IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 22

Suit No 1076 of 2016

Between

LEE SWEE CHON

… *Plaintiff*

And

KIAT SENG METALS PTE LTD

… *Defendant*

JUDGMENT

[Tort] — [Negligence]
[Tort] — [Negligence] — [Contributory negligence]

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v
Kiat Seng Metals Pte Ltd

[2018] SGHC 22

High Court — Suit No 1076 of 2016
George Wei J
27, 28 June 2017, 10 October 2017; 28 November 2017

31 January 2018 Judgment reserved.

George Wei J:

Introduction

1 This is a negligence action arising from a workplace accident in which a heavy stack of aluminium sheets fell on the plaintiff, Lee Swee Chon ("the Plaintiff"). As a result of this accident, the Plaintiff suffered injuries to his left thigh and back.[1]

2 The present suit was bifurcated and I heard the trial on liability. The principal issues in dispute are whether the defendant, Kiat Seng Metals Pte Ltd ("the Defendant"), breached its duty of care as an employer to provide a safe work environment to the Plaintiff, and whether (and if so, to what extent) the Plaintiff was contributorily negligent.

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[1] Statement of claim ("SOC"), para 10, Annexure A; Plaintiff's closing submissions, para 11.

Background

Dramatis personae

3 The Defendant is a local company that supplies, delivers and deals with sheet metal. It operates at and manages a warehouse located at 7030 Ang Mo Kio Avenue 5 #01-20 Northstar @ AMK Singapore 569880 ("the Site").[2] Lim Gim Oo ("Lim") is a director of the Defendant who works at the Site.[3]

4 The Plaintiff was employed by the Defendant as a lorry driver and deliveryman. He was 54 years old at the time of the accident and had been working in this position for about 15 months.[4]

5 The Plaintiff had a co-worker, Md Halfizi Bin Hassan ("Hassan"), who had been employed by the Defendant as a sheet metal (delivery) worker for about four years prior to the date of the accident.[5]

6 It appears that aside from Lim, the Defendant had a total of four persons working at the premises: the Plaintiff, Hassan, and two office assistants.[6]

The accident

7 On 5 December 2014 at about 10am, the Plaintiff and Hassan were scheduled to leave the Site to make deliveries of aluminium sheets to customers. The Plaintiff had completed loading his lorry with the aluminium sheets. Hassan then asked the Plaintiff to help him to retrieve an aluminium sheet from a stack

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2 SOC, para 2; Lim's affidavit of evidence-in-chief ("AEIC"), para 2.

3 Lim's AEIC, para 1.

4 Plaintiff's AEIC, para 3; Plaintiff's closing submissions, para 2.

5 Plaintiff's closing submissions, para 3.

6 Notes of Evidence ("NE") Day 2, p 36, lines 2–13.

of aluminium sheets that was leaning horizontally against the wall in an upright position. The aluminium sheets were about 2.44m in length and 1.22m in width, and ranged from 3mm to 1cm in thickness.[7] Each millimetre in width of a standard-sized aluminium sheet weighed about 8kg.[8] In other words, a sheet of 5mm width would weigh about 40kg.

8 The Plaintiff supported the stack of aluminium sheets while Hassan flipped through the stack looking for a sheet with the dimensions he was looking for. As Hassan continued to flip through the stack, the weight that was resting on the Plaintiff increased such that the Plaintiff could no longer support the aluminium sheets he was supporting.[9]

9 The aluminium sheets subsequently fell onto Hassan and the Plaintiff, who landed on a pallet on the floor beside him.[10] According to the Plaintiff, the aluminium sheets weighed about one tonne (or 900kg) in total.[11] A few warehouse workers in the vicinity heard his cries for help and helped to lift up the aluminium sheets in order to free him.[12]

10 The Plaintiff suffered injuries to his left thigh, back and head. He made his way to Lim's office to inform him of the accident, and was conveyed to the hospital for immediate medical attention and treatment.[13]

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7 Plaintiff's AEIC, para 4.

