Manickam Sankar *v* Selvaraj Madhavan (trading as MKN Construction & Engineering) and another
[2012] SGHC 99

Case Number	: Suit No 177 of 2011
Decision Date	: 08 May 2012
Tribunal/Court	: High Court
Coram	: Chan Seng Onn J
Counsel Name(s)	: R Kalamohan and K S Elavarasi (Kalamohan & Co) for the plaintiff; Tan Joo Seng and Chong Kuan Keong (Chong Chia & Lim LLC) for the second defendant.
Parties	: Manickam Sankar — Selvaraj Madhavan (trading as MKN Construction & Engineering) and another

Tort – Negligence

Tort – Occupier's liability

Tort – Breach of statutory duty

8 May 2012

Chan Seng Onn J:

Introduction

1 This was an action by Manickam Sankar ("the plaintiff") against his former employer, Selvaraj Madhavan (trading as MKN Construction & Engineering) ("Madhavan"), as the first defendant and Trans Equatorial Engineering Pte Ltd ("TEE") as the second defendant. The plaintiff instituted his action on 16 March 2011, claiming that both defendants were liable for his fall from the area between the false ceiling of the first storey and the floor slab of the second storey of Terminal 1, Changi Airport ("the Ceiling Space") which caused him to suffer various injuries.

2 TEE was the main contractor in a project for the "Design, Supply, Installation, Testing and Commissioning of VAV Boxes and Associated Control and Electrical Works in T1 and T2, Singapore Changi Airport" ("the Project"). The project owner was the Civil Aviation Authority of Singapore ("CAAS").

3 Madhavan failed to enter an appearance although the writ of summons was served on him by way of personal service on 19 March 2011. Consequently, interlocutory judgment in default of appearance was entered against him by the plaintiff on 29 March 2011.

4 The plaintiff's action against TEE was bifurcated on 29 June 2011.

The evidence

The plaintiff's case

5 The plaintiff was the sole witness called in support of his case. His account in his Affidavit of

Evidence-in-Chief ("AEIC") of the events leading up to the fall was as follows [note: 1] :

> 4 On the night of 19.05.2009, I was working at Singapore Changi Airport Terminal 1. As I did not know the way to Singapore Changi Airport Terminal 1, I met one Kannan and followed him. We reached the Singapore Changi Airport Terminal 1 at or about 11.00pm. As work was to start at 1.00am, Kannan and I went to a warehouse to pick up some equipment (air-conditioner spare parts) before going to Terminal 1. Upon reaching Terminal 1, as there was still time to spare, the other workers and I were sitting around the bus terminal and drinking coffee.
>
> 5 A group of 10 workers including me were involved in carrying out the works at the material time. Rex [a supervisor, one Selvaraj Arun Johansonrex ("Rex")] came to the spot and told all the workers including me to be at the work area by [11.50pm] as work had to start at [midnight]. Accordingly all the other workers and I walked to the work area. *At [11.55pm] all the workers including myself were given safety belts without any explanation. We were not issued with other safety equipment like safety helmets. Even the safety shoes I was wearing on the day of the accident was my own*. Thereafter, Rex told us to follow Kannan and go up and start work. *Rex did not do or say anything else. We did not have any safety briefing that day*.
>
> 6 We were working on the staging of the said premises which is about 12 metres high. We were fixing the air-conditioner. As such, each of the workers including myself had carried a ladder to the work area. *Rex did not climb the ladder.*
>
> 7 When I was mounting the ladder, I had already worn my safety belt as I had already commenced work. *The area was* ***not well lit and lighting was insufficient for the workers including myself to differentiate between the catwalks and the false ceiling ("ceiling panels").*** *Further, approximately every 3 feet of the work area was covered with huge railings. There was no space for the other workers and myself to walk and do our work. Thus, we had to crawl on our bellies to move from one point to the other. Furthermore*, ***there was nowhere for the workers including myself to anchor our safety harness while we were crawling and doing our work*** **.**
>
> 8 *Kannan was the first person to crawl to the other side of the work area. Thereafter, two other workers carried equipment and crawled to the other side of the work area after Kannan. I was the next worker who carried equipment and crawled to the other side of the work area. After passing the equipment to Kannan, the two other workers and I turned around to crawl back to the other side of the work area.* ***I was the first worker to crawl back.***
>
> 9 *On my way back*, ***the staging gave way*** and I fell about 78 to 80 feet to the ground and was injured as a result. At the time of the accident I weighed about ***106 kilograms*** and was about ***6 feet tall*** . ...
>
> [emphasis added in italics and bold italics]

When the plaintiff stated "On the night of 19.05.2009..." at para 4 of his AEIC, this was clearly a mistake because the plaintiff reached Changi Airport on the night of 18 May 2009 and the accident (*ie*, the fall from the Ceiling Space) occurred in the early hours of 19 May 2009. Nothing turned on this.

6 The plaintiff's account in his AEIC of what happened was elaborated upon in oral evidence.

Before the plaintiff went up the ladder to the Ceiling Space

7 The plaintiff is an Indian national. Before he arrived in Singapore sometime in March or April 2009 [note: 2], he was working, and had always been working, as a marketing executive in the finance sector in India [note: 3]. This job did not require him to wear a safety harness [note: 4].

8 Sometime in March or April 2009, the plaintiff attended a "Construction Safety Orientation Course for Workers (General Trade)" which was conducted in Singapore by an entity called "Armstrong Health and Safety Training Providers" (see Plaintiff's Bundle of Documents ("PB") at p 50) ("the Safety Course") [note: 5]. The plaintiff was taught how to wear a safety harness and how to hook the safety harness to metal railings [note: 6]. However, the Safety Course did not teach him how to hook the safety harness to objects which were larger than the opening of the hook [note: 7]. I demonstrated to the plaintiff how the safety harness could be hooked to such objects by looping the rope around the object and then attaching the hook to the rope itself ("loop-hooking"). The plaintiff stated that he was not taught this method of hooking the safety harness at the Safety Course, and that he had not personally thought about this method before [note: 8]. Furthermore, during the Safety Course he was only told that the safety harness should be hooked when he was at the place where the work proper was being carried out. He was not told that he should also hook the harness when he was moving around [note: 9].

9 On 18 May 2009, Madhavan instructed the plaintiff to report for work at Changi Airport for "air-con renovation" [note: 10]. The plaintiff arrived at Changi Airport at about 11pm on 18 May 2009. At about 11.30pm, Rex told him and some other workers to be at the work area by 11.50pm because work would start at midnight [note: 11]. When the plaintiff reached the work area at Terminal 1, he saw two Chinese men. No briefing was given by these two men to the workers [note: 12]. The ten workers, including the plaintiff, were told that the works would commence at midnight and that they should wear their safety harnesses [note: 13]. Further, they were told that it was getting late and that they should commence work [note: 14]. Rex fixed the safety harness to the plaintiff because the latter did not know how to do so [note: 15].

10 The safety harness which TEE produced at trial was not of the same type as the safety harness which was in fact provided to the plaintiff on 18 May 2009 [note: 16]. The safety harness which was supplied to him had hooks with a gap of about 4cm. This was significantly smaller than the hooks of the safety harness which was produced in court (which had a gap of about 7cm) [note: 17].

11 Before the plaintiff went up the ladder to the Ceiling Space, he was not shown any diagrams or photos of the Ceiling Space or of the particular area in the Ceiling Space where he would be working that night [note: 18]. He was also not told *how* to hook the safety harness [note: 19]. Rex told the plaintiff to follow one Ramanujan Kamalakkannan ("Kannan"). The plaintiff, Kannan and another pair of workers then went up the ladder [note: 20]. Rex remained at the foot of the ladder on the first storey and was supposed to pass things to the workers, who would then bring the things up to the Ceiling Space [note: 21]. When cross-examined, the plaintiff maintained that Rex was not in the Ceiling Space when the accident occurred because Rex was on the ground level near the ladder [note: 22].

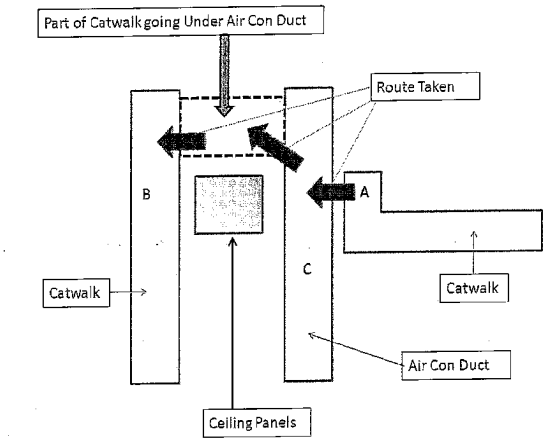
Events occurring in the Ceiling Space

12 At the top of the ladder, the plaintiff and the other workers stepped onto a catwalk (see, for example, p 54 Second Defendant's Bundle of Documents ("SDBD")) [note: 23]. Each worker was

carrying a plank to be carried to the worksite. The workers then walked along the catwalk to the area where some old VAV boxes were located (see red arrows at SDBB p 41) [note: 24]. However, at some parts the workers had to stoop or crawl because there were obstructions. The plaintiff was following Kannan.

13 There were fluorescent tubes placed every 7 or 8 feet "within some gaps" in the Ceiling Space (see, for example, p 54 SDBD). However, it was dark at the place where the plaintiff fell [note: 25]. That area was not bright and not clear, but the plaintiff could see his own feet [note: 26].

14 At this juncture, it is necessary to set out the following diagram of the immediate vicinity of where the fall occurred [note: 27]:



The part marked "Ceiling Panels" in the diagram was the area from which the plaintiff fell. Photos of this area can be found at pp 47–51 SDBD.

