the loss of earning capacity permanently caused by that injury, expressed as a percentage, shall not exceed the appropriate percentage specified in the First Schedule in respect of the loss of such part;

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Supreme Court
of Hong Kong
Appellate
Jurisdiction*

10

(ii) in the case of injury not specified in the First Schedule, the loss of earning capacity permanently caused by such injury shall, so far as possible, be assessed in conformity with the scale of percentages specified in that Schedule."

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Judgment of
the Court of
Appeal

(Continued)

20

The First Schedule to the Ordinance describes some 40 categories of physical injury and appoints a percentage of loss of earning capacity which must be attributed to any particular injury falling into any one of those categories. In the present case we are not dealing with an injury specified in the First Schedule and therefore the provisions of paragraph (b) of Section 9 apply as also do the provisions of paragraph (ii) of the proviso to that subsection.

Mr. Bell contends that where a person has, in some sense, been permanently disabled by an accident but retains thereafter the capacity to earn at the same or at a higher rate in similar employment, the Court in awarding compensation must take into account the existing earning capacity in making this award. Such "earning capacity", he says, can be established - as it was in the present case - by evidence of actual earnings in a particular class of employment over

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a given period. He would make no distinction in this regard between injuries specified in the Schedule and other injuries not so specified, and maintains that where in fact there has been no reduction in earning capacity an applicant does not get as far as the First Schedule at all even if his injury happened to be one which fell within one of those 40 categories.

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Judgment of
the Court of
Appeal

(Continued)

Mr. Mackay for the respondent maintains that there is a significant difference between the English legislation and that which applies in Hong Kong. Section 9, he says, embodies a radically different approach which is intended to bear hard upon employers. He points out that, other than in Section 10, which deals with temporary incapacity, there is no provision in the Hong Kong legislation for periodic payments corresponding with the periodic weekly payments for permanent partial incapacity coupled with a system of review such as prevailed under the former legislation in the English jurisdiction. The English decisions, he says, are simply irrelevant to the Hong Kong situation. 10 20

Like Mr. Bell Mr. Mackay does not seek to draw any distinction, in relation to the right to compensation, between injuries falling within the Schedule and those not specified therein. But this leads him to precisely the opposite conclusion. He points to the proviso to the definition which plainly states that the scheduled injuries are deemed to result in the designated loss of earning capacity. The law, he says thus prevails over any evidence to the contrary and once the applicant has established the existence of a schedule injury he has a right to the appropriate compensation whatever his earning position may be in fact when he comes before the Court. He concludes by saying that if that is so in the case of what one might call a "scheduled applicant" then there is no good ground in justice or in logic for refusing compensation to an employee who can show some disability of a permanent character which does not fall within any 30 40

of the scheduled categories, simply because at the time of the application there is evidence to show that his actual earning capacity has not been reduced.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

Insofar as the scheduled injuries are concerned Mr. Mackay is quite clearly right. Were it not for the proviso to the definition of "partial incapacity" in Section 3, there might be substance to Mr. Bell's contention that some
10 degree of incapacity to earn must be shown in fact before the applicant can get his case within the Schedule at all.

—
No. 7
Judgment of
the Court of
Appeal

(Continued)

The law as it is presently framed can only be understood as giving to any person who can show an injury of the scheduled kind compensation calculated by reference to the fixed degree of earning incapacity appointed to that injury in the Schedule. The proviso to the definition in
20 Section 3 of the Ordinance cannot be regarded as setting up a rebuttable presumption of fact any more than the figures in the Schedule, read together with the provisions of Section 9(i) or (ii) can be said merely to establish a ceiling to the quantum of compensation awardable in the given case, the actual amount of the award being determined by the evidence. Only by some such route as that could Mr. Bell's interpretation of Section 9 be sustained. But whatever the true
30 intention may have been, the language used by the Legislature is clear and it is wholly against him. Save as provided in S. 9(1A) - which is not material in this case - there is no room within these provisions for evidential considerations to intrude upon the expressed intent to grant compensation in respect of any of the scheduled injuries at a rate ascertainable only by reference to the fixed figures in the Schedule.

No assistance can be derived on this point from the English decisions since the English
40 legislation did not provide by way of schedule for specified degrees of incapacity as does the Hong Kong law. The English case law supports Mr. Bell

In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction

—
No. 7
Judgment of
the Court of
Appeal

(Continued)

only so far as it accords with the principle, which in Hong Kong has statutory force, that incapacity, whether total or partial, means incapacity to earn. Counsel in the present case are in agreement upon this point and the English cases are of no assistance on the question which is of primary importance here: Does the proved capacity to earn at or above the pre-accident rate disentitle the applicant to recover anything in respect of his injury?

10

In New Zealand the Workmen's Compensation Act of 1922 did, however, provide in very similar fashion by way of schedule for the degree of incapacity to be attributed to specified injuries. In Grace v. Auckland Gas Co. Ltd. (4) the Court was construing a schedule which was evidently in very similar terms to that contained in the later Act and Sim, J. said:

"In the case of the injuries specified in the second schedule to the Act, the Legislature has said, in effect, that these injuries must be presumed conclusively to have affected the earning capacity of the injured worker to the extent therein specified, and the worker is entitled to the specified compensation, although his earning capacity may not have been diminished at all."

20

This view of the matter was approved by the New Zealand Court of Appeal in Boyes v. Smyth (5) where it is quoted by Myers, C.J. at page 1433.

30

The different approach to compensation under the former English law is admirably illustrated by the decision in Pomphrey v. Southwark Press (2), one of the cases relied upon by Mr. Bell. Although the Court of Appeal in that case did indeed uphold the right of an employer to be granted an order suspending weekly payments in the case of a workman who was earning more after the accident in which he had sustained his injury

40

(4) (1913) 15 G.L.R. 442; (5) 1933 N.Z.L.R. 1427;
(2) (1901) 1 Q.B.D. 86

than he had been earning before, thus differing from the trial judge, it also ordered that the amount awarded by the judge should be reduced to the nominal sum of one penny per week, purely for the purpose of keeping the workman's claim alive so that if, at a future date, his injury should result in reducing his capacity to earn he would be entitled under the Act to have his case reviewed.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

No. 7
Judgment of
the Court of
Appeal

(Continued)

10 No such right has been given to the employee under the Ordinance. The absence of any provision to cover such future contingencies is in itself an indication that it was intended that, as regards scheduled injuries, compensation was to be granted at the stated rate on proof of the sustaining of the injury.

20 This being the state of the law as it relates to scheduled injuries can it be said that any different rule should apply to injuries not so particularized? One must have considerable sympathy with Mr. Mackay's complaint that this would be a very unjust result where good evidence is given of disablement which may be quite as palpable in its effects as any of physical injuries described in the Schedule, and which may possibly be more disagreeable, in terms of general disability, than many of them.

30 The difficulty is in extending the plain words and figures of the Legislature relating to schedule injuries to the area of unscheduled injuries in relation to which no loss of earning capacity is "deemed".

Mr. Mackay suggests a link between these two legislative areas. The eighth item in the Schedule, the final item in the list of gross disablements to which 100% incapacity is assigned reads: "any ther injury causing permanent total disablement."

Counsel suggests that this read together with the concluding words of Section 9(1)(b)(ii) offers to the Court the means of dealing with all unspecified injuries so as to avoid an unjust discrimination between claimants whose cases fall within one as against those whose claims fall within the other of these two categories. This would mean that where the evidence of earning capacity runs counter to the percentages in any case involving a scheduled injury it must be disregarded, whereas in cases of the other class evidence - such as that given by the specialist witnesses in the present case - becomes all-important.

