

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap. 4A)

Order 37 – DAMAGES: ASSESSMENT AFTER JUDGMENT AND ORDERS FOR PROVISIONAL DAMAGES

Remarks:

Adaptation amendments retroactively made – see 25 of 1998 s. 2

Remarks

I. ASSESSMENT OF DAMAGES AFTER JUDGMENT

1. Assessment of damages by a master (O. 37, r. 1)

(1) Where judgment is given for damages to be assessed and no provision is made by the judgment as to how they are to be assessed, the damages shall, subject to the provisions of this Order, be assessed by a master, and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment from a master and, at least 7 days before the date of the appointment, serving notice of the appointment on the party against whom the judgment is given, proceed accordingly.

(HK)(1A) Upon judgment being given for damages to be assessed, the following directions shall, unless the Court directs otherwise, take effect automatically – (L.N. 383 of 1996)

- (a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within 7 days thereafter in accordance with Order 24, rule 9;
- (ab) each party shall serve on the other parties, within 6 weeks, written statements under Order 38, rule 2A of the oral evidence which the party intends to lead on any issues of fact to be decided at the trial;**
- ~~(b) subject to subparagraph (c), where any party intends to place reliance at the hearing on expert evidence, he shall, within 21 days after the time for inspection of documents has expired under subparagraph (a), disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible;~~
- ~~(c) where subparagraph (b) applies to more than one party, the reports shall be disclosed by mutual exchange within the time provided;~~
- ~~(d) unless such reports are agreed, the parties shall be at liberty to call as expert witnesses those witnesses the substance of whose evidence has been disclosed in accordance with the preceding subparagraph, except that the number of expert witnesses shall be limited in any case to two medical experts and one expert of any other kind;~~
- (e) photographs, plans and the contents of any police investigation report shall be receivable in evidence at the hearing and shall be agreed if possible;

Rule 264
Logical
Extension

- (f) the record of any proceedings in any court or tribunal shall be receivable in evidence upon production of a copy thereof certified as a true copy by the clerk or other appropriate officer of the court or tribunal;
- (g) at the time of making of the application for an appointment the master shall be notified of the estimated length of the assessment and any other matter which may affect the setting down of the assessment. (L.N. 363 of 1990)

(2) Notwithstanding anything in Order 65, rule 9, a notice under this rule must be served on the party against whom the judgment is given.

(3) The attendance of witnesses and the production of documents before a master in proceedings under this Order may be compelled by writ of subpoena, and the provisions of Order 35 shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at a trial.

(HK)1A. Assessment of costs as damages (O. 37, r. 1A)

Where damages to be assessed pursuant to a judgment to which this Order applies consist solely of costs claimed on an indemnity basis, such assessment shall proceed as for a taxation of costs under Order 62 and the provisions of that Order shall apply as if an order for taxation of costs on the indemnity basis had been made.

(L.N. 404 of 1991)

2. Certificate of amount of damages (O. 37, r. 2)

Where in pursuance of this Order or otherwise damages are assessed by a master, he shall certify the amount of the damages and the certificate shall, when judgment is entered, be filed in the Registry.

3. Default judgment against some but not all defendants (O. 37, r. 3)

Where any such judgment as is mentioned in rule 1 is given on failure to give notice of intention to defend or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court otherwise orders.

4. Power to order assessment at trial (O. 37, r. 4)

- (1) Where judgment is given for damages to be assessed, the Court may –
 - (d) order that the action shall proceed to trial before a judge (with or without a jury) as respects the damages.

Remarks

(3) Where the Court orders that the action shall proceed to trial, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application to the Court in pursuance of which the Court makes the order, were a ~~summons for directions- case~~ management summons under Order 25.

Rule 155
Consequential to
Order 25

5. Assessment of value (O. 37, r. 5)

The foregoing provisions of this Order shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed, and references in those provisions to the assessment of damages shall be construed accordingly.

6. Assessment of damages to time of assessment (O. 37, r. 6)

Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

II. ORDERS FOR PROVISIONAL DAMAGES FOR PERSONAL INJURES

7. Application and interpretation (O. 37, r. 7)

(1) This Part of this Order applies to actions to which section 56A of the Ordinance (in this Part of this Order referred to as “section 56A”) applies.

(2) In this Part of this Order “award of provisional damages” (暫定損害賠償裁決) means an award of damages for personal injuries under which-

- (a) damages are assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in section 56A; and
- (b) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

8. Order for provisional damages (O. 37, r. 8)

(1) The Court may on such terms as it thinks just and subject to the provisions of this rule make an award of provisional damages if –

- (a) the plaintiff has pleaded a claim for provisional damages, and
- (b) the Court is satisfied that the action is one to which section 56A applies.

(2) An order for an award of provisional damages shall specify the disease or

type of deterioration in respect of which an application may be made at a future date, and shall also, unless the Court otherwise determines, specify the period within which such application may be made.

(3) The Court may, on the application of the plaintiff made within the period, if any, specified in paragraph (2), by order extend that period if it thinks it just to do so, and the plaintiff may make more than one such application.

(4) An order for an award of provisional damages may be made in respect of more than one disease or type of deterioration and may in respect of each disease or deterioration specify a different period within which an application may be made at a future date.

(5) Orders 13 and 19 shall not apply in relation to an action in which the plaintiff claims provisional damages.

9. Offer to submit to an award (O. 37, r. 9)

(1) Where an application is made for an award of provisional damages, any defendant may at any time (whether or not he makes a payment into court) make a written offer to the plaintiff –

- (a) to tender a sum of money (which may include an amount, to be specified, in respect of interest) in satisfaction of the plaintiff's claim for damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in section 56A and identifying the disease or deterioration in question; and (L.N. 404 of 1991)
- (b) to agree to the making of an award of provisional damages.

(2) Any offer made under paragraph (1) shall not be brought to the attention of the Court until after the Court has determined the claim for an award of provisional damages.

(3) Where an offer is made under paragraph (1), the plaintiff may, within ~~21 days after receipt of the offer~~ **28 days after the offer was made**, give written notice to the defendant of his acceptance of the offer and shall on such acceptance make an application to the Court for an order in accordance with the provisions of rule 8(2).

Rule 265
Consequential to
Order 22

10. Application for award of further damages (O. 37, r. 10)

(1) This rule applies where the plaintiff, pursuant to an award of provisional damages, claims further damages.

(2) No application for further damages may be made after the expiration of the period, if any, specified under rule 8(2), or of such period as extended under rule 8(3).

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(3) The plaintiff shall give not less than three months' written notice to the defendant of his intention to apply for further damages and, if the defendant is to the plaintiff's knowledge insured in respect of the plaintiff's claim, to the insurers.

(4) The plaintiff must take out a ~~summons for directions-~~ **case management summons** as to the future conduct of the action within 21 days after the expiry of the period of notice referred to in paragraph (3).

Rule 156
Consequential to
Order 25

(5) ~~On the hearing of the summons for directions-~~ **At the determination of the case management summons,** the Court shall give such directions as may be appropriate for the future conduct of the action, including, but not limited to, the disclosure of medical reports and the place, mode and date of the hearing of the application for further damages.

(6) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the order for the award of provisional damages.

(7) The provisions of Order 29 with regard to the making of interim payments shall, with the necessary modifications, apply where an application is made under this rule.

(8) The Court may include in an award of further damages simple interest at such rate as it thinks fit on all or any part thereof for all or any part of the period between the date of notification of the plaintiff's intention to apply for further damages and the date of the award.

(Enacted 1988)