15 Once the workers (including the plaintiff) reached A, they left the planks there because there were some "stage works" which were going to be carried out in that area [note: 28]. Kannan had a fluorescent light (chemically operated) in his hand, whereas the plaintiff did not have a light [note: 29]. Kannan was the first person to cross from A to B, and Kannan had told the plaintiff to follow the route which he (Kannan) took. However, Kannan did not tell the plaintiff of the location of the ceiling panels and that he should not step on them [note: 30].

16 Once Kannan had reached B, he stopped there and motioned for the three other workers (including the plaintiff) to bring the planks over [note: 31]. Kannan and the other two workers did not hook their safety belts to any external objects when they were crossing from A to B [note: 32]. The plaintiff was the last to cross from A to B. He stated that he could not recall how he got across from A to B, and that he may have placed his foot on the area marked by dotted marks (see p 6 of Rex's AEIC and the southeast part (relative to the marking "B") of the photo at p 51 SDBD) ("the Transverse Grating") [note: 33]. The plaintiff could not remember clearly [note: 34]. He stated that there was "some kind of railing by the side" and that "[they] stacked onto it" [note: 35].

17 The plaintiff was the first person to attempt to return to A from B [note: 36]. The three other workers were behind him. The fall occurred because the plaintiff placed his foot in the wrong place when he was in a stooping position [note: 37]:

Witness: To---for about 3 feet, we have to crawl. And according to the photo, we cannot---we---after two---we will be crawling for about 3 feet. After which, we could get up and---we cannot stand at our full height but maybe you can just bend down a little.

Court: Yes, that's where I'm getting at. You'll bend down. At that time when you fell through, were you crawling? Were you---were you crawling or---or stooping as you were---as you were walking before---just before you fell? ...

Witness: I was stooping, your Honour.

Court: So just before you fell, you were actually stooping to go back, stooping to walk---walk in a stooping position to go back, right, you're stooping?

Witness: Yes, your Honour.

Court: So you step off the---the---the metal grating and onto the false ceiling?

Interpreter: Sorry, your Honour. Can you repeat that?

Court: That means to say, in his stooping position, as he was making his way back, he stepped off the metal grating onto the false ceiling whilst making his way back.

Witness: Yes, your Honour, that was the time [I fell off after I turned.]

...

Court: Above "B", there is a bar, right, I mean it would be a---

Tan: There's a railing.

...

Witness: Yes, your Honour.

Court: So actually, you---you---your head was below the---you were stooping, right, so you fell through underneath the railing into the hole because you were in a stooping position, right, making your way back?

Witness: It was---it was---I was stooping low. It was the point when I try to rest up a bit, that was when I fall off.

Court: Yes, you fell through the hole, I mean beneath the railing. It's not as though you fell over the railing. You step---you step out of "B", one foot, and then you practically---your---your first foot fell through and then your body just followed beneath the railing and out through the hole of the---between the railing and the grating?

Witness: Yes, your Honour.

Court: So actually you were stooping to make your way back, walking slowly to make your way back except that one foot went to the wrong place and you fell through?

Witness: Yes, your Honour.

Court: I see. So you did not see clearly where you were going in that sense, it was dark?

Witness: There wasn't much light there, your Honour.

Court: Right. So you couldn't see between the grating and the false ceiling in that sense, you couldn't differentiate between the grating and the false ceiling?

Witness: Yes, I could not differentiate, your Honour [and there wasn't much light.]

18 I observed that the plaintiff was fairly big-sized and tall. In his AEIC (at para 9), he said that he was 6 feet tall and weighed about 106 kg at that time. Due to his size, manoeuvring in such a confined space would not have been easy especially when he had to bend down to clear the horizontal railing before he could get back from B to A. From a stooping position, he would have to extend his leg out to step on the Transverse Grating (seen as dotted lines in the diagram above) to support himself before climbing on top of the Air Con Duct at C, which was at a higher level, in order to reach A. The plaintiff's fall had to be seen in that context because the horizontal railing was in the way, which made it rather difficult to cross over safely in my opinion.

19 The plaintiff was cross-examined on why his report of the accident to the Ministry of Manpower had stated that "the staging *and the safety belt* gave way [emphasis added]" [note: 38], even though he had earlier testified that his safety harness was not hooked onto anything when he fell [note: 39]. This report was interpreted to the plaintiff in Tamil before he signed it. The plaintiff explained that what he meant was that he had fallen off *together with* the safety harness. He asserted that he did not tell the interpreter that the safety harness had given way [note: 40]. The plaintiff also stated that he did not know what the word "staging" meant.

20 When asked whether the safety harness was hooked by him to an anchor point during the crossing over from B to A, the plaintiff responded by saying that he had not hooked it because there was no place to hook it to [note: 41].

TEE's case

Evidence of the supervisor, Rex

21 Rex is presently an employee of Nam Hong Construction & Engineering Pte Ltd. At the time of the accident, Rex was employed by a company called Yong Teng Engineering ("Yong Teng") and he was assigned to work on the Project. After he arrived at Changi Airport sometime between 11.30pm and 11.45pm on 18 May 2009, he met four workers supplied by Madhavan. Two of the four workers, Kannan and Masilamani Chandrasekaran ("Chandra"), were not new workers in that they had worked on the Project before. However, it was the first day on the job for the other two workers (one of whom was the plaintiff) and Rex was aware of this [note: 42]. The plaintiff was paired up with Kannan by Rex [note: 43].

22 Rex did not show the diagrams at pp 4 and 6 of his AEIC (see above at [14] for the diagram at p 6 of his AEIC) to the plaintiff before the latter went up the ladder even though he knew that the plaintiff was working at that site for the first time and the other workers who had worked on the Project before knew about the diagrams [note: 44]. TEE's project engineer, Tommy Liaw Chee Wee ("Liaw"), was the first person to go up the ladder, followed by Rex, Kannan, and three other workers (including the plaintiff) [note: 45]. Liaw and Rex did not carry anything up the ladder, while Kannan and the three workers were carrying tools [note: 46]. The wooden planks were already in the Ceiling Space because some work was done there on the previous night [note: 47].

23 After all the workers had climbed up the ladder, Rex's evidence was that he had told the plaintiff that there were metal catwalks and metal railings. Rex said that he had also shone his

torchlight to show the plaintiff where to go and where not to go [note: 48]. Specifically, Rex asserted that he had shone his torchlight on the ceiling panels and told the plaintiff that it was dangerous if he went closer to the ceiling panels [note: 49]. Rex made the plaintiff and Kannan cross from A to B and he crossed over last [note: 50]. Although Kannan had a headlight [note: 51], he did not turn it on [note: 52]. As Rex was crossing from A to B, he hooked his safety harness somewhere [note: 53]. Once the three of them were at B, Rex showed the plaintiff and Kannan the location where they would be working that night. Rex then crossed back from B to A, followed by Kannan [note: 54]. When Rex was past A and Kannan was at A, Kannan called out to Rex to say that someone fell down, and Rex came running over [note: 55]. When Rex saw that the plaintiff had fallen to the ground level, he informed Liaw and all the works were stopped [note: 56].

24 When questioned by the court, Rex explained that in order to cross from A to B, one would first have to stand on top of the air-con duct marked C (see bottom right section of photo 14 at p 47 SDBD) [note: 57]. After that, one would have to hook the safety harness on the beam (see square beam running diagonally downwards from upper right to middle of photo 14). However, as the opening of the hook was not large enough to fit around the beam directly, the loop-hooking method would have to be used [note: 58]. This method of hooking the safety harness was demonstrated by Rex in court. Once the harness was hooked to the beam, one would then have to step down to the Transverse Grating which was about 40cm wide (see lower centre section of photo 14, and also the area demarcated by dotted lines in the diagram at [14] above) [note: 59]. The Transverse Grating was about 73cm lower than the air-con duct [note: 60]. The distance between the air-con duct and the catwalk at B (*ie*, the length of the Transverse Grating) was about 1.5m [note: 61]. Rex explained that one would then have to stoop underneath a horizontal metal railing in order to step onto B [note: 62]. This railing was higher than the catwalk at B by about 1.38m [note: 63].

25 Rex also explained how one would cross from B back to A. First, while standing on the catwalk at B, one would have to hook on to the horizontal metal railing first [note: 64]. Next, one would have to stoop under the horizontal metal railing and step on the Transverse Grating (most likely with the left foot) to hook the safety harness (using loop-hooking [note: 65]) to the roof truss which was further away. Both hooks of the safety harness would not be hooked at the same time to the same spot [note: 66]. After hooking the harness to the beam while stooping under the horizontal metal railing, one would have to detach the other hook from the said railing ("sequential hooking"). One would then step onto the air-con duct which was higher than the platform by about 73cm [note: 67]. Rex did not explain to the plaintiff how to navigate the path back from B to A [note: 68]. However, he maintained that the air-con duct was the only obstacle there [note: 69].

Evidence of the safety supervisor, Heng

26 Heng Chin Aun ("Heng") is presently employed by TEE as a safety supervisor. At the time when the accident occurred, Heng had been employed by TEE for about 10 years and was the safety supervisor for the Project.

27 Heng's evidence was that on 18 May 2009, the work day started at about midnight with a toolbox meeting for all workers who were scheduled to work that night [note: 70]. This toolbox meeting was held on the ground floor. It was "to remind the workers of the safety issues that they have to pay attention to at work" as they would be working at a height of about 8m from the ground

[note: 71]. The toolbox meeting was conducted mainly by Liaw who did most of the talking. Heng added his comments and observations where necessary. It was emphasised to the workers as a group that they would be working at a height and that they should put on their safety harness and hook it at all times [note: 72]. Among other things, Heng made sure that all the workers were wearing their safety harnesses, and he also told them that they should hook the safety harness to a safe anchor point [note: 73]. However, he did not demonstrate how they should go about doing this [note: 74]. Although Heng knew that the plaintiff was coming to work on the Project for the first time, he did not explain the safety issues to the plaintiff separately [note: 75].