10

Whichever view be taken of these provisions in Cap. 282 one encounters some degree of friction between common sense and apparent - or possible - legislative intention. On either view the Court may find itself obliged to disregard evidence of a perfectly acceptable kind which in the one case (scheduled injury) would have favoured the employer and in the other (unscheduled injury) the employee. However, the Ordinance obliges the Court to resolve any such contradiction in favour of the employee in case of the Scheduled injuries but makes no provision of the kind to suit the circumstances of the claimant whose case is not within the Schedule. Indeed, although there would seem to be here a casus omissus, it is not easy to see how injuries of the kind with which we are concerned in the present case could be accommodated within the same frame work as that provided for the scheduled injuries since that in effect establishes in every case a fixed figure which is applicable to a readily identifiable mutilation or defect. Though the Legislature has purported to do so, ostensibly by reference to loss of earning capacity, the net result is to provide relief of a kind similar to common law damages for personal injury irrespective of financial loss. Unscheduled injury is not so covered and, anomalous as the result may seem, the words in Section 9(1)(b):

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30

40

"..... loss of earning capacity permanently caused by the injury"

would seem to oblige proof of some loss of earning capacity in fact before the formula in paragraph (ii) of the proviso to that Section can be invoked.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

The present state of the law cannot be regarded as satisfactory. A person in the position of the present applicant is under the special disadvantage that his claim has now been
10 dealt with for all time. Yet if he should lose his present employment it may be that he subsequently will find himself at such a disadvantage in the market generally that genuine loss of pre-accident earning capacity may result. The Legislature might well care to consider some provision whereby the future interests of such workmen are protected. As the law stands, however, I do not think the respondent was
20 entitled to any compensation under Section 9. I would allow the appeal and set aside the award.

—
No. 7
Judgment of
the Court of
Appeal

(Continued)

Hon. C.J. :

I am in general agreement with the judgment which has just been delivered and I do not wish to add anything.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

—
No. 7
Judgment of
the Court of
Appeal

(Continued)

Silke, J.A.:

The respondent was a workman employed by the appellant who operates a small scale transportation company. He does not have fixed number of workers. The respondent, while a casual worker with him, was regularly employed. His job was to push a handcart laden with fruits and to load them on to and off a lorry. He put in an average of 24 to 25 days' work a month. His income was calculated on the basis of \$1,900 for a full month's work. 10

On the 24th September 1982 the respondent was involved in an accident arising out of and in the course of his employment. He suffered brain damage, as a result of which there was a 5% chance of epilepsy developing. He suffered some weakness in his left limbs. The medical examiner felt that he was capable of light work and assessed his loss of earning capacity at between 60% to 70%.

Dr. Shroff, a neurosurgeon, called on behalf of the respondent said: 20

"It would not be difficult for the applicant to go back to his job by pushing a trolley from point A to point B or by assisting people doing similar work. The difficulty to him now is to take care of himself in relation to others and to life generally, rather than to his normal work."

In August 1983 the respondent entered into fresh full time employment at wages of \$2,000 per month. That is in excess of his pre-accident wage. His fresh employment is cleaning floors and wiping tables. Between April and August of 1983 he had been partially employed in the same form of work by the same employer but a stand-in worker did his job for him. His new employer said that he normally sent his staff to various locations to work on their own at cleaning work. He stated that he kept the respondent on his payroll because the respondent worked very hard under supervision. 30 40

The respondent applied under the Employees' Compensation Ordinance, Cap. 282 - "the Ordinance" - for compensation under its sections 9 and 10. No quarrel is taken with the award made under section 10, for compensation during his temporary incapacity while recovering from the accident.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

Under section 9 the trial judge made an award of \$91,238. Of the section 9 application he said:

No. 7
Judgment of
the Court of
Appeal

10 "Dr. Ng, neurologist, who was called by the Respondent disclosed more or less the same findings as those of Dr. Shroff and Mrs. Lee. He put the Applicant's loss of capacity to work in the order of at least 50%, whereas Dr. Shroff estimated it at between 60% and 70%. In spite of those experts' estimations, counsel for the Respondent maintained that since the Applicant was bale to assume work anew from August 1983 at slightly higher pay than before the accident, compensation to him under S.9 for permanent partial incapacity should be reduced to 'nil'. Having considered evidence on this aspect I find it as a fact that the Applicant had suffered from brain injury which led to his personal and behavioural changes. I also say that, although he is able to obtain employment which pays him a little more than what he earned before the mishap, the adverse effect of the accident on his mental and physical abilities ought to be duly compensated."

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(Continued)

He then took 60% disability as a fair and reasonable percentage.

It has been argued for the appellant in this appeal that the trial judge approached the matter from the wrong aspect treating it as something more akin to a personal injuries claim, rather than, as it should have, a claim confined within the provisions of the Ordinance.

40

There is substance in this submission. Under the Workmen's Compensation Acts in the United Kingdom it was normal for an order for weekly payments of compensation to be made. These payments were subject to review from time to time in the light of a change of circumstance. They could be reduced to nil, or to a nominal sum in order to keep the future rights of the workman alive. The scheme of the Employees' Compensation Ordinance is some what different, in that one final lump sum payment is made instead of separate weekly payments. This may well be because of the volatile nature of the smaller Hong Kong companies which might not be in a position, over an extended period of time, to make weekly payments.

10

Section 9(1) fo the Ordinance reads:

"Subject to subsection (1A), where permanent partial incapacity results from the injury the amount of compensation shall be -"

20

the section then goes on to deal with scheduled injuries and with unscheduled injuries. It is a prerequisite for compensation under either of those headings that there be "permanent partial incapacity" but this is deemed, by the proviso to that definition in section 3, to exist in respect of scheduled injuries. It is not so deemed in respect of unscheduled injuries.

A definition of "partial incapacity" is set out in section 3 of the Ordinance:

30

"'partical (sic) incapacity' means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of an employee in any employemnt in which he was engaged at the time of the accident resulting in the incapacity, and, where the incapacity is of a permanent nature, such incapacity (which may include disfigurement) as reduces his earning capacity in any employment which he was capable of undertaking at that time:"
(Emphasis added)

40

It is clear that the legislation, in respect of unscheduled injuries, was intended to cover a permanent partial incapacity which related directly to a loss of earning capacity in any employemnt which the employee was capable of undertaking at the time of the accident. The employee here was in a somewhat unusual position in that the form of work he was doing at the time of the accident was not dissimilar from the form
10 of work which he is now doing. His "earning capacity" is not disminished in the sense that his earnings now are greater than his earnings at the time of the accident.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

—
No. 7
Judgment of
the Court of
Appeal

(Continued)

One must be careful to see that these strict provisions are not abused. The Legislature might care to consider some provision whereby the future interests of an employee suffering from an unscheduled injury are protected.

20 With respect, I must differ from the trial judge both as to his approach and as to the result which he achieved. In this case I do not think the respondent to have been entitled to any section 9 compensation. I, too, would allow the appeal.

Mr. G. Mackay (D.L.A.) for appellant.

Mr. A. Bell (Hampton, Winter & Glynn) for respondent.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

APPLICATION FOR LEAVE TO APPEAL TO HER MAJESTY IN
COUNCIL

No. 8
Application
for Leave
to Appeal
to Her
Majesty in
Council

TAKE NOTICE that the Court of Appeal will be moved on Friday the 25th day of January 1985 at 10 a.m. or as soon as Counsel can be heard thereafter by Counsel on behalf of the Applicant for leave to appeal to Her Majesty in Council from the whole of the Judgment of the Court of Appeal dated the 21st December 1984, which was presided over by the Honourable Chief Justice who agreed with the judgment of the Honourable Mr. Justice McMullin Vice President.

10

AND FURTHER TAKE NOTICE that the grounds of this application are :-

That the questions involved in the appeal are ones which, by reason of their great general or public importance, or otherwise, ought to be submitted to Her Majesty in Council namely :-

1. That Their Lordships :-
misdirected themselves upon the spirit and
intendment of the Employees' Compensation
Ordinance Cap. 282.

20

Particulars

- (a) When they failed to find on a true construction of the Ordinance that when an Employee has suffered an accident within the meaning of S. 5 of the Ordinance, the entitlement to payment of compensation arises and this cannot be reduced or otherwise be affected by any earnings which arise from any employment following the accident.
- (b) When they failed to distinguish between actual earnings, and "earning

30

capacity" within the meaning of the Ordinance.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

(c) When they held that the relief provided to the Respondent under the Provisions of the Ordinance was of a kind similar to common law damages.

(d) When they held that notwithstanding the finding of fact by the trial judge of a percentage loss of earning capacity, that an additional evidential burden arises wherein the Respondent had to prove loss of earning capacity.

No. 8
Application
for Leave
to Appeal
to Her
Majesty in
Council

(e) When they held that notwithstanding the facts established by the Trial Judge they had in effect the power to reduce the award by 100%.