8 NE Day 2, p 43, lines 11–15.

9 Plaintiff's AEIC, paras 5 and 6.

10 Lim's AEIC, para 8.

11 Plaintiff's AEIC, para 4.

12 Plaintiff's AEIC, para 8.

13 Plaintiff's affidavit of evidence-in-chief ("AEIC"), paras 8 and 10; Plaintiff's closing submissions, para 11.

The present suit

11 On 20 November 2015, the Plaintiff commenced the present negligence action against the Defendant, seeking:

(a) general damages, including damages for the injuries sustained, pain and suffering, loss of amenities, loss of future earnings, loss of earning capacity, and the cost of future medical and transport expenses;

(b) special damages, including medical and transport expenses, and pre-trial loss of earnings; and

(c) interest, costs and further relief.[14]

12 The action was bifurcated and I heard the trial on liability on 27 and 28 June 2017. Only two witnesses, the Plaintiff and Lim, testified.

13 On the first day of trial, I visited the Site to get a more accurate perspective of the premises and the aluminium sheets in question. This had been suggested to me by both sides' counsel as an alternative to bringing a bulky sample aluminium sheet to court for my viewing.[15] During my visit of the Site, I was shown the "balance stack" which comprised loose aluminium sheets of varying thickness, and was leaning against the wall in the same way as it was prior to the accident.[16] There were metal clamps installed to hold both sides of the balance stack in place,[17] but they had to be removed whenever a worker flipped through the balance stack to search for an aluminium sheet.[18] It is

14 SOC, paras 13–17 and Annexure B.

15 NE Day 1, pp 19–22.

16 Plaintiff's closing submissions, para 19–20.

17 NE Day 2, pp 44–46.

18 NE Day 2, pp 50–51.

apparent that many aluminium and/or metal sheets were also stored horizontally (lying flat) on stacked pallets elsewhere at the Site, arranged according to thickness. It also appears that aluminium sheets that were more than a certain thickness and accordingly which were especially heavy were always stored flat on account of their weight.

14 Lim, who was present at the Site along with the Plaintiff and both sides' counsel, demonstrated how a forklift could be used to provide support so that individual sheets could be retrieved from the balance stack more safely. In brief, the forklift could be "parked" in close proximity to the balance stack. The worker could then flip the aluminium sheets so that they rested or leaned against the body of the forklift whilst he was searching for the sheet that was required. The body of the forklift was essentially being used to support the aluminium sheets. Lim's evidence was that he had informed the Plaintiff (and Hassan) that this was the proper way to support the aluminium sheets in the balance stack during flipping.

15 Although Hassan was slated to testify as a witness for the Defendant on the second day of the trial, he was unable to attend court as he was hospitalised in Malaysia.[19] A new date was fixed on 10 October 2017 for Hassan to testify. However, Hassan resigned from the Defendant around August 2017 and could not be contacted by counsel for the Defendant. I granted the Defendant's application to withdraw Hassan as a witness and expunge his affidavit of evidence-in-chief from the court's record.[20]

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19 NE Day 2, p 87; NE Day 3, pp 2–5.

20 NE Day 3, pp 6–7; Plaintiff's closing submissions, para 17.

The parties' cases

16 The principal issues in dispute are whether the Defendant breached its duty of care as an employer to provide a safe work environment to the Plaintiff, and whether (and if so, to what extent) the Plaintiff was contributorily negligent.