28 After the toolbox meeting, Heng checked to ensure that each worker had put on his safety harness before climbing the ladder [note: 76]. After the workers went up the ladder to the Ceiling Space, Heng remained on the ground floor with one Mohammad Mohsin Bashir Ahammad ("Mohsin"). Mohsin helped Heng to cordon off an area on the ground floor in order to avoid injury from falling objects to persons who were passing by. After the cordon was set up, Heng was supposed to go up to the Ceiling Space to ensure that the workers complied with safe work procedures, especially as regards the hooking of their safety harnesses [note: 77]. When the plaintiff fell from the Ceiling Space, Heng was still setting up the cordon on the ground floor. Heng ran to the plaintiff's location to help him and Heng noticed that the plaintiff was still wearing his safety harness [note: 78].

Evidence of the project engineer, Liaw

29 Liaw is presently employed by Sembawang Engineers and Constructors Pte Ltd as a mechanical engineer [note: 79]. At the time of the accident [note: 80], Liaw was employed by TEE as a project engineer. At about 11.50pm on 18 May 2009, a toolbox meeting was held. Liaw testified that he had reminded a group of workers, including the plaintiff, of safety issues [note: 81]. Although Liaw was aware that the plaintiff was working at the site for the first time, he did not explain the safety issues to the plaintiff separately [note: 82]. Among other things, Liaw told the workers that they were required to wear their safety harnesses and to hook the harnesses while they were working [note: 83]. However, he did not demonstrate to the workers how they were supposed to hook the harnesses [note: 84]. The reason for the absence of any demonstration was because Liaw assumed that all the workers knew how to use the harness [note: 85]. The plaintiff had not come forward to ask how to use the harness [note: 86].

30 Liaw was the first to go up the ladder [note: 87]. He led the workers to the first work location which was about 6 metres from A (see the two VAV boxes coloured in red and which were closest to A at p 39 of Liaw's AEIC) [note: 88]. Those two VAV boxes were scheduled to be replaced that night. Liaw assigned two workers to remove the VAV boxes and another two workers to assist them. When Liaw was still at this location, he heard a loud shout and he was told that someone had fallen through the ceiling panels. At that time, the workers were just about to start work on the VAV boxes at the first work location.

31 After the accident, CAAS asked TEE to halt the works and to brief it on how the accident could have happened and whether even more safety measures could be taken to ensure the safety of workers. In order to prepare for the briefing, Liaw went up to the working area on 2 June 2009 to take photographs of the location where the accident occurred [note: 89].

Events leading up to the accident

32 Counsel for TEE, Mr Tan Joo Seng ("Mr Tan"), argued that TEE's version of events should be accepted in preference to that of the plaintiff's for two reasons. First, Rex was an "independent" witness in that he was not an employee of TEE and had never been in its employment. Thus, he had nothing to gain or lose from the outcome of the case. Mr Tan argued that the same could be said of Liaw. By contrast, a lot was at stake for the plaintiff because although he had initially applied for workmen's compensation with the Ministry of Manpower ("MOM"), he later opted not to accept MOM's assessment of damages and instead to pursue his rights under the common law. The plaintiff had every reason and motivation to twist his evidence to advance his case.

33 Secondly, the plaintiff's evidence was inherently implausible and demonstrated a selective recollection of the facts:

(a) It was highly implausible that the plaintiff was not taught how to hook the safety harness at the Safety Course. A safety harness was a crucial piece of equipment to be worn by workers working at height. It was very unlikely that workers were not taught how to secure the harness properly during the Safety Course.

(b) The plaintiff said that he did not know how he had managed to cross from A to B. This selective amnesia was deliberate. The plaintiff managed to cross over safely the first time and did not want to show the court that it could be done. It was inexplicable that he could recall in much detail the events occurring before he crossed from A to B (including the lighting) but not the actual crossing itself.

(c) Liaw, Heng and Rex all testified that there was a safety briefing and their evidence on this was not challenged.

(d) Rex did enter the Ceiling Space. Heng stated that all workers then entered the Ceiling Space except for Mohsin and himself, who remained on the ground to set up a cordon. This aspect of Heng's evidence was not challenged by the plaintiff's solicitors. Further, there was no reason for Rex to remain on the ground level.

34 In response, counsel for the plaintiff, Mr R Kalamohan ("Mr Kalamohan"), advanced the following arguments:

(a) TEE's case was loaded with inconsistencies between their witnesses as to what happened on the day of the accident, especially between the testimony of Rex and Liaw. Additionally, there were internal contradictions between the AEIC and testimony of the same witnesses, particularly Rex and Liaw.

(b) There was no evidence produced to disprove the plaintiff's evidence that he was not taught loop-hooking and sequential hooking during the Safety Course. Therefore, the court should accept the plaintiff's evidence to that effect. TEE's argument was purely speculative.

(c) It was understandable that the plaintiff was not able to remember exactly how he crossed from A to B given that almost three years had elapsed between the accident and the time he testified in court. Furthermore, he had spent very little time in the Ceiling Space (which had poor lighting) and had only crossed from A to B once. It was not fair for TEE to regard the plaintiff's inability to recollect how he crossed from A to B and his ability to remember the lighting conditions as selective amnesia because the lighting would be the first thing that one would notice upon entering the Ceiling Space.

Before the plaintiff went up the ladder to the Ceiling Space

35 The first area of dispute between the parties was whether the plaintiff had been taught at the Safety Course in March or April 2009 how to hook the safety harness by loop-hooking and sequential hooking. I accepted the plaintiff's evidence that he was not taught these methods of hooking the safety harness at the Safety Course. He appeared to me to be an honest witness who was trying his best to recall the events which occurred about three years ago. It would have been highly implausible if the plaintiff had not been taught how to hook the safety harness *at all*. However, as the plaintiff testified, he was in fact taught how to wear the safety harness and how to hook the safety harness to objects such as metal railings (where the objects were smaller than the gap in the hook). Given that this was so, I rejected Mr Tan's submission that the additional methods of loop-hooking and sequential hooking were also taught during the Safety Course. It was open to TEE to have called the course instructors to testify in court but it did not do so.

36 The second area of dispute was whether a safety briefing had been conducted on the night of 18 May 2009 and, if so, what matters were touched upon during the briefing. Based on the evidence of Liaw and Heng, I accepted that there had been a safety briefing on that night and that the workers had been reminded that they should wear their safety harnesses and hook their safety harnesses to roof trusses, steel structures or railings at all times. To a limited extent, I was fortified in reaching this conclusion by reason of the fact that the plaintiff testified that he had been told to wear his safety harness (see [9] above).

37 Both parties did not dispute the following facts:

(a) The plaintiff had not been shown any diagrams or pictures of the Ceiling Space before he went up the ladder;

(b) The plaintiff was in fact wearing a safety harness before he went up the ladder. The hook of the safety harness which the plaintiff was wearing was smaller than the hook of the safety harness which was produced by TEE in court;

(c) The plaintiff had not been told by Liaw, Heng or Rex how to hook the safety harness onto objects by way of loop-hooking or sequential hooking; and

(d) The plaintiff had been paired up with Kannan who was a more experienced worker.

In the circumstances, I accepted these undisputed facts which were also established by the evidence. I will now examine the events occurring in the Ceiling Space.

Events in the Ceiling Space

38 The first area of dispute was whether Rex had gone up the ladder together with the plaintiff and Kannan. While the plaintiff insisted that Rex had remained at the foot of the ladder in order to pass things to the workers, Rex testified that he had climbed up the ladder.

39 I believed the plaintiff's evidence that Rex had remained at the foot of the ladder to pass things to the workers. There were no inconsistencies in the plaintiff's evidence in this regard. On the other hand, I agreed with Mr Kalamohan that there were several inconsistencies which indicated that Rex's story was untrue [note: 90] :

(a) Rex stated in his AEIC (at para 16) that he was the second person to go up the ladder and

he was followed by one Tong Jian Wei ("Tong"). Tong was allegedly employed by Yong Teng as Rex's supervisor and did most of the technical work to the VAV boxes. The other workers (including Rex) were there only to assist Tong and followed Tong's instructions. However, Rex's oral testimony was that he was followed up the ladder by Kannan and no mention was made of Tong.

(b) Rex stated that Liaw did not stay in the vicinity of A and went to another location outside the diagram at exhibit "SAJ-3" of Rex's AEIC [note: 91]. This was contradicted by Liaw's testimony (see [30] above).

(c) Rex stated in his AEIC (at paras 25 and 26) that he had "explained" to the plaintiff how to get from A to B and that he crossed over to B after this explanation, followed by the plaintiff and Kannan. However, Rex stated during cross-examination that the plaintiff and Kannan crossed from A to B first and that he crossed over last [note: 92].

(d) Rex stated in his AEIC (at para 28) that he heard a shout just after returning to A. However, he stated in court that he was moving away from point A when Kannan informed him that the plaintiff had fallen, and that he had not heard any sound of the plaintiff falling [note: 93].

(e) Rex testified in court that he had hooked his safety harness when he was crossing from A to B and back from B to A. However, he had not stated this fact anywhere in his AEIC. This was a highly material fact.

In particular, I was of the view that Rex's failure to mention Tong when he was questioned as to the identities of the persons who went up the ladder into the Ceiling Space was very significant. Rex affirmed his AEIC only about five months before the trial (in September 2011). If Tong had been Rex's supervisor (from the same company, Yong Teng) and had played such an important technical role in the Project, Rex's failure to mention him when testifying in court was inexplicable.