(Continued)

(f) When they held that an employee who returns to work and receives earnings therefrom which are greater than those received from his employment before the accident has suffered no loss of earning capacity.

2. Misconstrued the provisions of the Employees' Compensation Ordinance Cap. 282.

Particulars

(a) When they held that the entitlement to the award arose under the proviso, namely S. 9(1)(b)(ii), whereas entitlement properly arose under S. 9(1)(b).

(b) When they held that a different criterion arises for the assessment of loss of earning capacity when an injury or injuries are not specified within Schedule 1 to the Ordinance.

In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction

No. 8
Application
for Leave
to Appeal
to Her
Majesty in
Council

(Continued)

(c) When they held, notwithstanding their misdirection that the Respondent's injuries fell within the scope of S. 9(1)(b)(ii), that the Respondent is obliged to prove some loss of earning capacity.

(d) When they failed to find that once the Trial Judge had found permanent partial incapacity as a fact the Plaintiff need not furnish any further proof of loss of earning capacity and/or post accident earnings of any kind. 10

(e) When they held that the proviso to the definition in S. 3 Cap. 282 wherein "permanent partial incapacity" is deemed in relation to injuries specified in Schedule 1 thereof, that the absence of such a deeming provision in relation to injuries falling outside the Schedule obliges a claimant to prove loss of earning capacity. 20

Dated this 11th day of January 1985.

(Sgd.)
(M.K. Turnbull)
Asst. principal Legal Aid Counsel
acting on behalf of the Applicant

To : The Clerk of Court,
Court of Appeal, 30
Hong Kong.

and

Messrs. Hampton, Winter & Glynn,
Solicitors for the Respondent,
6th floor, Shell House,
24 Queen's Road, Central,
Hong Kong.

ORDER OF THE COURT OF APPEAL

BEFORE THE HONOURABLE MR. JUSTICE McMULLIN,
VICE-PRESIDENT, THE HONOURABLE MR. JUSTICE
SILKE AND THE HONOURABLE MR. JUSTICE KEMPSTER

O R D E R

UPON reading the notice of motion dated
11th day of January, 1985 on behalf of the
Applicant for leave to appeal to her Majesty in
Council from the order of the Court of Appeal
10 given on the 21st day of December, 1984.

AND UPON reading the said Order of the
Court of Appeal dated the 21st day of December,
1984.

AND UPON hearing Counsel for the Applicant
and Counsel for the Respondent.

It is Ordered that the Applicant do have
leave to appeal from the said Order of the Court
of Appeal given on the 21st December, 1984 on
condition :-

- 20 (1) That the Director of Legal Aid do
within 28 days from the date hereof
provide a security by payment into
Court in the sum of \$100,000.00 for
the due prosecution of Appeal and the
payment of all such costs as may
become payable, and
- 30 (2) That the Records of the Appeal be
prepared and despatched to England
within three (3) months from the date
hereof and the costs of this
application be costs in the Appeal.

Dated the 25th day of January, 1985.

(J. Betts)
Acting Registrar
Supreme Court.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

—
No. 9
Order of the
Court of
Appeal

EVIDENCE

and

EXHIBITS

MEMO OF DR. CATHERINE NG DATED 8TH AUGUST 1983

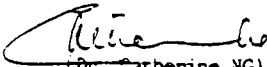
Item.
No. A1

MEMO

From..... <u>Medical Superintendent, Q.M.H.</u>	To..... <u>Director of Legal Aid</u> <u>(Attn.: Mr. R.A. Davies)</u>
Ref..... in..... <u>MS/QMH/P</u>	Your Ref..... in..... <u>LU/WCC/LA 23/83 RAD (PTL)</u>
Tel. No. <u>5-8192377</u>	dated..... <u>20.7.1983</u>
Date..... <u>8th August, 1983</u>	

Re : LAU Ho-wah, M/27

Please be informed that a sum of HK\$150.- in cash was paid to Accounts Office on 24.10.1982 vide Receipt No. 2983. There was no record to show who made the payment.


(Dr. Catherine NG)
Medical Superintendent, Q.M.H.

CN/j1

C.F. 77

Item.
No. A2

MEMO OF DR. G.P. POON DATED 13TH OCTOBER 1983


MEMO	
Dr. G.P. POON Senior Medical & Health Officer From Government Surgical Unit, Q.M.H.	To Director of Legal Aid
Ref. in ICN No. 9770/82	Your Ref. in LU/NCC/LA 23/83 RAD (PTI)
Tel. No. 5-8192386	dated 28.9.83
Date 13th October, 1983.	

Re : LAU Ho-wah ¹¹M/2†

This patient attended the Tang Chi Ngong Surgical Specialist Clinic 9 times from October 1982 to August 1983 since discharge. Eight visits were made before April this year.

2. The charge was \$3.00 each time before 1st April, 1983 and \$6.00 each time since then.

GPP:sh


(Dr. G. P. POON)
Senior Medical & Health Officer
Government Surgical Unit
Queen Mary Hospital

FORM 2 (CHINESE VERSION)

Item.
No. A3



EMPLOYERS' COMPENSATION ORDINANCE, CAP. 282
僱員賠償條例 (香港法例第282章)

SECTION 15
第十五條

NOTICE BY EMPLOYER OF THE DEATH OF AN EMPLOYEE OR OF AN ACCIDENT
TO AN EMPLOYEE RESULTING IN DEATH OR INCAPACITY
由僱主通知有關僱員死亡或僱員因意外而致死亡或受傷之通知書

(To be completed and returned in DUPLICATE to the Labour Department)
本通知一式兩份，一份呈外僱主

Certified true copy
Signed: _____
Designation: Assistant Labour Officer
Date: 8. 5. 93 1993

To the Commissioner for Labour,
Hong Kong.
致香港勞工處處長：

Name of injured employee (Surname first)
受傷僱員姓名

Sex
性別

Age
年齡

Identity Card Number
身份證號碼

劉浩華

M

H132967

Address
地址

西環荷李活街240座三樓 H2197020

Occupation
職業

Date of injury
受傷日期

Time of injury
受傷時間

搬運工人

24/9/92

11:00 AM a.m./p.m.
上午/下午

Nature of injury
受傷情形

Result of injury—Injury/Death*
受傷/死亡

受傷

Describe in detail how the accident happened
詳述意外如何發生

Place of injury
受傷地點

華林街近心芳園人座

If injury is due to machinery, state:
若意外由機器引起，說明：

Type of machinery
機器種類

Was the machinery power-driven? Yes/No
是否以動力開動? 是/否

Part causing injury
引起傷情的部分

Was the machinery in motion? Yes/No
機器是否在運動中? 是/否

Name of employer
僱主姓名

鄭三傑

Address
地址

Telephone Number
電話號碼

香港佐蘭竹坑邨二座五樓406室

H22056

Item.
No. A3

(Continued)

17 FEB 1982

If accident resulted in death, Police notified/notified? Sta. ..
 若意外引致殞命死亡，未有報警/已通知..... 警察*

Name of next-of-kin Relationship
 近親姓名 關係

Address
 地址

Certified true copy
 Signed.....
 Designation Assistant Labour Officer
 Date.....