17 The Plaintiff submits that the Defendant owed a duty of care as an employer to take reasonable care for the Plaintiff's safety.[21] As the accident took place in the course of employment, the Plaintiff relies in part on the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed) ("the WSHA") and the regulations promulgated thereunder to determine the standard of care required of the Defendant.[22] The Plaintiff submits that the Defendant breached its duty of care to its employees by storing the balance stack of aluminium sheets in an unsafe manner and by failing to provide a safety rack to store the loose sheets.[23] The Plaintiff argues that the accident and the injuries to the Plaintiff were foreseeable on the Defendant's part.[24] The Plaintiff further argues that the Defendant breached its duty of care as an occupier of the Site,[25] and that the Defendant is vicariously liable for the negligence of Lim and Hassan.[26]

18 In response, the Defendant takes the position that it did not breach its duty of care owed to the Plaintiff. Lim testified that its employees had been clearly instructed to use a forklift to support the weight of the balance stack when flipping through it to look for aluminium sheets, and not to use their bare hands to support the weight of the sheets. The Defendant further contends that

21 Plaintiff's closing submissions, para 51.

22 Plaintiff's closing submissions, paras 56 and 61.

23 Plaintiff's closing submissions, paras 70–78.

24 Plaintiff's closing submissions, para 53.

25 Plaintiff's closing submissions, para 69.

26 Plaintiff's closing submissions, paras 86–100.

the use of a safety rack was impractical especially given the size of the aluminium sheets in question, and that the use of such safety racks is not common industry practice. Even if it is found to be negligent, the Defendant argues that the Plaintiff was contributorily negligent, such that the amount of damages recoverable is to be reduced according to the Plaintiff's responsibility for the damage. In the Defendant's view, an ordinary prudent person who was well aware of the weight of the stack and with the Plaintiff's experience would not have attempted to support the aluminium sheets with his bare hands.[27]

19 I note that the parties were in dispute as to several factual points such as whether it was Lim or an office girl employed by the Defendant who had asked Hassan to retrieve the aluminium sheet he was looking for, and the total weight of the aluminium sheets that had fallen on the Plaintiff.[28] However, I do not find these points to be of much significance to the trial on liability. I simply note that I accept that although Lim was not the one who had asked Hassan to retrieve the aluminium sheet in question, Hassan had done so as part of his work for the Defendant. I also accept that that a significant weight had fallen on the Plaintiff such as to cause his injuries. Although it appears that the stack would indeed weigh about a tonne or 900kg, not all of this weight fell squarely onto the Plaintiff's body. The aluminium sheets were partly in contact with the ground. It would thus be difficult to determine the exact weight that fell on the Plaintiff, or the force or pressure exerted upon him. In any event, this is not an issue that is of much relevance to the present analysis.

Whether the Defendant was negligent

20 I shall begin with the main question of whether the Defendant was

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27 Defendant's closing submissions, para 87.

28 Plaintiff's closing submissions, para 31(a).

negligent. As I have stated in *Chen Qiangshi v Hong Fei CDY Construction Pte Ltd and another* [2014] SGHC 177 ("*Chen Qiangshi*") at [125], the four-fold test for negligence is trite: (a) the defendant must have owed the claimant a duty of care; (b) the defendant's conduct must have breached the duty of care by falling below the requisite standard of care; (c) the claimant must have suffered loss; and (d) the defendant's breach of duty must have been a cause of the claimant's loss. The framework of the WSHA and its accompanying regulations intersects with the tort of negligence at the first two stages of this inquiry. I will elaborate on this shortly.

Duty of care

21 The Defendant does not dispute that it owed a duty of care to the Plaintiff. Indeed, the law places on an employer the obligation to take reasonable care for its employees' safety, and the employee is entitled to expect that his employer has taken reasonable care in evaluating all safety issues before work commences (*Chandran a/l Subbiah v Dockers Marine Pte Ltd (Owners of the Ship or Vessel "Tasman Mariner", third party)* [2010] 1 SLR 786 at [19]). There is no doubt that the damage suffered by the Plaintiff was foreseeable by the Defendant, and that there was a sufficient relationship of proximity for the Defendant to owe the Plaintiff a duty of care by virtue of the employment relationship that existed (see *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 at [26] and [73]).