40 As for the question of whether Heng's evidence had any corroborative effect *vis-à-vis* Rex's evidence, Heng's AEIC stated (at paras 12 and 13) that "Nine workers would go up first with the Project Engineer, Tommy" and that one worker, Mohsin, remained below with Heng to set up the cordon. It could possibly be inferred from the "Daily Toolbox Meeting Form" (at p 8 of Heng's AEIC) that Rex was one of the nine workers who, according to Heng, went up the ladder. I noted that Heng's AEIC was less than satisfactory because it did not expressly state that the nine workers *did in fact* go up the ladder. Nonetheless, even leaving aside this point, I was of the view that Heng's evidence had no corroborative effect (and in fact undermined Rex's credibility and therefore the veracity of his evidence) because it materially contradicted Rex's oral testimony that a total of *six* persons went up the ladder. Therefore, Rex's evidence in this regard was not merely internally inconsistent (see [39(a)] above) but also externally inconsistent.

41 I was of the opinion that it was not true that there was absolutely no reason for Rex to have remained at the foot of the ladder. As the works for the night had just begun, it was not unlikely that there were things which had to be brought from below to the Ceiling Space. In this regard, Rex's explanation as to the location of the wooden planks was highly evasive [note: 94].

42 The second area of dispute was whether Rex had informed the plaintiff of the following matters when they were both in the Ceiling Space before the accident occurred:

(a) How to cross safely from A to B and back from B to A;

(b) The danger posed by the ceiling panels; and

(c) The proper method of hooking the safety harness to the roof trusses, steel structures or railings (*ie*, loop-hooking and sequential hooking).

43 I accepted the plaintiff's evidence that Rex had not informed him of any of these matters. First, as I stated earlier, I accepted the plaintiff's evidence that Rex had not gone up the ladder into the Ceiling Space before the accident. Secondly, even if I was wrong on that point and Rex did in fact go into the Ceiling Space together with the plaintiff before the accident occurred, it did not *necessarily* follow that Rex had *additionally* informed the plaintiff of those three matters. I was not convinced by Rex's evidence in this regard because there were numerous inconsistencies between his AEIC and his testimony in court (see [39] above). Furthermore, Rex was evasive when he was cross-examined on whether he had shown the plaintiff where to hook his safety harness [note: 95] :

Q: And when you purportedly went to point B from point A, did you have a safety harness on? Did you have a---no, did you have?

A: Yes, your Honour, I wore one.

Q: Yes. And on the way along from point A to point B, did you hook your safety harness anywhere?

A: Yes, your Honour.

Q: ***And did you show the plaintiff where to hook his safety harness?***

A: ***From point A to point B, we have---we have to---it's quite a big hook so we can't hook it the normal way, we have to hook it in a different way.***

Q: Okay, all right. Now is this hooking of the safety harness a very important safety facet for the plaintiff and workers like you?

A: Yes, your Honour.

Q: And you'll agree this is important. Yes?

A: Yes, your Honour, it's important.

Q: ***Why is that fact of you hooking on your safety harness and you teaching the plaintiff hooking on the safety harness not stated in your affidavit?***

A: ***No one asked me anything about that; it's only now that they're asking me about this hooking.***

Q: ***I'm putting it to you, witness, that this story about you going from point A to point B is a fiction; that is why that very important detail is missing.***

A: ***I disagree, your Honour.***

[emphasis added in bold italics]

44 I also found it odd that TEE produced in court a different safety hook that was much larger instead of the smaller type of safety hook that was actually supplied to the plaintiff at that time for his use. In his examination-in-chief, the plaintiff denied that the safety hook produced in court was of the same size as the one which was supplied to him on 18 May 2009, which was much smaller [note: 96]. He was not challenged on this point by Mr Tan. In my opinion, TEE's production of a larger hook was an attempt to establish that the plaintiff could have used the larger hook to secure the safety harness to an anchor point by simple hooking. Before the trial, TEE probably had not thought of the possibility of adapting the other equally effective loop-hooking method to secure the safety harness equipped with small hooks to the big roof trusses that were present in the area where the plaintiff fell from. Hence, I was not surprised that the plaintiff was not taught the alternative method of loop-hooking with the smaller hook since TEE apparently also never contemplated that possibility itself, even up to the stage of the trial. If it had done so, then there would have been no need to impress the court with a different larger safety hook which the plaintiff flatly denied was ever issued to him.

Negligence

The parties' arguments

The plaintiff's case

45 Mr Kalamohan cited *Awang bin Dollah v Shun Shing Construction & Engineering Co Ltd and other appeals* [1997] 2 SLR(R) 746 ("*Awang bin Dollah*") at [20] for the proposition that if a main contractor exercised or had the right to exercise control over a workman (employed by its sub-contractor) in respect of the work which he was engaged to perform, the main contractor would owe the workman a duty of care *as if* it was the workman's employer. In this regard, Mr Kalamohan drew the court's attention to the following undisputed facts:

(a) At the time of the accident, the plaintiff was the direct employee of Madhavan who had assigned him to work on the Project;

(b) Liaw and Heng were direct employees of TEE while Rex was the employee of Yong Teng (TEE's sub-sub-contractor).

On TEE's own case, Liaw and Heng had conducted a safety briefing during which they reminded the workers of the need to adhere to safety precautions. Heng had checked the safety harness of all workers before they were allowed to enter the Ceiling Space. Liaw went up the ladder into the Ceiling Space first, and all other workers followed his lead. Thus, on TEE's own case it had control or the right to exercise control over the plaintiff in respect of the work he was engaged to do.

46 Mr Kalamohan submitted that TEE owed certain duties to the plaintiff, relying on *Parno v SC Marine Pte Ltd* [1999] 3 SLR(R) 377 ("*Parno*") at [45]:

> The common law duty of employers vis-à-vis their employees is clear. This was laid down in *Wilsons and Clyde Coal Co Ltd v English* ... where the House of Lords held that the obligation was three-fold – to provide a competent staff of men; adequate material; and a proper system and effective supervision.

Mr Kalamohan added that this categorisation was not exhaustive and that there was also an established duty on an employer to provide safe premises and access to it, relying on *Chandran a/l Subbiah v Dockers Marine Pte Ltd* [2010] 1 SLR 786 ("*Dockers Marine*") at [22]. The plaintiff's claim was that TEE had (a) failed to provide him with a proper system of work and effective supervision,

and (b) failed to provide him with a safe place of work.

47 With respect to the first allegation, Mr Kalamohan submitted that even if the court was inclined to believe TEE's version of events, TEE should still be held to have failed to provide the plaintiff with a proper system of work and effective supervision [note: 97]. He drew the court's attention to the following facts:

(a) Liaw did not state in his AEIC that he had instructed Rex to take the plaintiff and Kannan from A to B. This meant that Rex took the plaintiff and Kannan from A to B without Liaw's knowledge.

(b) No efforts were taken by Liaw and Heng to explain the safety issues (such as how to hook the safety harness in the Ceiling Space using loop-hooking and sequential hooking) to the plaintiff individually although they knew that he was a new worker. Indeed, Liaw and Heng did not demonstrate how to hook the safety harness to the workers as a group at all. Liaw had assumed that all the workers knew how to hook the harness properly.

(c) No diagrams or photos were given to the plaintiff before he entered the Ceiling Space. This was despite the obvious dangers and difficulties which one would face in crossing from A to B and back from B to A.

(d) No explanations were given to the plaintiff on how to manoeuvre between A and B. Rex had not explained to the plaintiff how to hook his safety harness in the Ceiling Space (by way of loop-hooking and sequential hooking).

(e) Rex and Kannan left the plaintiff at B for him to move back to A on his own without any supervision although it was his first day of work at the site.

(f) Heng was supposed to enter the Ceiling Space after setting-up the cordon on the ground level to ensure that the workers complied with safe work procedures such as the proper hooking of their safety harnesses. However, he did not enter the Ceiling Space at the same time as the plaintiff and the other workers.

48 Mr Kalamohan relied on *Parno* (at [48]) for the proposition that "the instruction of apprentices and inexperienced workers" was within the category of a proper system of work. Liaw and Heng testified that they only *reminded* the workers as a group of the safety issues that they had to bear in mind.

49 With respect to the second allegation, *viz*, that TEE failed to provide the plaintiff with a safe place of work, Mr Kalamohan pointed to the following facts:

(a) Various obstructions (*ie*, vertical railings, horizontal railings and the air-con duct) were present in the path which the plaintiff would have to take to get from A to B and from B back to A.

(b) A safety officer appointed by TEE to review the working conditions and to provide recommendations had stated the following:

(i) That there was "restricted workroom";

(ii) That "certain areas may not have available/nearest structure (roof beam or truss)

for anchoring of safety harness";

(iii) That there were "existing services piping across platform" creating a "hazard of tripping & falling". The safety officer had recommended that the "area of existing services across working platform be made known to all work personnel as far as practical possible (layout plans, etc)"; and

(iv) That there was a "gap within platform" creating a "hazard of tripping and falling", and that the brightness of the lights was not sufficient; and

(c) There was insufficient lighting at A, B and C with the result that the plaintiff could not differentiate between the catwalk and the ceiling panels.

50 Mr Kalamohan summed up by referring to the court's observation in *Dockers Marine* (at [57]) that "the common law demands more of employers who require their employees to work at heights as compared to employers who do not expose their workers to similar dangers".

TEE's case

51 Mr Tan submitted that the plaintiff's claim under this cause of action should be dismissed for several reasons. First, TEE did not owe any duty of care to the plaintiff because:

(a) It was not the plaintiff's employer at the material time; and

(b) The working conditions were not inherently dangerous and it did not exercise a significant degree of supervision and control over the plaintiff.