The wages of the employee at the time of accident were S...../day/week/month.*

發生意外時，該僱員之工資為每月 1700.00 元

For the preceding twelve months or total period of employment, if less than twelve months, the following additional information is provided:
 茲將意外發生前之十二個月內或整段受僱期間內，若少過十二個月之其他資料提供如下：

Average wages S...../day/week/month.*

平均工資 每月 1700.00 元

Average wages for regular overtime worked S...../day/week/month.*

定期逾時工作之平均工資 每月 0 元

Additional allowance or bonus of constant nature S...../day/week/month.*

經常性質之額外津貼或獎金 每月 0 元

Total: S...../day/week/month.*

總額：每月 1700.00 元

Was free food provided by the employer? Yes/No*
 伙食是否由僱主免費供給? Yes 否*

Was free accommodation provided by the employer? Yes/No*
 住宿是否由僱主免費供給? Yes 否*

Was the employer insured against liabilities under the Employees' Compensation Ordinance? Yes/No*
 僱主是否因理員職責條例所規定之責任而為僱員投保保險? Yes 否*

Name of insurance company
 保險公司名稱

Policy Number
 保單號碼

WORKERS' COMPENSATION
DEPARTMENT
INDUSTRIAL AND COMPENSATION
 (Chop of company)
 公司蓋印

Signature 鄧廷標
 簽 署
 Position 東主
 職 位
 Date 13-12-82
 日 期

* Delete whichever is not applicable.
 * 請不適用者刪去。

FORM 2 (ENGLISH TRANSLATION)

Item.
No. A4

(Translation)
FORM 2
表格二

(4) A

EMPLOYEES' COMPENSATION ORDINANCE, CAP. 282
僱員賠償條例 (香港法例第二八二章)

SECTION 15
第十五條

NOTICE BY EMPLOYER OF THE DEATH OF AN EMPLOYEE OR OF AN ACCIDENT
TO AN EMPLOYEE RESULTING IN DEATH OR INCAPACITY
由僱主呈報有關僱員死亡或僱員因意外而致死亡或受傷之通知書

(To be completed and returned in DUPLICATE to the Labour Department WITHIN 7 DAYS of the accident)
(請填寫一式兩份，於意外發生後七日內送交勞工處)

To the Commissioner for Labour,
Hong Kong.
致香港勞工處處長：

Name of injured employee (Surname first) 受傷僱員姓名	Sex 性別	Age 年齡	Identity Card Number 身份證號碼
Lau Ho Wah	M		H132967
Address 地址			
No 2, Davis Street, Block C, 4/F, Western, Hong Kong Tel 5-8187020			
Occupation 職業	Date of injury 受傷日期	Time of injury 受傷時間	
Delivery Worker	24/9/82	11 00 a.m./p.m.* 上午/下午*	
Nature of injury 受傷情形	Result of injury—Injury/Death* 受傷/死亡*		

Describe in detail how the accident happened
詳述意外如何發生

Place of injury
受傷地點 At Pokfulam Road near Ebenezer School for the Blind.

If injury is due to machinery, state:
若意外由機器引起，說明：

Type of machine 機器類別	Was the machinery power-driven? 是否以動力帶動?	Yes/No* 是/否*
Part causing injury 引致僱員受傷之機器部份	Was the machinery in motion? 機器是否在帶動中?	Yes/No* 是/否*

Name of employer 僱主姓名	Address 地址	Telephone Number 電話號碼
Yau Chi Bin	Rm 406, Block 2, Wong Chuk Hang Estate, 4/F, Aberdeen, Hong Kong	5-528056

L.D. (3/3)

Item.
No. A4

(Continued)

If accident resulted in death, Police not notified/notified* at Station.

若意外引致僱員死亡，未有報警/已通知..... 警署*

Name of next-of-kin 近親姓名	Relationship 關係
-----------------------------	--------------------

Address
地址

The wages of the employee at the time of accident were \$...1,900.../day/week/month.*

發生意外時，該僱員之工資為每月/週/日*.....元

For the preceding twelve months or total period of employment, if less than twelve months, the following additional information is provided:
茲將意外發生前之十二個月內或整段受僱期間內(若少過十二個月)之其他資料提供如下:

Average wages \$...1,900.../day/week/month.*
平均工資 每月/週/日*.....元

Average wages for regular overtime worked \$...../day/week/month.*
定期逾時工作之平均工資 每月/週/日*.....元

Additional allowance or bonus of constant nature \$...../day/week/month.*
經常性質之額外津貼或獎金 每月/週/日*.....元

Total: \$...../day/week/month.*
總額: 每月/週/日*.....元

Was free food provided by the employer? Yes/No*
伙食是否由僱主免費供給? 是/否*

Was free accommodation provided by the employer? Yes/No*
住宿是否由僱主免費供給? 是/否*

Was the employer insured against liabilities under the Employees' Compensation Ordinance? Yes/No*
僱主有無因僱員賠償條例所規定之責任而為僱員投購保險? 有/無*

Name of insurance company 保險公司名稱	Policy Number 保單號碼
-------------------------------------	-----------------------

Signature You Chi Bin
簽 署

Position Employee
職 位

Date 13/12/82
日 期

(Chop of company)
公司蓋印

* Delete whichever is not applicable.
* 將不適用者刪去。

SICK LEAVE CERTIFICATES

Item.
No. A5

SICK LEAVE CERTIFICATE
病 假 証 明 書

Hospital/Clinic
醫院/診療所

Date 21/11/13
日期

I certify that Lau Hei Wai
茲 証 明

is suffering from (IN BLOCK LETTER)
因 患 (請用正楷)

(1) He is recommended 28 1/2 days
(一) 需要病假 日

sick leave from 21/11/13
即 由

to 28/11/13 inclusive.
至 止。

(2) He will be fit to resume duty on
(二) 該病人可於 恢復工作。

(3) He should return here on
(三) 該病人應於 回來覆診。

(4) A permanent disability ^{is} expected.
is not 可能 永久喪失工作能力。
(四) 預 期 該 病 人 不 致

Medical Officer.
醫 生

To:
致:

M.D. 37

Item.
No. A5

(Continued)

SICK LEAVE CERTIFICATE
病 假 証 明 書

..... AT Hospital/Clinic
醫院/診療所

Date 28.10.82
日期

I certify that Lam Ho Lick
茲 証 明

is suffering from (IN BLOCK LETTER) Lead injury
因 患 (請用正楷)

(1) He is recommended 46 days
(一) 需要病假 日。

sick leave from 28.9.82 -
即 由

to 8.11.82 inclusive.
至

(2) He will be fit to resume duty on 8.11.82
(二) 該病人可於 恢復工作。

(3) He should return here on 8.11.82
(三) 該病人應於 回來覆診。

(4) A permanent disability ^{is} ~~is not~~ expected.
(四) 預 期 該 病 人 ^{可能} ~~不致~~ 永久喪失工作能力。

..... [Signature]
Medical Officer.
醫 生

To: 2 Lam Tin Hong, Wai Man
致:

M.D. 37

Item.
No. A5

(Continued)

SICK LEAVE CERTIFICATE
病假證明書

..... Hospital/Clinic
醫院/診療所

Date 8-11-82
日期

I certify that Alan Ho Wah
茲證明

is suffering from (IN BLOCK LETTER)
因患 Head Injury (請用正楷)

1) He is recommended days
一) 需要病假 8-11-82 日。

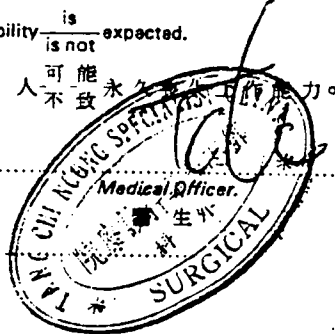
sick leave from
即由 20-11-82
to inclusive.
至 止。

He will be fit to resume duty on
二) 該病人可於 恢復工作。

(3) He should return here on
(三) 該病人應於 回來覆診。

(4) A permanent disability is expected.
is not
(四) 預期該病人 可能 永久不能工作。
不致永久不能工作。

To:
致：
M.D. 37



Item.
No. A5

(Continued)

SICK LEAVE CERTIFICATE

病假證明書

G. S. O. M. *04* Hospital/Clinic
醫院/診療所
Date *9/11/82*
日期

I certify that *Lee Ho Wah*
茲證明

is suffering from (IN BLOCK LETTER)
因患 (請用正楷)

post encephalitic Sx.

(1) He is recommended *7* days
(一) 需要病假 *7* 日

sick leave from *9/11/82*
即由 *9/11/82*
to *15/11/82* inclusive.
至 *15/11/82* 止。

(2) He will be fit to resume duty on
(二) 該病人可於 *15/11/82* 恢復工作。

(3) He should return here on *15/11/82*
(三) 該病人應於 *15/11/82* 回來覆診。

(4) A permanent disability is expected.
is not

(四) 預期該病人 可能 永久喪失工作能力。
不致

Lin
Medical Officer.
醫生

To:

文:

I.D. 37

Item.
No. A5

(Continued)



I certify that
茲證明

Lim Ho Wah

is suffering from (IN BLOCK LETTER)

因患 *Cerebral Edema x 2*

(1) He is recommended days
(一) 需要病假 *29-11 R* 日。

sick leave from
即由 *31-12-82*
to inclusive.
至 止。

(2) He will be fit to resume duty on
(二) 該病人可於 恢復工作。

(3) He should return here on
(三) 該病人應於 回來覆診。

(4) A permanent disability is expected.
is not
(四) 預期該病人 可能永久喪失工作能力。
 不致

[Signature]
Medical Officer.