The WSHA framework

22 Although s 60(1)(*a*) of the WSHA provides that the WSHA is not to be construed as conferring a right of action in any civil proceedings in respect of any contravention, the WSHA framework is nonetheless relevant in ascertaining the appropriate standard of care expected of the Defendant (*Jurong Primewide*

Pte Ltd v Moh Seng Cranes Pte Ltd and others [2014] 2 SLR 360 at [43]; *Chen Qiangshi* at [132]). The standard of care is the general objective standard of a reasonable person using ordinary care and skill, and industry standards and practice are indicative of this standard (*Chen Qiangshi* at [132]).

23 Regulation 24 of the Workplace Safety and Health (General Provisions) Regulations (GN No S 134 of 2006, 2007 Rev Ed) ("the General Provisions Regulations") provides:

> **Storage of goods**
>
> **24.**—(1) All goods, articles and substances which are stored, stacked or placed in a workplace shall be stored, stacked or placed…
>
> > (*d*) in such manner, and using such supporting structures as may be necessary, as to ensure the stability, and to prevent the collapse, of the goods, articles or substances.

24 More generally, reg 4 of the Workplace Safety and Health (Risk Management) Regulations (GN No S 141 of 2006, 2007 Rev Ed) ("the Risk Management Regulations") provides:

> **Elimination and control of risk**
>
> **4.**—(1) In every workplace, the employer, self-employed person and principal shall take all reasonably practicable steps to eliminate any foreseeable risk to any person who may be affected by his undertaking in the workplace.
>
> (2) Where it is not reasonably practicable to eliminate the risk referred to in paragraph (1), the employer, self-employed person or principal shall implement —
>
> > (*a*) such reasonably practicable measures to minimise the risk; and
> >
> > (*b*) such safe work procedures to control the risk…

25 These regulations are relevant to the determination of the appropriate standard of care expected of the Defendant, and whether the Defendant breached its duty of care to the Plaintiff.

Breach of the duty of care

26 Having considered the facts and circumstances of this case, I find that the Defendant's conduct did indeed fall below the requisite standard of care with respect to the safety of its employees. It was clearly unsafe for the balance stack of aluminium sheets to be leaned against the wall in such a manner, without any supporting structure or rack that could prevent or minimise the likelihood of an accident occurring while an individual sheet was being retrieved. This is especially so as the aluminium sheet required might be found in the middle of the stack or indeed it could be one of the last sheets in the stack. The sheets were heavy and bulky, and their weight would certainly (in the sense that it was reasonably foreseeable) overwhelm a worker trying to support too many sheets with just his bare hands or body. The parties did not dispute that the function of the metal clamps present at the time of the accident (see [13] above) was not to prevent the stack from falling while someone was flipping through the stack.[29] The clamps were simply used to hold the aluminium sheets in place as they leaned against the wall as described at [7] and [13] above.

27 I agree with the Plaintiff that a safety rack designed to hold and support the aluminium sheets when stored and when individual sheets were being retrieved would have been a much safer way to store the loose aluminium sheets. Although Lim was sceptical about the practicality and effectiveness of the safety rack envisioned by the Plaintiff, which had a front bar to prevent upright sheets from toppling forward and to provide support, he conceded that

[29] NE Day 2, p 50.

it would at least have been possible to design and weld other more effective safety racks. For instance, a rack could store the sheets by placing them flat, much like the other sheets that were placed flat and horizontally on the pallets at the Site.[30] Alternatively, Lim suggested the possibility of designing a rack with a movable arm that could go up and down to lock the sheets in place.[31]