52 In relation to the point that TEE was not the plaintiff's employer, Mr Tan did not take issue with the general proposition in *Awang bin Dollah* (see [45] above). However, he submitted that there was no evidence that TEE had the requisite control or the right to exercise control over the plaintiff in respect of the work he was to perform. On the contrary, the evidence showed that:

(a) The plaintiff took instructions from and was supervised by Rex who was Yong Teng's employee, or Kannan who was Madhavan's employee; and

(b) TEE did not deal with the plaintiff directly and left it to Yong Teng because the plaintiff was provided by Yong Teng's sub-contractor.

Further, Mr Tan submitted that the plaintiff had not adduced any evidence showing the degree of TEE's control and supervision over him. The plaintiff's AEIC was silent on this point and so were his pleadings.

53 In relation to the point that the working conditions were not inherently dangerous and TEE had not exercised a significant degree of supervision and control over the plaintiff, Mr Tan submitted as follows:

(a) The working conditions were not inherently dangerous because there were catwalks for workers to walk on. The catwalks were red in colour and were lit by fluorescent lights at regular intervals. The mere fact that the plaintiff was working at a height did not make the workplace inherently dangerous: see *Mohd bin Sapri v Soil-Build (Pte) Ltd and another appeal* [1996] 2 SLR(R) 223 at [34].

(b) TEE had not taken it upon itself to micromanage and coordinate Madhavan's and the plaintiff's activities. The plaintiff took instructions from and was supervised by Rex or Kannan.

54 Mr Tan added that it was Rex (or, according to the plaintiff, Kannan) who instructed the plaintiff to use the route which ultimately led to the accident. There was no evidence that TEE knew or approved of this route.

55 Mr Tan's second argument was that the plaintiff had not pleaded any specific particulars or material facts in his Statement of Claim to explain how TEE had breached its duty of care. Consequently, he was not entitled to adduce any evidence in support of this cause of action and his claim should be dismissed. In support of this proposition, Mr Tan relied on *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd and others* [1992] 2 SLR(R) 382, *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd* [1993] 1 SLR(R) 220 and Jeffrey Pinsler SC gen ed, *Singapore Court Practice 2009* (LexisNexis, 2009) at pp 360–363.

56 Mr Tan submitted that TEE had not breached its duty of care to the plaintiff because it had taken the following steps:

(a) Giving a safety briefing to all workers before they commenced work;

(b) Checking that all workers had put on their safety harnesses before allowing them to go up the ladder to the Ceiling Space;

(c) Reminding the workers to hook up their harnesses to roof trusses, steel structures or railings at the working area at all times;

(d) Instructing the workers to work in pairs and pairing the plaintiff with Kannan, a more experienced worker;

(e) Limiting the number of VAV boxes to be replaced each night;

(f) Reminding the workers to ensure that there was sufficient lighting; and

(g) Reminding the workers' supervisors to keep a close watch to ensure that the workers took adequate care when working.

Mr Tan submitted that the standard of care to be applied was that which an ordinary prudent employer would have taken in all the circumstances, relying on *China Construction (South Pacific) Development Co Pte Ltd v Shao Hai* [2004] 2 SLR(R) 479. Further, he submitted that although evidence of general practice might be of material assistance, it was ultimately for the court to decide what would be required to discharge the standard of reasonable care having regard to the particular circumstances of a case, relying on *Chong Yeo and Partners and another v Guan Ming Hardware and Engineering Pte Ltd* [1997] 2 SLR(R) 30. Mr Tan observed that TEE should not be required to give instructions to the plaintiff on every aspect of his work and that the plaintiff was expected to be able to carry out some work himself relying on his own experience and judgment, especially for simple tasks, relying on *Chua Ah Beng v C & P Holdings Pte Ltd* [2001] 1 SLR(R) 844.

The court's findings

57 I was of the view that the plaintiff's pleadings were not fatally defective. Although I agreed with Mr Tan that para 11 of the plaintiff's Statement of Claim was not sufficiently particularised, this

was not prejudicial to TEE. It was well aware of the case which the plaintiff was putting forward and which it had to meet (see para 13 of the Defence). Even if there was some prejudice to TEE due to the lack of particulars in the plaintiff's Statement of Claim, this would have been cured by the particulars given in the plaintiff's Reply (see paras 5 to 11 thereof).

58 I found that TEE owed a duty of care to provide the plaintiff with (a) a proper system of work and effective supervision, and (b) a safe place of work. I agreed with Mr Kalamohan that TEE exercised sufficient control over the plaintiff on the night of 18 May 2009 such that it could be treated as his employer. There was no doubt in my mind that if TEE had wished that the plaintiff be deployed to replace other VAV boxes (at a location other than B), Liaw (who was TEE's project engineer) would have directed Rex (who, on TEE's own case, was the plaintiff's supervisor) accordingly and Rex would have complied. TEE was the main contractor for the Project and the plaintiff was assigned by his employer, Madhavan, to work on the Project that night. According to TEE's own Defence (at paras 2 to 5), Madhavan was contractually bound to provide labour to dismantle and install the VAV boxes. While it was true that, on the face of it, Madhavan was contractually bound only to Yong Teng, the reality of the situation was that if one went down the chain of the various contracts, the true power over the deployment of labour for the Project was concentrated in TEE's hands. That power would be exercised, in practice, through directions given by Liaw and Heng (TEE's safety supervisor), both of whom were present on 18 May 2009 when the plaintiff reported for work. According to Liaw's own evidence (at para 26 of his AEIC), he was the person who assigned workers to work on particular VAV boxes. In the circumstances, it would not make commercial and practical sense to find that TEE did not have *de facto* control over the work that the plaintiff did on that night.

59 I agreed with Mr Tan that the standard of care to be applied was that which an ordinary prudent employer would have taken in all the circumstances, that TEE should not be required to give instructions to the plaintiff on every aspect of his work, and that the plaintiff was expected to be able to carry out some work himself relying on his own experience and judgment, especially for simple tasks. However, I found that on the facts TEE had breached its duty to provide the plaintiff with (1) a proper system of work and effective supervision, and (2) a safe place of work.

60 With respect to (1), I arrived at this finding for the following reasons:

(a) Although Liaw and Heng had given a safety briefing to all workers before they commenced work, this briefing did not include an explanation or demonstration on how the safety harnesses should be hooked using loop-hooking together with sequential hooking having regard to the fact that at the location where they had to do the crossing from A to B and back again in order to perform the work, there was no convenient anchor point to simply hook on to with the safety hooks that were supplied. Liaw simply assumed that all the workers knew what to do, even though he was aware that the plaintiff would be working in the Ceiling Space for the first time that night. The importance of these methods of hooking the safety harness was underscored in this case because the accident would most likely have been prevented had the plaintiff been taught these methods.

(b) Although Liaw and Heng were aware that the plaintiff was a new worker, they did not take any steps to ensure that the plaintiff knew how to get across safely from A to B and then back from B to A. They did not testify that either one of them had instructed the plaintiff in this regard, or had instructed Rex to guide the plaintiff. This aspect was particularly important because:

(i) The architecture of that area of the Ceiling Space made it necessary for workers

crossing from A to B or from B to A to take a specific path which would avoid the obstructions and the ceiling panels; and

(ii) The methods for getting across from A to B safely would be different from those from B to A, given that the Transverse Grating was lower than the air-con duct, a horizontal railing was blocking entry to B while there was no such railing blocking entry to the air-con duct, and the safe anchor points for the safety harness would be different.

(c) As Heng was the safety supervisor on that night, he should not have remained at the foot of the ladder to ensure that the cordon was set up before he went up into the Ceiling Space. It was not clear to me why he had to remain downstairs to oversee what was a simple task as compared to the work which was going to be carried out in the Ceiling Space, especially considering the obstructions which were present there. The cordon should have been set up first before the workers went up the ladder. Alternatively, Heng should have instructed one worker to set up the cordon and he should have gone up himself into the Ceiling Space to ensure that proper safety practices (such as the proper hooking of safety harnesses to roof trusses and beams) were complied with. Heng's failure to do so was compounded by the fact that he had not demonstrated to the workers how to hook the safety harnesses properly (using loop-hooking and sequential hooking) in an area where anchor points for simply hooking the safety harness were not readily available.

(d) Heng's presence in the Ceiling Space was particularly important given the plaintiff's testimony that Kannan and the other two workers had not hooked their safety harnesses while they were crossing from A to B. It was open to TEE to apply for leave to call Kannan or the two other workers to rebut this assertion of the plaintiff's. It did not do so. Heng's presence would have made it more likely that all the workers would comply with their instructions to hook their safety harnesses. I could not see how there could be a proper system of work and effective supervision when Heng, as the safety supervisor, was not present at all in the Ceiling Space to supervise the work carried out there.

(e) Although there was an obvious danger posed by the presence of the ceiling panels, no diagrams or pictures were shown to the plaintiff by Liaw and Heng. Indeed, the plaintiff was not even told that there were ceiling panels which he had to look out for. This failure on TEE's part was compounded by the particular path which workers had to take when crossing back from B to A.

(f) There was no evidence that Kannan had instructed the plaintiff as to the danger posed by the ceiling panels, how he could cross from A to B and back from B to A safely, and how he could hook his safety harness properly in that area (using loop-hooking and sequential hooking). There was also no evidence that Liaw or Heng had instructed Kannan to inform the plaintiff of these matters.

61 With respect to (2), I found that TEE had breached its duty to provide a safe place of work for the following reasons:

(a) There were numerous obstructions along the path which the workers had to take to get around the Ceiling Space in order to carry out their work. Some of the obstructions were particularly difficult to manoeuvre around, such as horizontal railings which could only be circumvented by going under or over them. Although I accepted that TEE had no control over the layout and design of the Ceiling Space (which was, presumably, under the control of CAAS), this was not a sufficient reason for finding that TEE did not reasonably have to take any steps for the

safety of workers who were working on the Project. TEE had to take the Ceiling Space as it found it, but its safety measures also had to be adequately adapted to the Ceiling Space.