醫生

To:

致:

M D. 37

Item.
No. A5

(Continued)

TANG SHI NGONG SPECIALIST CLINIC
病 假 証 明 書
鄧志昂專科診療院

Hospital/Clinic
醫院/診療所
Date 3/1/83
日期

I certify that CAU MO KWAI
茲 証 明

is suffering from (IN BLOCK LETTER)
因 患 (請用正楷)

HEAD INJURY

(1) He is recommended 2/1/83 days
(一) 需要病假 日

sick leave from 20/1/83
即 由 止
to 20/1/83 inclusive.

(2) He will be fit to resume duty on
(二) 該病人可於 恢復工作。

(3) He should return here on
(三) 該病人應於 回來覆診。

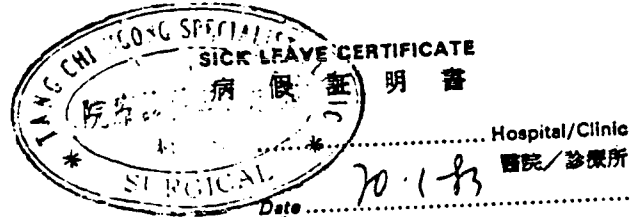
(4) A permanent disability is not expected.
(四) 預期該病人可能不致永久喪失工作能力。

[Signature]
Medical Officer.
醫生

To: Whose it may concern
致：
M.D. 37

Item.
No. A5

(Continued)



Hospital/Clinic
醫院/診所

Date
日期

20-1-83

I certify that
茲證明

Chan Ho Wah

is suffering from (IN BLOCK LETTER)
因患 (請用正楷)

Concussion

(1) He is recommended days
(一) 需要病假 日,

20-1-83

sick leave from

即由

30-1-83

to inclusive.
至 止。

(2) He will be fit to resume duty on
(二) 該病人可於 恢復工作。

(3) He should return here on
(三) 該病人應於 回來覆診。

(4) A permanent disability is expected.
is not

(四) 預期該病人 可能 永久喪失工作能力。
不致

Medical Officer.
醫生

To:
致:

M.D. 37

Item.
No. A5

(Continued)

SICK LEAVE CERTIFICATE
病 假 証 明 書

Hospital/Clinic 醫院/診療所

Date 27.1.83
日期

I certify that Lau Ho Wai
茲 証 明

is suffering from (IN BLOCK LETTER) POT Bronchitis
因 患 (請用正楷)

(1) He is recommended 30 days
(一) 需要病假

sick leave from 27.1.83
即 由

to 25.2.83 inclusive.
至 止。

(2) He will be fit to resume duty on
(二) 該病人可於 恢復工作。

(3) He should return here on
(三) 該病人應於 回來覆診。

(4) A permanent disability is not expected.
(四) 預期該病人 不致 永久喪失工作能力。

.....
Medical Officer. 醫生

To: W. H. T. ...
致:

M.D. 37

Item.
No. A5

(Continued)

SICK LEAVE CERTIFICATE
病、假、証、明、書
醫院 / Hospital/Clinic
醫院 / 診所

Date 21.2.83
日期

I certify that 茲證明
Fall the war

is suffering from (IN BLOCK LETTER) 因 患
fracture injury

(1) He is recommended 無要緊
sick leave from 21.2.83
即由 21.2.83

to 28.2.83 inclusive.
至 止。

(2) He will be fit to resume duty on 恢復工作。

(3) He should return here on 回來覆診。

(4) A permanent disability is not expected.
(四) 預期該病人可能不致永久喪失工作能力。

Medical Officer
醫生
To: Alan H. Lee
致：
M.D. 37

Item.
No. A5

(Continued)

TEMPERANCE N. UNG (SOUTH) HOSPITAL **證明書**
SURGICAL **日期** 2.3.83
Hospital/Clinic
醫院/診所

I certify that
茲證明

is suffering from (IN BLOCK LETTER)
因患 (請用正楷)

(1) He is recommended days
(一) 需要病假 日,
sick leave from 13.13
即由
to 14.3.83 inclusive.
至 止。

(2) He will be fit to resume duty on
(二) 該病人可於 恢復工作。

(3) He should return here on
(三) 該病人應於 回來覆診。

(4) A permanent disability is expected.
is not
(四) 預期該病人 可能 永久喪失工作能力。
不致

.....
Medical Officer.
醫生

To:
致:
M.D. 37

Item.
No. A6

MEDICAL REPORT BY DR. FALI J. SHROFF

DATED 9TH AUGUST 1983

DR. FALI J. SHROFF

M.B.B.S., F.R.C.S.
ROOM 818, HOLLAND HOUSE
9, ICE HOUSE STREET
HONG KONG
TEL. 5-224800

施 樂 富 醫 生

五月大學內外科學士
英國愛丁堡皇家外科醫學院院士
荷蘭街八八五九號
香港會慶街九號
電話：五·二二四八〇〇

9th August, 1983.

Mr. R. A. Davies,
Legal Aid Department,
173 Des Voeux Road Central.
HongKong.

Your ref: LU/WCC/LA 23/83.

Dear Mr. Davies,

Re: Lau Ho Wah M/ 31.

Lau Ho Wah was interviewed and examined by me on the 1st of August, 1983 with regard to an accident sustained by him in September, 1982. He was accompanied by his cousin.

Lau Ho Wah has complete amnesia for the accident. He can recall travelling on a lorry but any subsequent events cannot be recalled by him. Thus he was unaware of the arrival of the ambulance or of his admission into hospital.

According to his cousin Lau Ho Wah fell off a moving lorry.

Lau Ho Wah was admitted into the Government Surgical Unit of Queen Mary Hospital in a condition that was stated to be drowsy with laceration over the occipital region (back of the head). He remained drowsy for some considerable time and it was felt that a special investigation in the form of computerised tomography of the brain should be carried out. This revealed cerebral oedema (swelling of the tissues of the brain with fluid). Radiological examination did not reveal any evidence of fracture.

It appears from the medical report of Queen Mary Hospital that Lau Ho Wah remained drowsy for some considerable time and he was discharged after remaining in hospital for one whole month.

Continued.....

2.

Lau Ho Wah

Lau Ho Wah was asked to describe his present symptoms.
These are:

- (a) Marked intellectual impairment with difficulty in concentration; poor memory for recent events and at times easily confused.
- (b) Attacks of headaches associated with dizziness occurring almost daily and each time lasting for several hours.
- (c) Feeling of numbness in his left limbs.
- (d) Lethargy and apathy throughout the day.

Neurological Examination:

This was carried out in a detailed manner.
Lau Ho Wah appeared to be mentally dull. There was marked slowness of thought processes. He could not give his address nor could he recall his telephone number. During the physical examination he showed some difficulty in following instructions.

The cranial nerves were examined with regard to their functions. No abnormality could be detected.

Next both the upper and lower limbs were examined. There was slight weakness of the left limbs when compared to the right. This weakness amounted to grade 4 * where grade 5 = normal; grade 3 = can just overcome gravity and grade 0 = complete paralysis.

This mild weakness of the left limbs resulted in an equivocal response of the plantar reflex.

No other abnormality in the nervous system could be detected.

I M P R E S S I O N S:

In order to judge the severity of a head injury sustained, the duration of unconsciousness (i.e. period of amnesia) is a very good guide. This period of time is calculated from the moment of impact to the restoration of continous awareness. During this period there may be 'islets of consciousness' but for the purpose of arriving at an indication of the severity of the head injury sustained, this is disregarded.

According to Professor B. Jennett of the University of Glasgow, where the period of amnesia lasts for 1 to 7 days the head injury sustained falls under the category of severe; and it is considered

Continued.....

**Item.
No. A6**

(Continued)

3.

Lau Ho Wah

to be very severe where the period of amnesia is from 1 to 4 weeks.

This criteria as laid down by the professor is now almost universally agreed upon. It follows therefore that the head injury sustained by Lau Ho Wah under the category of severe.