28 I also have doubts that using an "upright" safety rack with frontal support as envisioned by the Plaintiff would be ineffective in reducing the risk of accidents, let alone more dangerous as Lim suggested at trial.[32] It is not a sufficient reason that such a safety rack might require two workers instead of one to retrieve a sheet, and that such labour requirements would be too intensive for the Defendant's small scale of operations.[33] Lim's concern that workers would suffer cuts on their hands when retrieving sheets[34] can be easily mitigated by requiring workers to wear gloves or to use a tool such as a spanner or tongs to grip and pull out the required sheet[35], which has always been the practice according to the Defendant. In any case, even if a worker used the method demonstrated by Lim, a worker might still suffer cuts to his hands from the edges of the aluminium sheets as he flipped through the stack and extracted the required sheet. In any case, it does not appear to me that it would have been too cost-prohibitive for the Defendant to have acquired or designed or customised and welded a rack to fit its needs, especially given that this concerned the safety of its employees. Indeed, I note that there are many manufacturers and suppliers of racks and support stands for metal sheets in Singapore. Indeed, on the first

30 NE Day 2, pp 64–66.

31 NE Day 2, p 85.

32 NE Day 2, p 64.

33 See NE Day 2, p 65; Defendant's closing submissions at para 37.

34 NE Day 2, p 64.

35 Defendant's bundle of documents, p 3.

day of the hearing, photographs of safety racks were introduced by the Plaintiff without objection from Defence counsel.[36] There is no doubt that safety racks do exist for holding metal sheets that facilitate the flipping of panels.

29 The Defendant contends that it had clearly and repeatedly instructed the Plaintiff to use a forklift as support when flipping through the balance stack to retrieve aluminium sheets.[37] As mentioned earlier, this was demonstrated to me during my visit of the Site. This entailed a worker driving the forklift to the front of the balance stack, and then flipping aluminium sheets onto the side of the forklift's body. Essentially, any sufficiently sturdy object, such as a forklift or a bar of a safety rack, could fulfil this function.

30 Although I accept that it is possible to use a forklift in such a "creative manner" and that the Plaintiff was aware that this method would have been much safer than using his hands or body to support the weight of the sheets, this nonetheless struck me as being a rather makeshift and temporary way of addressing the problem. It does not seem to me that it is accepted practice to use the body of the forklift to provide support for heavy objects to lean on or against. Indeed, the Plaintiff testified that he had not been taught this during his forklift operator course.[38]

31 Most importantly, despite its instructions, the Defendant must have expected or foreseen that its employees might be tempted, especially when facing time pressures to get their deliveries ready, to avoid going through the process of finding a forklift and driving the forklift over so that it could be used as support whilst the worker tried to find and retrieve a sheet from the balance

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36 NE Day 1, pp 6–7.

37 Lim's AEIC, para 15.

38 NE Day 2, pp 4–5.

stack. Indeed, whilst it is accepted that there was a forklift at the premises, it is unclear whether the forklift was nearby at the time. Even though Lim's evidence was that he did not know exactly when the drivers would set off to make deliveries after loading the lorries, there is little doubt that it was important that deliveries left the premises on time to reach customers. As the Court of Appeal articulated in *Parno v SC Marine Pte Ltd* [1993] 3 SLR(R) 377 ("*Parno*") at [46], "[i]n devising a safe system, the employer should be aware that workmen are often careless for their own safety, and his system must, as far as possible, reduce the effects of an employee's own carelessness". It is upon employers such as the Defendant to ensure that they have taken all reasonable care to prevent accidents, even ones that could arise in part due to their employees' lack of caution.

32 In the context of the WSHA framework, the Defendant's failure to have a proper safety rack/structure or work procedures in place to safely store and support the balance aluminium sheets amounts to a breach of reg 24(1)(*d*) of the General Provisions Regulations, under which the sheets should have been "stored, stacked or placed... in such manner, and using such supporting structures as may be necessary, to ensure [their] stability, and to prevent [their] collapse". It also amounts to a breach of the Defendant's duty to "take all reasonably practicable steps" to eliminate or minimise "any foreseeable risk" under reg 4 of the Risk Management Regulations.

33 More broadly, the Defendant's conduct fell below the standard of reasonable care for its employees' safety. As there is no dispute that the Plaintiff suffered injuries that were caused by the accident, I find that all of the elements of the Plaintiff's negligence claim have been met.