(b) TEE had failed to ensure that the plaintiff had been adequately instructed on how to hook his safety harness (by loop-hooking and sequential hooking) to the various objects contained in the Ceiling Space, some of which were larger than the gap of the hook (which was 4 cm). TEE had also failed to ensure that the plaintiff had been adequately instructed on how to hook his safety harness while crossing from A to B or back from B to A. This specific area was particularly difficult to navigate because, as Rex testified, it required loop-hooking and sequential hooking, stooping and stretching in order to cross safely (see [24]–[25] above).

(c) There was insufficient lighting in the vicinity of A, B and C. Sufficient lighting would help workers differentiate between catwalks and ceiling panels. Although there were fluorescent tubes placed at various points in the Ceiling Space, the photos clearly showed that these were not sufficient to provide adequate lighting for the areas in which work was to take place and for the paths which the workers had to take to get to those areas. Furthermore, the mere fact that fluorescent tubes were provided would not be sufficient in the absence of proper placement, given that there were many obstructions and objects which would cast shadows. TEE should have given the workers helmets with attached lights for them to wear or provided additional temporary lighting at the work location and the areas around A, B and C in the Ceiling Space.

Occupier's liability

The parties' arguments

62 Mr Kalamohan argued that it is settled law that an employer who is an occupier of premises where an accident has happened can be liable to his employee in his capacity as an occupier, regardless of whether the employer is also liable under the common law for failing to take reasonable care of the employee's safety. He cited *Ma HongFei v U-Hin Manufacturing Pte Ltd and another* [2009] 4 SLR(R) 336 ("*Ma HongFei*") as authority for this proposition. He then cited *Sim Cheng Soon v BT Engineering Pte Ltd and another* [2006] 1 SLR(R) 697 for the proposition that an occupier would be liable to an invitee for injuries suffered by him where:

(a) The occupier knew or ought to have known of the danger; and

(b) The danger was unusual to that class of plaintiff having regard to the nature of the place and the knowledge of the invitee.

Applying these propositions to the facts, Mr Kalamohan submitted that:

(a) TEE was an occupier of the premises at the time when the accident occurred;

(b) As the main contractors who had been carrying out work at the said premises before the accident, TEE knew or ought to have known of the danger posed by the various obstacles (*ie*, vertical pipes, horizontal railings and air-con ducts) in the path which the plaintiff would have to take from A to B and back from B to A; and

(c) This danger was unusual to the plaintiff considering that he was a new worker and that no diagrams or pictures of the work area were shown to him before he climbed up the ladder into the Ceiling Space.

63 Mr Tan submitted that the plaintiff's claim under this cause of action should be dismissed for several reasons. First, the plaintiff had not pleaded any specific particulars or material facts in his Statement of Claim to explain how TEE had breached its duty as an occupier. As a result, the plaintiff was not entitled to adduce any evidence in support of this cause of action and his claim should be dismissed. Mr Tan relied on several authorities in support of this proposition (see [55] above).

64 Secondly, and in any event, Mr Tan submitted that TEE had not breached its duty of care as occupier because:

(a) The danger was not unusual to the plaintiff having regard to the nature of the place and the knowledge of the plaintiff. The plaintiff was working in a space above the ceiling. He should have known that parts of the "floor" were actually ceiling panels and that these panels would give way if he stepped on them. Para 7 of his AEIC showed that he did in fact know this. Further, the plaintiff would have been informed about the ceiling panels by Rex or Kannan;

(b) The danger was not unknown to the plaintiff and its significance was appreciated by him. The danger was highlighted to the plaintiff by Rex. Further, it was very likely that Kannan had informed the plaintiff of the danger posed by the ceiling panels.

(c) TEE had taken reasonable care to prevent any injury from the danger. The plaintiff had been reminded to hook up his harness to roof trusses, steel structures or railings at the working area at all times.

65 Mr Kalamohan's reply submissions were as follows:

(a) The plaintiff was in the Ceiling Space for a very short time and the area was not well-lit. TEE had never requested further and better particulars even though it had the option to do so. In the circumstances, the plaintiff had provided the best particulars that he could.

(b) Given that TEE knew that it was the plaintiff's first day working in the Ceiling Space, it was irresponsible for it to have assumed that he should have known that the ceiling panels would give way. Para 7 of the plaintiff's AEIC did not show that he was aware of the existence of the ceiling panels and the danger posed by those panels. The term "staging" was used in the Statement of Claim because the plaintiff did not know what he had stepped on. It was TEE who had used the terms "ceiling panels" and "catwalks" in its Defence. This led to the plaintiff using the correct terms in his Reply and AEIC.

(c) Rex's testimony in court as to whether he had told the plaintiff of the danger of stepping on the ceiling panels contradicted what he said in his AEIC.

(d) It was not TEE's pleaded case that Kannan had informed the plaintiff about the ceiling panels. In any event, it had not produced Kannan as a witness to support this assertion.

(e) It was not sufficient to discharge TEE's duty of care for it merely to remind the workers to hook their safety harnesses.

The court's findings

66 For the same reasons which I have set out in relation to the claim in negligence (see [57] above), I was of the view that the plaintiff's pleadings were not fatally defective in respect of the claim in occupier's liability.

67 I found that TEE had breached its duty as occupier for the following reasons:

(a) The danger was unusual to the plaintiff having regard to the nature of the place and the knowledge of the plaintiff as invitee. Although it was true that the plaintiff was working in a space above the ceiling and he should have known that parts of the "floor" were actually ceiling panels, it was an entirely different matter to assert that he should have known that these panels *would or were likely to give way* if he stepped on them. Given that TEE knew that it was the plaintiff's first day working in the Ceiling Space, it was irresponsible for it *to assume* that he had such knowledge. At the very least, Liaw or Heng should have reminded the workers of this danger. There was no evidence to this effect. As I accepted Mr Kalamohan's argument in relation to para 7 of the plaintiff's AEIC, Mr Tan's point in this regard did not assist TEE.

(b) The danger was unknown to the plaintiff. He had not been shown any diagrams or pictures of the Ceiling Space, let alone that of the area around A, B and C. Although Liaw, Heng and Rex all knew that the plaintiff was a new worker, they did not ensure that he was aware of the danger posed by the ceiling panels. Given that the nature of the pathway between A to B meant that workers crossing that path would have to come very close to stepping on the ceiling panels, it was important that the plaintiff's attention be drawn to the ceiling panels. This failing on TEE's part was compounded by the fact that the lighting in that area was poor. Even if I was wrong to find that Rex had not gone up the ladder, Rex's evidence as to what he had told the plaintiff in the Ceiling Space was riddled with inconsistencies. I therefore did not believe that Rex had ensured that the plaintiff was aware of the ceiling panels and of the danger posed by them. As for Mr Tan's argument that it was very likely that Kannan had informed the plaintiff of the danger posed by the ceiling panels, this was merely speculative. TEE failed to call Kannan as a witness to establish that fact.

(c) Although the plaintiff had been reminded to hook up his harness to roof trusses, steel structures or railings at the working area at all times, this was not sufficient to discharge TEE's duty of care in the specific circumstances of this case because the plaintiff had not been instructed on how to hook his safety harness properly in the area whilst moving around and between the various points A, B and C (by loop-hooking and sequential hooking). Workers working in that area had to have such knowledge given the obstructions that were present. It was negligent, to say the least, for Liaw and Heng to have assumed that the plaintiff knew how to hook his harness in that way given that they knew he was a new worker. While it was true that the plaintiff had attended the Safety Course, it would not have been unduly onerous for Liaw and Heng to have confirmed whether he indeed had such knowledge.

Breach of statutory duty

The parties' arguments

TEE's case

68 Mr Tan relied on s 60(1) of the Workplace Safety and Health Act (Cap 354A, 2007 Rev Ed) ("the Act") to support his submission that the plaintiff did not have a private right of action against TEE for breach of ss 11 and 12 of the Act. The relevant sections of the Act are as follows:

Meanings of "employee" and "employer"

6.—(1) Subject to subsections (2), (3), (4) and (5), in this Act —

...

"employer" means a person who, in the course of the person's trade, business, profession or undertaking, employs any person to do any work under a contract of service.

...

(4) Where —

(*a*) an employer places an employee (referred to in this subsection as the loaned employee) at the disposal of another person to do work for that other person; and

(*b*) there is no contractual relationship between the employer and that other person regarding the work to be performed by the loaned employee,

then, for the purposes of this Act —

(i) the loaned employee shall be regarded as if he were an employee of that other person (instead of his employer) while the loaned employee is at work for that other person;

(ii) that other person shall be regarded as if he were the employer of the loaned employee while the loaned employee is at work for that other person; and

(iii) the loaned employee shall be regarded as if he were at work when doing work for that other person.

...

Duty of occupier of workplace

11. It shall be the duty of every occupier of any workplace to take, so far as is reasonably practicable, such measures to ensure that —

(*a*) the workplace;

(*b*) all means of access to or egress from the workplace; and

(*c*) any machinery, equipment, plant, article or substance kept on the workplace,

are safe and without risks to health to every person within those premises, whether or not the person is at work or is an employee of the occupier.

Duties of employers

12.—(1) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of his employees at work.

(2) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of persons (not being his employees) who may be affected by any undertaking carried on by him in the workplace.

(3) For the purposes of subsection (1), the measures necessary to ensure the safety and

health of persons at work include —

(*a*) providing and maintaining for those persons a work environment which is safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work;

(*b*) ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article or process used by those persons;

(*c*) ensuring that those persons are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things —

(i) in their workplace; or

(ii) near their workplace and under the control of the employer;

(*d*) developing and implementing procedures for dealing with emergencies that may arise while those persons are at work; and

(*e*) ensuring that those persons at work have adequate instruction, information, training and supervision as is necessary for them to perform their work.