A repeat computerised scanning of the brain was therefore called for. Plain studies revealed an area of brain atrophy involving the right anterior and mid frontal lobe of the brain. The X-ray series were therefore repeated this time after the introduction of a contrast material in order to see if this area was enhanced. (See detailed report enclosed).

There is therefore radiological evidence of right frontal lobe damage which can account for his marked intellectual impairment. Skilled psychometric testing is recommended. It may enable the examiner to make some assessment as to how far the patient's poor intellectual performance is inherent and constitutional, how far it is genuinely due to brain damage; in the latter instance the patchiness of the test results is characteristic.

In this respect may I recommend;

Ms. Janie O. C. Lee,
29-31 Yuk Sau St.
Po Wah Court, Rm 2C.
Happy Valley, H.K. Tel: 5-756412.

Another evidence with regard to his intellectual impairment is forthcoming from his history; he cannot watch television for long as his concentration would falter nor does he read newspapers. However Lau Ho Wah was born in China and only attended primary schooling. He arrived in HongKong in 1980.

Post Concussional Syndrome:

Lau Ho Wah's symptoms of headache, associated with dizziness and feeling of lethargy and easy fatigability is very suggestive of post concussional syndrome. That these symptoms have an organic basis have been confirmed by recent evidence. It is now accepted that even mild injuries usually entails some structural damage to the brain. The dizziness so often complained of can readily be related to labyrinthine (ear) concussion; but the headache is more difficult to explain.

It is possible that with the passage of time these symptoms of post-concussional syndrome may ameliorate.

Continued.....

Item.
No. A6

(Continued)

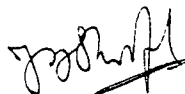
4.

Lau Ho Wah

It would be difficult at this early stage to state if Lau Ho Wah can return to his previous employment. His head injury occurred only 10 months ago.

I will await the report from the psychologist before making any definite decision regarding return to work.

Yours sincerely,



Neurosurgeon.

Item.
No. A6

(Continued)

~~DR.~~ FALI J. SHROFF

M.B.B.S., F.R.C.S.
ROOM 818, HOLLAND HOUSE
9, ICE HOUSE STREET
HONG KONG

TEL. 5-224800

施樂富醫生

五月大學內外科醫學士
英國愛丁堡皇家外科醫學院院士
香港華人一八堂九屆
香港會醫學會
電話：五·二二四八〇〇

COMPUTERISED TOMOGRAPHY SCANNING OF THE BRAIN.

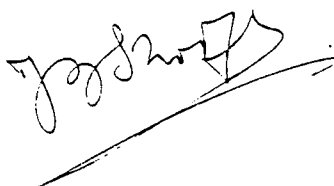
Lau Ho Wah Male, 31.

Initial scan showed an area of irregular shape with reduced attenuation value occupying the anterior and mid frontal lobe of the brain on the right side.

The lateral and 3rd ventricles are slightly dilated but the anterior horn is dilated more on the right side. There is no shift of the mid line structures.

In view of the abnormality seen, contrast injection was mandatory. No localised enhancement was shown.

Opinion: The findings are consistent with localised brain atrophy in a part of the right frontal lobe together with scar tissue formation.



MEDICAL REPORT BY DR. FALI J. SHROFF DATED 1ST

Item.
No. A7

OCTOBER 1983

DR. FALI J. SHROFF
M.B.B.S. F.R.C.S.
ROOM 818, HOLLAND HOUSE
9, ICE HOUSE STREET
HONG KONG
TEL. 5-224800

施樂富醫生
是醫大學內外科醫學士
英國愛丁堡皇家外科醫學院院士
香港華人一六五九號
香港會慶街九號
電話：五·二二四八〇〇

1st October, 1983.

Mr. R. A. Davies,
Legal Aid Department,
173 Des Veaux Road,
HongKong.

Your ref: LU/WCC/LA 23/83 RAD (PIL)

Dear Mr. Davies,

Re: Lau Ho Wah, M/31.

Thank you for your letter dated 26th September,
and for the enclosure.

I have now had occasion to study in detail, Ms.
Lee's report.

I do not think that Lau Ho Wah is capable of ta-
king up any employment which does not entail continous super-
vision by a colleague.

Whilst regretfully it was not mentioned in my ori-
ginal report the possibility of Lau Ho Wah developing generalised
epileptic convulsions within the next four years is of the order
of 5%.

It is important therefore the he should not work
near any place of hazard nor at any height above ground level.

The fact that he is very absent-minded will also pre-
clude him from obtaining any employment which calls for even mi-
nimal responsibility. His psychological (emotional and behaviour-
al) and intellectual problems will again make it difficult for
him to sustain any employment for any length of time.

Continued....

Item.
No. A7

(Continued)

2.

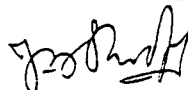
Lau HO Wah

One cannot give a definite answer if he can return to his previous employment as a porter in a fruit market. If this involves lifting of heavy weights then he would tire easily because on clinical examination some weakness of his left limbs was noticed.

If his job involves light physical duties and if supervision is present all the time, in my opinion he can return to his previous employment. However at the present time he suffers from symptoms suggestive of post-concussional syndrome; in particular headache and dizziness. This will prevent him from taking up any employment at the present time. These symptoms should abate in about 6 months time taking into account the fact that he sustained his head injury about a year ago.

I would estimate his loss of capacity to work as being of the order of 60 to 70%.

Yours sincerely,



Neurosurgeon

PSYCHOLOGICAL ASSESSMENT REPORT BY JANIE O.C. LEE

Item.
No. A8

DATED 7TH SEPTEMBER 1983

HONG KONG CHILD GUIDANCE CENTRE

香港兒童
啟導中心
李澤堯
李澤堯
李澤堯
李澤堯

Educational Psychologist
JANIE O. C. LEE
B.A.(HONS.), DIP. ED.(H.K.), M. SC.(ED. PSY.)(LONDON)

7th September, 1983.

PSYCHOLOGICAL ASSESSMENT REPORT

Name : Lau Ho Wah LU/WCC/LA 23/82

Sex : Male

Age : 28

Date of Birth : 16.8.1955

Date Assessed : 30.8.1983

Referred by : R. A. Davies Esq. for Director of Legal Aid

Reasons for Referral :

Mr. Lau was injured in a traffic accident on 24.9.1982. The present assessment is to investigate if he has sustained deficits in cognitive ability as a result of the injury.

Case Notes :

- A. I have for reference reports from:
- 1) Dr. T.C. Lee dated 18.2.1983.
 - 2) Dr. Fali J. Shroff dated 9.8.1983.
- B. Testing took a total of 5 hours.

Item.
No. A8

(*Continued*)

- 2 -

The Interview :

Mr. Lau was accompanied by his cousin and the following information is supplied by both of them :

Mr. Lau could not remember anything of the accident except that he was working, riding on a lorry full of fruits. He could not remember anything of the subsequent accident or hospitalization. However, memory of remote events prior to the accident did not seem to have suffered unduely. He could still remember the name of the Primary School he went to in China and his life as a farmer in the village.

Mr. Lau complained of weakened memory ability since the accident. This was attested to by his cousin who lived in the same flat with him. He had become very absent-minded, forgetting what he had promised to do, leaving his personal things in the bathroom after his bath etc. He found it hard to concentrate and his attention tended to wander during conversations. His intelligence also deteriorated. In the village, he could use the abacus and do calculations, even 5 digit divisions. His cousin stated that now he could not even do something as simple as buying the food for a meal sensibly.

Moreover, his cousin also found him to be much more irritable than before, brusquely throwing things down, answering back loudly, etc. All the tenants in the same flat were afraid of him.

**Item.
No. A8**

(Continued)

- 3 -

Mr. Lau also complained of difficulties in his vision. He felt as if there was some haze covering up his vision and he could not see clearly especially small words. He could not read newspapers. He could not watch television as he found the picture very confusing and not clear.

Behavioural Observations :

Mr. Lau appeared tired and pale when he arrived with his cousin. He had to rest a while before he could join his cousin for the initial interview. Mr. Lau spoke with a heavy Tung Kwun accent and his cousin had to interpret for me. During the testing Mr. Lau settled down gradually and his efforts improved considerably in the process. Moreover, in at least one test even though he started off badly and confused with the early items, he made considerable efforts and showed improvement in his performance in the later items.