34 Although the Plaintiff raised the issues of the Defendant's liability as an

occupier of the site and its vicarious liability over purportedly negligent acts by Hassan and/or Lim, I note that the parties' submissions focused mainly on the Defendant's duty to the Plaintiff as his employer. As I have found the existence and breach of a duty of care on the latter basis, there is no need for me to consider the parties' cases on occupier's liability and vicarious liability. In any case, it is undisputed that Lim is a director of the Defendant. It is also clear that Lim was the supervisor at the premises.[39]

Whether and to what extent the Plaintiff was contributorily negligent

Relevant law

35 Having found the Defendant negligent in failing to take adequate precautions to ensure the safety of the Plaintiff, the inquiry now shifts to whether the Plaintiff was contributorily negligent, or in other words, whether the damages recoverable by the Plaintiff should be reduced according to the Plaintiff's responsibility for his loss.

36 The law on contributory negligence is clear and not in dispute. Contributory negligence is a statutory concept encapsulated in s 3(1) of the Contributory Negligence and Personal Injuries Act (Cap 54, 2002 Rev Ed), which provides:

> **Apportionment of liability in case of contributory negligence**
>
> **3.**—(1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

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39 NE Day 2, p 31, lines 12–14.

37 In other words, contributory negligence provides a partial defence to a defendant who has been found negligent by reducing the quantum of damages payable to a claimant who has failed to take due care for his own safety and thus caused loss to himself (*Asnah bte Ab Rahman v Li Jianlin* [2016] 2 SLR 944 ("*Asnah*") at [18]). As the Court of Appeal further stated in *Asnah*, "[a] person is guilty of contributory negligence if he ought to have objectively foreseen that his failure to act prudently could result in hurting himself and failed to take reasonable measures to guard against that foreseeable harm" (at [18]).

38 As with the standard of care in negligence, the standard expected of the claimant is measured against a person of ordinary prudence (*Asnah* at [20]). There is no need for the defendant to show that a claimant has breached a legal duty of care, as is necessary in a claim for negligence (*Asnah* at [19]; *Chen Qiangshi* at [204]). The defendant must nonetheless show that the claimant owes himself a duty to take care of his own safety in the prevailing circumstances of the case (*Asnah* at [19]).

Cases cited

39 The parties cited a number of cases on contributory negligence in the context of workplace accidents in their written submissions, and I will briefly examine them here.

40 The Defendant cited *Sim Cheng Soon v BT Engineering Pte Ltd and another* [2007] 1 SLR(R) 148 ("*Sim Cheng Soon*"). The appellant in that case was an experienced welder who suffered injuries after falling through an uncovered and unfenced opening in a working platform. The Court of Appeal held that the respondents were liable in negligence, but also found that the appellant was contributorily negligent in failing to observe the ordinary care which an ordinary prudent person would have taken for his own safety. The

Court of Appeal observed that the immediate cause of the accident was the appellant's failure to look at where he was going (at [40]). There was enough natural lighting and the appellant was familiar with the layout of the area (at [39]). The appellant was thus held to have been more blameworthy than the respondents as employer and occupier of the site, and the Court of Appeal apportioned liability at 40% to the respondents and 60% to the appellant by way of contributory negligence (at [40]).

41 Next, the Defendant cited *Parno*, a case in which the appellant was an experienced rigger who had been tasked to monitor the condition of a piling hammer. Upon noticing that a pin on the hammer had come loose, the appellant sought to rectify the situation by approaching the hammer to replace the pin. While he was doing so, his co-workers lowered a heavy piece of equipment and struck him. It was not disputed that the appellant knew that he should not have approached the hammer before the starter had come down. The Court of Appeal found the respondent negligent due to, *inter alia*, the defective system of communication that the respondent had in place, inadequate instructions given to and supervision of the appellant, and inadequate inspection and maintenance of the piling machinery (at [49]–[55]).