(4) Every employer shall, where required by the regulations, give to persons (not being his employees) the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their safety or health while those persons are at his workplace.

...

Civil liability

60.—(1) Nothing in this Act shall be construed —

(a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of this Act; or

(b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.

(2) Subsection (1) shall not affect the extent (if any) to which a breach of duty imposed under any written law is actionable.

Mr Tan argued that *Ma HongFei*, which held that s 60(1) did not have the effect of removing a plaintiff's right of private action in relation to a breach of the Act, was incorrect and should not be followed by this court. In support of this argument, Mr Tan relied on Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2011) ("*Chan & Lee*") at pp 332–334, and Ravi Chandran, *The Workplace Safety and Health Act: An Overview* (2007) 19 SAcLJ 15 ("*Chandran*") at paras 10 and 11. Mr Tan also submitted that the recent decision in *Tan Juay Pah v Kimly Construction Pte Ltd and others* [2012] SGCA 17 ("*Tan Juay Pah*"), where the Court of Appeal considered the effect of s 60 of the Act, supported his argument that a breach of the Act did not confer a right of action in civil proceedings.

69 In any event, Mr Tan submitted that TEE had not breached its duties under ss 11 and 12 of the

Act. In relation to the duty imposed under s 11 of the Act, Mr Tan accepted that TEE fell within the definition of "occupier" in s 4. However, he argued that TEE had taken all reasonably practicable measures to ensure that the plaintiff's workplace was safe. It had:

(a) Held a toolbox meeting with the workers every day to remind them of the safety issues;

(b) Reminded the workers to hook up their harnesses to the roof trusses, steel structures or railings at the working area;

(c) Ensured that all workers put on their safety harnesses before entering the Ceiling Space;

(d) Provided additional lighting at the working areas where the VAV boxes were to be replaced; and

(e) Requested the workers' supervisors to keep a close watch to ensure that they took adequate care when carrying out their works.

70 In relation to the duty imposed under s 12 of the Act on "every employer", Mr Tan submitted that TEE was not the plaintiff's "employer" as defined in s 6 of the Act. Mr Tan submitted that TEE did not have any contractual relationship with the plaintiff, and the plaintiff was not placed at its disposal to do work for it. Instead, the plaintiff was under the control and supervision of Madhavan and/or Yong Teng.

The plaintiff's case

71 Mr Kalamohan submitted that *Ma HongFei* was good law and should be followed by the court. He argued that the court was merely stating that a plaintiff had to have *locus standi* before he could commence a civil action for breach of statutory duty under the Act, and that the test of *locus standi* was whether a plaintiff could show that his injuries were *caused* by the breach of the Act. The criticism in *Chan & Lee* was misplaced because it was premised on a misunderstanding of that decision.

72 In relation to s 11 of the Act, Mr Kalamohan submitted that TEE had failed to take all reasonably practicable measures to ensure that the plaintiff's workplace was safe:

(a) Regarding the alleged toolbox meeting, it was not sufficient for TEE simply to remind the workers of the safety issues. It should have explained the safety issues in detail, including how to manoeuvre around difficult, problematic and risky areas such as between A and B, especially because it knew that the plaintiff was a new worker.

(b) Regarding the alleged reminder to hook the safety harnesses, it was not sufficient to remind the plaintiff to do so since he was a new worker. TEE should have showed pictures or diagrams of the workplace to the plaintiff before allowing him into the Ceiling Space. Also, TEE should have demonstrated to the plaintiff how to hook the harness (loop-hooking and sequential hooking). It was fundamentally wrong to assume that the plaintiff would have known how to loop-hook and sequentially hook his safety harness.

(c) Regarding the alleged checks to ensure that all workers were wearing safety harnesses before going up the ladder, this fell short of the statutory duty to take all reasonably practicable measures. It would be more reasonable for Heng to have entered the Ceiling Space together with the workers. Heng could then have instructed the plaintiff as to how and where to hook the

safety harness.

(d) Regarding the additional lighting at the area near the VAV boxes, it was clear from the photos that the workplace was not well lit, especially between A and B. TEE should have provided additional lighting at all areas of the workplace. At the very least, it should have provided the workers with helmets with attached headlights. This would have aided the plaintiff to see the ceiling panels clearly.

(e) Regarding the alleged request to the workers' supervisors to keep a close watch on them, TEE should not delegate the duty to take all reasonable steps to ensure the safety of the workers and the workplace to other workers (*ie*, the supervisors). Even if this duty was delegated, TEE was still vicariously liable for the conduct of those to whom its responsibility was delegated.

73 In relation to s 12 of the Act, Mr Kalamohan submitted that TEE was the plaintiff's "employer" under the Act and therefore owed him a duty under s 12 to take all reasonably practicable measures to ensure his safety at the workplace. Mr Kalamohan relied on the following facts to support this argument:

(a) The plaintiff was at the workplace to do work for the business of TEE. The plaintiff was a loaned employee, and, by virtue of the contractual relationship between TEE, Sing Wah (sub-contractor), Yong Teng (sub-sub-contractor) and Madhavan (sub-sub-sub-contractor), TEE was the plaintiff's employer at the time of the accident.

(b) On the day of the accident, the plaintiff was under the control and supervision of TEE and not Madhavan. The plaintiff was on the worksite at TEE's disposal to do work for them. It was TEE who allegedly held a toolbox meeting, who asked the workers to sign an undertaking (see p 29 of Liaw's AEIC), and who allegedly took it upon itself to ensure that all workers were wearing safety harnesses before entering the Ceiling Space.

74 Mr Kalamohan pointed out that TEE had not pleaded in its Defence that Yong Teng was the plaintiff's employer and that Yong Teng should be liable for his injuries. In any event, Mr Kalamohan submitted that if the court found that the plaintiff was under the control and supervision of Yong Teng and not TEE, TEE should still be *vicariously* liable for Rex's failure to ensure the plaintiff's safety.

The court's findings

75 In *Tan Juay Pah*, the Court of Appeal stated:

> 6 3 *While s 60(1)(*a*) of the WSHA provides that the WSHA does not confer any right of action in civil proceedings*, s 60(1)(*b*) provides (inter alia) that the WSHA also does not affect any (independent or pre-existing) right of action in civil proceedings. *In other words, s 60 of the WSHA neither confers nor takes away any right to bring a private claim in respect of a breach of statutory duty under the WSH Regime. More importantly for present purposes*, ***s 60 does not answer the question of whether there is an independent or a pre-existing private right of action for such a breach*** . ... [U]nder the *Spandeck* test, it is clear that the mere fact that a particular statutory duty exists does not suffice to give rise to a common law duty of care founded on that statutory duty. ...
>
> [emphasis added in italics and bold italics]

7 6 *Tan Juay Pah* stands for the proposition that s 60 has no effect on the existence (or otherwise) of an independent or pre-existing private right of action for the breach of a duty imposed by the Act. Where there is an independent or pre-existing private right of action, the right is not taken away by virtue of s 60.

77 In *Animal Concerns Research & Education Society v Tan Boon Kwee* [2011] 2 SLR 146 ("*Animal Concerns*"), the Court of Appeal stated as follows:

> 21 We should highlight at the outset that even if the Appellant's construction of s 10(5) of the Act is correct, s 10(5) is, strictly speaking, not determinative of the Respondent's civil liability to the Appellant in an action for negligence, for it is trite law that ***there is no common law tort of "careless performance of a statutory duty"*** (see the House of Lords decision of *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 ("*X v Bedfordshire CC*") at 732-735).
>
> 22 In other words, ***what the courts in this area are looking for is still a duty of care at common law*** (see, for example, the English Court of Appeal decision of *Connor v Surrey County Council* [2010] 3 All ER 905 at [102]), *ie*, the statutory duty which a plaintiff alleges sounds in negligence must have been previously held to give rise to a common law duty of care, or must be so declared by the court adjudicating the matter, applying the test in *Spandeck* ([16] *supra*). A statutory duty does not *ipso facto* impose a concomitant duty of care at common law. ***A statutory duty may, of course, form the backdrop to and inform the existence (or lack thereof) of a common law duty of care*** (see, for example, *X v Bedfordshire CC* at 739), ***but that does not mean the statutory duty*** per se ***is a duty of care, even if it is phrased (as here) in terms of requiring the taking of "reasonable steps" and "due diligence"*** .
>
> 23 Even if the Appellant's construction of s 10(5)(*b*) of the Act is correct, therefore, the *mere existence* of a statutory duty on the Respondent to supervise the backfilling is not sufficient to establish an action in negligence at common law by the Appellant.
>
> 24 Nevertheless, if there is indeed such a statutory duty on the Respondent under s 10(5)(*b*) of the Act (as construed by the Appellant), and the Respondent had breached such a duty, ***another possible cause of action that the Appellant might have pursued against the Respondent would be one based on the tort of breach of statutory duty*** . However, this alternative legal route does not appear to have been adopted by the Appellant. Although s 10(5) of the Act clearly imposes some sort of statutory duty on site supervisors, the Act only states that breach of that duty will give rise to *criminal* liability under s 10(8) of the Act. As ***the Act is completely silent on whether breach of s 10(5) also gives rise to*** civil ***liability, and, if so, whether such liability is incurred to a private individual who has suffered loss as a result of the breach*** , the success of a claim for breach of statutory duty would, in the main, have depended on the construction of the Act in general and s 10(5)(*b*) in particular, in order to ascertain whether the Legislature impliedly intended to provide a right of civil action to enforce the statutory duty (see the leading House of Lords decision of *Cutler v Wandsworth Stadium Ltd* [1949] AC 398 at 407 and 412).
>
> [emphasis added in bold italics]

In other words, a distinction has to be drawn between, on the one hand, determining whether a duty of care is owed at common law, and, on the other hand, determining whether the breach of a statutory duty *per se* gives rise to a right of civil action. In the present case, Mr Kalamohan's arguments on the purported claim for "breach of statutory duty" (see [72]–[73] above) were directed at the former rather than the latter. Furthermore, Mr Kalamohan did not advance any arguments on

Parliamentary intention which, as the Court of Appeal noted in *Animal Concerns* (at [24]), is the primary determinant of whether the breach of a statutory duty *per se* gives rise to a right of civil action. As I had already found that TEE owed a duty of care at common law (in the torts of negligence and occupier's liability) to the plaintiff, and that this duty of care was breached, it was not necessary for me to go on to consider whether ss 11 and 12 of the Act were breached by reason of the facts raised by Mr Kalamohan.