Tests Given :

Wechsler Adult Intelligence Scale (WAIS)

Weigl-Goldstein Colour Form Sorting Test

- 84 -

Item.
No. A8

(Continued)

- 4 -

Examining for Aphasia
Wechsler Memory Scale
Rey Auditory Verbal Learning Test
Benton Visual Retention Test
Frostig perceptual tests
Daniels & Diack Visual Discrimination & Orientation Test
Bender Visual Motor Gestalt Test
Money's Road Map Test
Stroop Test

Test Results & Discussions:

I. Intellectual Functioning

The WAIS was the first test Mr. Lau was asked to do. The results could have been somewhat adversely affected by his not having quite settled down. He could hardly score on the very first subtest. He attained Full Scale IQ 69 which would just put him within the range of Mentally Deficient. However, judging from his overall performance in the testing session, and taking into consideration his initial confusion and that he had a different educational background, I think the Borderline Defective Range of intellectual functioning, IQ 70 to 79, would be a more appropriate description of his present intellectual ability.

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**Item.
No. A8**

(Continued)

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Mr. Lau's performance on the Weigl was defective. The Weigl is a simple test in which the examinee is expected to categorize a set of plastic pieces by both colour and form. Mr. Lau could only categorize by colour and could not change to categorize by form. His stereotypy was such that even when an example of categorizing by form was shown to him, he could not accept it as correct and he could not understand the concept used. When pressed, he became all confused in categorizing. This inflexibility in the ability for abstract conceptualization is a significant behavioural correlate of neurological difficulties especially of the frontal lobe.

For Mr. Lau we could assume a baseline of at least Low Average intelligence, IQ 80-89, before the accident, judging from his history of finishing Primary School and working as a farmer. His present intellectual ability would represent a deterioration of about 10 IQ points. His typical stereotypy in abstract conceptualization points to organic origins.

II. Symbolic Functioning

Mr. Lau did not appear to have undue difficulties in the use of speech. After encouragement and coaxing, he showed that he could read and write Chinese characters.

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Item.
No. A8

(Continued)

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III. Memory Functioning

Mr. Lau claimed complete amnesia of the accident and the subsequent hospitalization. However, he still retained memory of remote events such as his primary schooling in a village in China. His performance on immediate auditory memory span and immediate visual memory was adequate. However, in tests where the material to be learned was beyond his memory span, as in learning meaningful passages and word lists, both immediate reproductions and delayed reproductions were much weaker than average. His learning of word lists was much slower than average in repeated trials. Even in a recognition trial where Mr. Lau had only to recognize the words to be learned, a task usually easier than recall, his performance was also weaker than average. Most probably, his memory difficulties were due to interference effects in the registration process. In daily life, Mr. Lau's memory difficulties would make him absent-minded and make the learning of new material difficult to him.

IV. Spatial Perceptual Functioning

Mr. Lau had no difficulties with basic perceptual abilities of figure-ground, closure etc. but he showed difficulties in spatial perceptual functioning in his test performance. In the Bender, his reproductions showed many orientation mistakes of rotation that were significant of neurological difficulties. When his reproductions were discussed with him, he had no idea what his errors were. Even

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when the orientational errors were explained to him, it took much verbal explanation as well as hand movements to make him realize his own errors. In the Road Map Test, his performance was no better than chance level, indicating difficulties in personal spatial orientation as well.

Mr. Lau had no difficulties with discriminating and matching familiar, meaningful pictorial material. His difficulty was not on the sensation level. But when asked to copy unfamiliar, meaningless visual material as in the Bender, his difficulties were revealed.

V. Emotionality and Control

Mr. Lau's cousin pointed out that Mr. Lau had become much more irritable and his manner of speaking and acting much more brusque than before. At the start of the session I have also found him surly and uncooperative. But he gradually became much more responsive and better-mannered as the session progressed. Most probably, his present mood and temperamental changes could be traced to psycho-dynamic factors caused by injury, suffering and incapacity. Mr. Lau performed adequately on tests for mental control of behaviour but it must be pointed out that in the one-to-one situation of testing, the subject's effort is brought to a maximum and environmental distractions to a minimum. In everyday life Mr. Lau had difficulties concentrating. He seldom read newspapers or watch television and he found his attention wandered in

Item.
No. A8

(Continued)

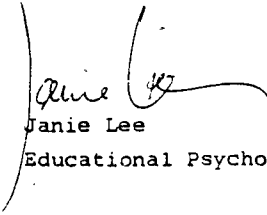
- 8 -

conversation. These difficulties in attentional control are frequently found after brain trauma.

Present testing found Mr. Lau functioning on the Borderline Defective Range of intellectual ability. This represents general intellectual deterioration of a postulated 10 IQ points. Testing also revealed inflexibility in his ability for conceptualization which is significant of brain injury. Mr. Lau also has a recent memory deficit which makes him absent-minded in everyday life and makes learning of new material difficult to him. In spatial perceptual functioning he has revealed orientational difficulties both with personal spatial orientation and with orientational relationships of new visual stimuli in the external world. Moreover, in everyday life, Mr. Lau has exhibited changes in temperament and he has difficulties with attentional control. Besides the intellectual difficulties, these difficulties in memory ability, spatial perceptual ability and attentional control are also significant of organic damage to the brain.

Conclusion:

Difficulties are revealed in intellectual functioning, in memory functioning, in spatial perceptual functioning and in mental control. These are significant behavioural correlates of brain injury.


Janie Lee
Educational Psychologist

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AFFIDAVIT OF MICHAEL KINGDON TURNBULL DATED 24TH
JANUARY, 1985

Item.
No. A9

IN THE SUPREME COURT OF HONG KONG
COURT OF APPEAL
ON APPLICATION FOR LEAVE TO APPEAL OF
HER MAJESTY IN COUNCIL FROM COURT OF APPEAL
CIVIL APPEAL NO. 139 OF 1984

BETWEEN

10

LAU HO WA Applicant

and

YAU CHI BIU Respondent

I, MICHAEL KINGDON TURNBULL, in the employ
of the Hong Kong Government, Department of Legal
Aid, 19th floor, Sincere Building, 173 Des Vouex
Road, Central, Hong Kong, do take oath and say as
follows :-

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1. I am the Legal Aid Officer acting on behalf
of the Applicant herein and I have the
conduct of this case on his behalf.
2. I have taken Counsel's advice and upon
considering the same verily believe that
there are valid and sustainable grounds of
Appeal to Her Majesty in Council against
the Judgment of the Learned Court of Appeal

Item.
No. A9

(Continued)

following the hearing of Civil Appeal No. 139 of 1984. A copy of the said judgment which was delivered on 21st December 1984 is exhibited hereto and marked "MKT-1".

3. The said judgment was delivered following consideration of arguments of learned Counsel on 8th November 1984 and the contents of the Bundle of Appeal, a copy of the latter is exhibited hereto and marked "MKT-2".
4. A copy of the Notice of Motion which was filed in the Supreme Court of Hong Kong in the Court of Appeal on 11th January 1984 is exhibited hereto and marked "MKT-3". The said Notice of Motion sets out the grounds of the application and particulars thereof referred to in paragraph 2 herein.
5. I humbly pray for an order in the terms of the said Application.

10

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SWORN this 24th day of January 1985) (Sgd.)
at Islands District Office City &) Michael
N.T. Administration.) Kingdon
Turnbull

Before me,

(Sgd.)
(Ming Kay-chuen)
A Commissioner for oaths

This Affidavit is filed on behalf of the Applicant.

Item.
No. R1

(Continued)

DR. NG SHI HON

M.B., B.S. (H.K.) M.R.C.P. (U.K.)

Rm. 706, Champion Building,
301-309, Nathan Rd., Kowloon.
Tel: 3-327773

香港大學內外全科醫學士
英國皇家內科醫學院院士
伍仕漢醫生

- 2 -

LAU HO WAH

- b) Mild weakness of left upper and lower limbs of an upper motor neurone pattern (i.e. due to brain origin rather than to peripheral nerves); power grade 4 (where grade 5=normal, grade 3=can just overcome gravity and grade 0=complete paralysis).
- c) Absence of significant 'primitive reflexes' that are usually present in patients with severe and extensive cerebral frontal lobe damage.