42 While the trial judge in *Parno* had apportioned the responsibility in the proportion of 75:25 in favour of the respondent, the Court of Appeal reapportioned liability in the proportion of one-third to the appellant and two-thirds to the respondent (at [71]). The Court of Appeal found that the trial judge had significantly underestimated the degree of negligence on the respondent's part while substantially misjudging the degree of blame on the appellant's part when there was no "deliberate act of folly" but "only a momentary lapse" on his part (at [65] and [70]). The Court of Appeal reiterated the following at [66]:

> In any event, it should be borne in mind that it was the respondent's defective work system which provided the setting for the occurrence of the accident in the first place. The whole object of the law imposing a duty on employers to provide a safe system of work is precisely to protect an employee from his own inadvertence or carelessness.

43 The Defendant also cited two cases for the proposition that the courts have generally apportioned liability equally in situations where the relative blameworthiness of the parties is uncertain:

(a) *Xu Ren Li v Nakano Singapore (Pte) Ltd* [2012] 1 SLR 729 ("*Xu Ren Li*") was an appeal against a District Court decision in which the appellant was a construction worker employed by the respondent. The appellant was using a staircase in an uncompleted building when he lost his balance and fell. Chan Sek Keong CJ observed that the appellant had used the staircases in the building many times in the course of his work and ought to have been aware that they were in an incomplete state of construction and that there was minimal lighting at the staircases. Instead, the appellant had rushed down the stairs. However, "it was difficult to determine which party was more at fault" based on the limited evidence available, and Chan CJ apportioned liability equally between the parties.

(b) In *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd and others* [2013] 3 SLR 284 ("*See Toh Siew Kee*"), the appellant was a service engineer who was injured by a crane barge's fouled mooring wire. The Court of Appeal found that the combined negligence of the plaintiff and the third respondent had contributed to the accident, but was unable to say which party was more culpable. V K Rajah JA remarked at [111] that the actions of these two parties were "*causae sine quibus non* – in other words, the accident would not have happened but

for the actions of both." The Court of Appeal apportioned liability equally between the plaintiff and the third respondent.

44 The Plaintiff cited the following cases in which the courts held the respective defendants fully liable in negligence:

(a) *Liu Yong Tao v Rich Construction Pte Ltd formerly known as China Construction Builders Pte Ltd* [2011] SGDC 207 ("*Liu Yong Tao*") was a District Court decision in which the plaintiff was a construction worker who had been employed by the defendant. The plaintiff was injured after his co-worker accidentally knocked him, causing a metal plank which the plaintiff was carrying to drop onto his left hand. The defendant argued that the plaintiff had been contributorily negligent by failing to grip the metal formwork properly according to safety procedures, but failed to adduce any evidence to support this allegation (at [11]). The court thus found the defendant fully liable (at [21]).

(b) In *Soon Pook Seng Arthur v Oceaneering International Sdn Bhd* [1993] 2 SLR(R) 518 ("*Arthur Soon*"), the plaintiff and his co-workers were moving a cabinet using trolleys when one of the trolley's wheels got stuck. While the plaintiff was investigating the cause, one or more of his co-workers withdrew support of the cabinet which fell onto the plaintiff. G P Selvam JC (as he then was) held that the withdrawal of support without regard to the plaintiff's safety was a negligent act which caused injury to the plaintiff, and held the defendant solely liable (at [26]).

45 Finally, in *Chen Qiangshi*, the plaintiff was an experienced rebar construction worker who was severely injured when an incorrectly-positioned

and improperly-rigged rebar cage collapsed on him as it was about to be lifted by a tower crane. The plaintiff was found to have rigged up the rebar cage in an improper and unsafe manner, and to have released the remaining wire ties holding the rebar cage (at [207]). The Court of Appeal affirmed these findings of fact and the finding of negligence against the defendants, but adjusted the plaintiff's share of liability for contributory negligence from 50% to 20%.