Impression : In view of the considerable period of post-traumatic amnesia (i.e. period from the moment of impact to the restoration of continuous awareness) of more than a few days, the presence of retrograde amnesia, and C.T. scan showing cerebral oedema initially and then right frontal lobe atrophy about one year later, it is no doubt that Lau Ho Wah had sustained a severe head injury in September, 1982.

The average incidence of post-traumatic epilepsy for closed head injury is about 5%. The absence of convulsion initially and in the subsequent 18 months in this case will make the possibility even less than 5%.

In addition to the right frontal lobe damage, the so-called 'post-concussional/traumatic syndrome' (symptom complex of headache, dizziness, poor memory and concentration) is also contributing to his present impaired intellectual and mental state. The mild weakness of his left arm and leg is most likely to be permanent. This together with his present intellectual and mental impairment would make him a loss of capacity to work of the order of at least 50 to 60%.

However, with the passage of time patients usually show improvement from the post-traumatic syndrome but the period of convalescence may last as long as three years. Hence, although Lau Ho Wah would surely have some intellectual and mental deficit permanently, it would be difficult to commit his present degree of incapacity to be permanent without a reassessment 18 months later.

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DR. NG SHI HON

M.B., B.S. (H.K.) M.R.C.P. (U.K.)

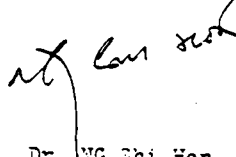
Rm. 706, Chameleon Building,
301-309, Nathan Rd., Kowloon.
Tel: 3-327773

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LAU HO WAH

Thank you for your attention.

Yours sincerely,



Dr. NG Shi Hon
M.B., B.S. (H.K.) M.R.C.P. (U.K.)

**Item.
No. R1**

(Continued)

香港大學內外全科醫學士
英國皇家內科醫學院院士
伍仕漢醫生

Item.
No. R2

SICK LEAVE CERTIFICATES

SICK LEAVE CERTIFICATE
病假證明書

Hospital/Clinic
醫院/診療所

Date: 28/19/52
日期

I certify that Leung Ho Tung
茲證明

is suffering from (IN BLOCK LETTER) Heart Disease
因 患 (請用正楷)

(1) He is recommended 24 days
(一) 需要病假 24 日
sick leave from 28/1/52
即由 28/1/52
to all full time notice inclusive.
至 止 止。

(2) He will be fit to resume duty on
(二) 該病人可於 恢復工作。

(3) He should return here on
(三) 該病人應於 回來覆診。

(4) A permanent disability is expected.
(四) 預期該病人 可能 永久喪失工作能力。
不致

hen
Medical Officer.
醫生

To: Colonel It Majors
致:

M.D. 37

Item.
No. R2

(Continued)

SICK LEAVE CERTIFICATE
病·假·証·明·書

..... SH Hospital/Clinic
醫院/診療所

Date 28.10.82
日期

I certify that Lam Ho Wah
茲 証 明

is suffering from (IN BLOCK LETTER) Lead injury
因 患 (請用正楷)

(1) He is recommended 46 days
(一) 需要病假 日

sick leave from 28.9.82
即 由
to 8.11.82 inclusive.
至 止。

(2) He will be fit to resume duty on 8.11.82
(二) 該病人可於 恢復工作。

(3) He should return here on 8.11.82
(三) 該病人應於 回來覆診。

(4) A permanent disability is not expected.
(四) 預期該病人 可能 不致 永久喪失工作能力。

..... [Signature]
Medical Officer.
醫生

To: Lam Ho Wah
致: Wong Tsang
M.D. 37

Item.
No. R2

(Continued)

SICK LEAVE CERTIFICATE
病假證明書

..... Hospital/Clinic
醫院/診療所

Date 8-11-82
日期

I certify that An Ho Wah
茲證明

is suffering from (IN BLOCK LETTER) Head injury
因 患 (請用正楷)

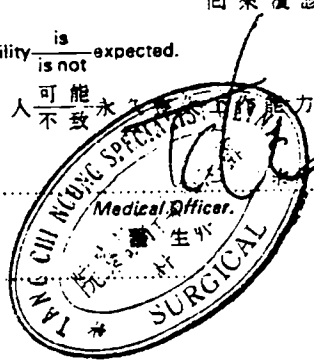
1) He is recommended 8-11-82 days
(一) 需要病假 日，
sick leave from 20-11-82
即由 止。
to 20-11-82 inclusive.
至 止。

He will be fit to resume duty on
二) 該病人可於 恢復工作。

(3) He should return here on
(三) 該病人應於 回來覆診。

(4) A permanent disability is expected.
is not
(四) 預期該病人 可能 永久 不致 喪失工作能力。

To:
致：
M.D. 37



Item.
No. R2

(Continued)



日期

I certify that Law Ho Wah
 茲證明
 is suffering from (IN BLOCK LETTER) Concussion
 因 患 (請用正楷)

(1) He is recommended days
 (一) 需要病假 日
 sick leave from 11/11/82
 即由
 to 25/11/82 inclusive.
 至 止。

(2) He will be fit to resume duty on
 (二) 該病人可於 恢復工作。

(3) He should return here on
 (三) 該病人應於 回來覆診。

(4) A permanent disability is expected.
 (四) 預期該病人 可能 永久喪失工作能力。
不致

.....
 Medical Officer.
 醫生

To: Whom it may concern
 致：
 M.D. 37-

Item.
No. R2

(Continued)



I certify that Am Ho Wah
茲證明

is suffering from (IN BLOCK LETTER)
因患 Cerebral edema x Is (請用正楷)

(1) He is recommended 29-11 R days
(一) 需要病假 29-11 R 日。
sick leave from 31-12 R
即由 31-12 R
to 31-12 R inclusive.
至 31-12 R 止。

(2) He will be fit to resume duty on
(二) 該病人可於 恢復工作。

(3) He should return here on
(三) 該病人應於 回來覆診。

(4) A permanent disability is expected.
is not
(四) 預期該病人 可能 永久喪失工作能力。
不致

Medical Officer.

醫生

To:

致:

M.D. 37

Item.
No. R2

(Continued)



Hospital/Clinic
醫院/診療所

Date 3/1/83
日期

I certify that CAU MO WAI
茲證明

is suffering from (IN BLOCK LETTER)

因患 HEAD INJURY (請用正楷)

(1) He is recommended 2/1/83 days
(一) 需要病假 2/1/83 日

sick leave from 2/1/83
即由 2/1/83
to 2/1/83 inclusive.
至 2/1/83 止

(2) He will be fit to resume duty on 2/1/83
(二) 該病人可於 2/1/83 恢復工作

(3) He should return here on 2/1/83
(三) 該病人應於 2/1/83 回來覆診

(4) A permanent disability is expected.
(四) 預期該病人可能永久喪失工作能力。

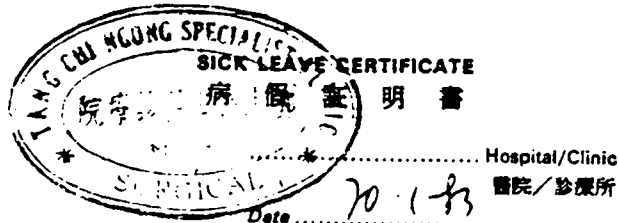
Medical Officer.

To: When is my concern.
致:

M.D. 37

Item.
No. R2

(Continued)



Hospital/Clinic
醫院/診所

Date 20-1-83
日期

I certify that 茲證明
Tan Ho Wah

is suffering from (IN BLOCK LETTER) 因 患
Concussion (適用正楷)

(1) He is recommended 20-1-83 days
(一) 需要病假 20-1-83 日
sick leave from 30-1-83
即由 30-1-83
to inclusive.
至 止。

(2) He will be fit to resume duty on
(二) 該病人可於 恢復工作。

(3) He should return here on
(三) 該病人應於 回來覆診。

(4) A permanent disability is not expected.
(四) 預期該病人可能不致永久喪失工作能力。

Medical Officer.
醫生

To: 致:

M.D. 37

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

LAU HO WAH - - - - - *Appellant*
(Applicant)

AND

YAU CHI BIU - - - - - *Respondent*

RECORD

DIRECTOR OF LEGAL AID
Solicitors for the Appellant (Applicant)

HAMPTON, WINTER & GLYNN
Solicitors for the Respondent