46 Although the Court of Appeal in the *Chen Qiangshi* case did not issue any written grounds, it noted three factors for this adjustment at the hearing. The first two factors were specific to the facts of the case – that the rigger must have appreciated that the rebar cage had not been properly done, and that it was known to everyone that the plaintiff was not a qualified rigger and should not have been asked to do the rigging in the first place. Finally, the Court of Appeal observed:[40]

> The third factor is that there is a particular obligation on the contractors having control of the site to establish and maintain systems to ensure workplace safety and health. Hence, even accepting that the plaintiff was contributorily negligent in failing to take adequate precautions in his own interest, we would tend to moderate the reduction of damages in such circumstances in order to underscore the primary responsibility that is on the defendants in this case.

My findings on contributory negligence

47 First, I find that there was clearly contributory negligence on the Plaintiff's part. I accept Lim's evidence that he had previously instructed the Plaintiff clearly to use the forklift method when retrieving sheets from the balance stack. During cross-examination, the Plaintiff confirmed that "the boss" would usually drive over the forklift to support the panels and ask the Plaintiff to help.[41] Despite being aware of the risk involved in using his hands and body

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40 NE of hearing on 10 March 2015 in Civil Appeal No 161 of 2014.

to support the balance stack while Hassan flipped through it,[42] the Plaintiff nevertheless did so. The Plaintiff had also never raised the need for a safety rack or an alternative to the forklift method to the Defendant prior to the accident.[43] The Plaintiff therefore failed to take due care of his own safety and must be partly responsible for his own loss. The present circumstances are easily distinguished from *Liu Yong Tao* and *Arthur Soon* cited by the Plaintiff (see [44] above), where there was no evidence of any carelessness on the respective claimants' parts.

48 I also place little reliance on *Xu Ren Li* and *See Toh Siew Kee* cited by the Defendant, in which liability was apportioned equally between the respective claimants and defendants due to the uncertainty surrounding the relative blameworthiness of the parties (see [43] above). There is no substantial question here as to the evidence regarding each party's responsibility for the accident. As such, I find it appropriate in these circumstances to specifically determine the parties' respective shares of liability.

49 Although the accident would not have happened but for the Plaintiff's and Hassan's failure to support the balance stack in a safe way, I nonetheless bear in mind that, as was similarly observed by the Court of Appeal in *Parno* at [66], it was the Defendant's work system which provided the setting for the occurrence of the accident in the first place. I reiterate the Court of Appeal's remarks that "[t]he whole object of the law imposing a duty on employers to provide a safe system of work is precisely to protect an employee from his own inadvertence or carelessness." Similarly, the Court of Appeal when hearing the appeal of *Chen Qiangshi* stated that "even accepting that the plaintiff was

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41 NE Day 1, p 18, lines 6–9.

42 NE Day 2, p 18.

43 NE Day 2, p 18, lines 9–11.

contributorily negligent in failing to take adequate precautions in his own interest, we would tend to moderate the reduction of damages in such circumstances in order to underscore the primary responsibility that is on the defendants" (see [46] above).

50 Taking all the facts and circumstances into account, I find it appropriate to apportion a 65% share of the liability to the Defendant, and 35% to the Plaintiff in contributory negligence. In my view, such an apportionment of liability appropriately underscores the primary responsibility that is on the Defendant to maintain safe working conditions for its employees, while recognising the Plaintiff's culpability and carelessness in adopting an unsafe method to retrieve the aluminium sheet.

Conclusion

51 I find the Defendant liable in negligence to the Plaintiff for the damage arising from the accident. I also find that a reduction in liability is appropriate due to the Plaintiff's contributory negligence. The Defendant is to bear 65% of the loss and damage suffered by the Plaintiff as a consequence of the accident.

52 The costs of these proceedings are to be agreed or taxed.

George Wei
Judge

Han Hean Juan (Hoh Law Corporation) for the plaintiff;
Eu Hai Meng and Lee Jia En Gloria (United Legal Alliance LLC) for the defendant.