78 I should add that if Mr Kalamohan had argued that a breach of ss 11 and/or 12 of the Act *per se* gave rise to a right of civil action, s 60(1)(*a*) indicates that Parliament did not intend such a result (as the Court of Appeal in *Tan Juay Pah* noted at [63]). Mr Kalamohan's reliance on *Ma HongFei* was misplaced because it was a case where the principal question was whether a duty of care was owed at common law in the tort of occupier's liability (see [43]–[45] thereof). The court's comments in *Ma HongFei* on s 60 of the Act must therefore be read in that context.

Contributory negligence

Contributory negligence of the plaintiff

79 Mr Tan cited *Parno* in support of TEE's allegation of contributory negligence by the plaintiff. In *Parno*, the Court of Appeal stated:

> 59 The classic statement of the law on contributory negligence was expounded by Lord Denning MR in the well-known case of *Froom v Butcher* [1976] QB 286 at 291:
>
> > Negligence depends on a breach of duty, whereas contributory negligence does not. Negligence is a man's carelessness in breach of duty to others. Contributory negligence is a man's carelessness in looking after his own safety. He is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man, he might hurt himself.
>
> 60 Section 3(1) of the Contributory Negligence and Personal Injuries Act (Cap 54, 1994 Ed) provides as follows:
>
> > 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. [emphasis added]
>
> 61 In *Stapley v Gypsum Mines Ltd* [1953] AC 663, Lord Reid said at 682 that a court must deal broadly with the problem of apportionment and in considering what is just and equitable, must have regard to the blameworthiness of each party. The claimant's share in the responsibility for the damage cannot however be assessed without considering the relative importance of his acts in causing the damage apart from his blameworthiness. In *Davies v Swan Motor Co (Swansea) Ltd* [1949] 2 KB 291 at 326 Denning LJ said that no true apportionment can be reached unless both the factors of blameworthiness or fault, and causation are borne in mind.

80 Mr Tan submitted that the plaintiff should be held to be contributorily negligent for the following reasons:

(a) The plaintiff failed to hook up his safety harness when he was crossing from B to A, even

though he knew or should have known that he was required to hook the safety harness at all times.

(b) The plaintiff failed to retrace his route on the way back from B to A.

(c) The plaintiff failed to keep a proper look-out for the ceiling panels. He could have seen the ceiling panels because the lighting conditions were sufficient for him to see his feet.

81 Mr Kalamohan submitted that the plaintiff was not contributorily negligent for the following reasons:

(a) With respect to (a), TEE did not have any evidence to show that the plaintiff was contributorily negligent.

(b) With respect to (b), TEE had not proved that the plaintiff was shown the safe and proper route to cross from A to B, or from B to A.

(c) With respect to (c), while crossing from A to B the plaintiff had followed Kannan and had somehow managed to cross safely. However, on the return from B to A, the plaintiff was the first person to cross and he fell through the ceiling panels on his first step. Just because he could see his feet did not mean that he could see the ceiling panels. Furthermore, the plaintiff had no knowledge that the ceiling panels would give way if he stepped on them.

82 After considering the evidence as a whole, I found that the plaintiff was contributorily negligent to the extent of one third. In reaching this conclusion, I took into account the following factors:

(a) It was undeniable that the plaintiff could have reasonably taken more care for his own safety when he was crossing from B to A. It could be said, for example, that the plaintiff should have spoken up and asked Kannan or the other two workers how he should hook his safety harness to a safe anchor point in that area. The plaintiff should not have taken the risk and proceeded with the crossing from A to B and back again, when he did not know how to secure his safety harness to the roof trusses and steel structures due to the limited knowledge he had. However, I was of the opinion that this should not be counted as a very significant factor against the plaintiff given that he was a new worker and that neither Kannan nor the other two workers had hooked their safety harnesses to any anchor points in that area. Further, no steps were taken by Liaw or Heng to ensure that all workers knew how to hook their safety harnesses using loop-hooking or sequential hooking. These were methods which were essential to safe work in the Ceiling Space given the numerous obstructions and the absence of anchor points for simple hooking in that area. Heng, as the safety supervisor, was not even there at the work area in the Ceiling Space to answer the workers' questions on safety, if any, and to advise and supervise the workers accordingly.

(b) The lighting conditions in the area were poor, making it difficult for the plaintiff to differentiate between the catwalk and the ceiling panels.

(c) The plaintiff had been paired with Kannan who was the more experienced worker. However, TEE did not call Kannan as a witness to substantiate its assertion that Kannan warned the plaintiff of the various dangers and taught him how to hook his safety harness and how to navigate from A to B and back from B to A.

Contributory negligence of the first defendant

83 Mr Tan also submitted that the court had the power to apportion liability between Madhavan and TEE even though the former did not defend the action and judgment in default of appearance had been entered against him. Paras [30] and [31] of *Ng Kim Cheng v Naigai Nitto Singapore Pte Ltd and another* [1991] 1 SLR(R) 270 ("*Ng Kim Cheng*") were cited as authority for this proposition. Mr Tan went on to argue that Madhavan had breached his duty to take reasonable care for the plaintiff's safety and should therefore be held 100% liable to the latter, thereby implying that TEE should not be held liable at all to the plaintiff.

84 I was of the view that this argument did not assist TEE. In *TV Media Pte Ltd v De Cruz Andrea Heidi and another appeal* [2004] 3 SLR(R) 543, the Court of Appeal stated as follows:

> 155 The law as to the apportionment of damages between joint tortfeasors is laid out in *Dingle v Associated Newspapers Ltd* [1961] 2 QB 162, which was adopted by us in *Chuang Uming (Pte) Ltd v Setron Ltd* [1999] 3 SLR(R) 771 . The English Court of Appeal held at 188-189:
>
> > Where injury has been done to the plaintiff and the injury is indivisible, ***any tortfeasor whose act has been a proximate cause of the injury must compensate*** **for the whole of it** ***. As between the plaintiff and the defendant it is immaterial that there are others whose acts also have been a cause of the injury and it does not matter whether those others have or have not a good defence. These factors would be relevant in a claim between tortfeasors for contribution, but the plaintiff is not concerned with that; he can obtain judgment for total compensation from anyone whose act has been a cause of his injury*** . [emphasis added]
>
> 156 We also find it useful to refer to the case of *Wong Jin Fah v L & M Prestressing Pte Ltd* [2001] 3 SLR(R) 1 , where the judge held at [92]:
>
> > ... [The] defendants were each a proximate cause of the injury inflicted on the plaintiff. Although they were not acting in concert when the accident happened, their contemporaneous acts of omission caused the indivisible damage to the plaintiff. The defendants left it to the others to take the necessary precautions and, cumulatively, they did nothing at all. Each turned a blind eye to safe working practices and relied on the others. Their faults and breaches indisputably overlapped such that each of them must be held liable to the plaintiff for the whole damage.
>
> [emphasis added in bold italics]

Therefore, TEE's liability *to the plaintiff* for his injuries caused by the accident was unaffected by the fact that Madhavan was made 100% liable (by virtue of the interlocutory judgment in default of appearance) *to the plaintiff* for those injuries. The injuries suffered by the plaintiff were indivisible and stemmed from a single event.

85 As for Mr Tan's argument that the court had the power to apportion liability between Madhavan and TEE, this would only be relevant if TEE had brought contribution proceedings against Madhavan under ss 15 and 16 of the Civil Law Act (Cap 43, 1999 Rev Ed). I would add that even if TEE had in fact brought contribution proceedings against Madhavan by way of a third party notice in this suit, this would not have affected the extent of TEE's liability *to the plaintiff* (see [84] above).

86 I did not think that *Ng Kim Cheng* was of assistance to TEE for three reasons. First, the apportionment of liability between the first and second defendants in that case was based on counsel's submission without any citation by counsel of any authorities to the court on joint and

several liability (see [31] of *Ng Kim Cheng*). The second defendant had instructed its counsel not to defend the claim; thus, there were no arguments in rebuttal of the first defendant's submission on apportionment. Second, it was not clear from the judgment whether contribution proceedings had been brought by the first defendant against the second defendant. Third, it was not clear from the judgment (at [30]–[31]) whether the apportionment of liability was between only the first and second defendants (with their individual liability to the plaintiff being unaffected), or whether the court had in fact held that the plaintiff could only recover 30% of his loss from the first defendant and had to recover the remaining 70% of his loss from the second defendant. The fact that the court referred (at [31]) to the apportionment of liability "between the two defendants" suggested that the court was not dealing with the plaintiff's entitlement to recovery.

87 In any event, the issue of Madhavan's liability *vis-à-vis* TEE was not pleaded in the Defence. Therefore, even if I was wrong to hold that TEE's liability to the plaintiff was unaffected by the apportionment of liability between Madhavan and TEE (if any), TEE could not rely on the fact that Madhavan was adjudged 100% liable (by virtue of the interlocutory judgment in default of appearance) to the plaintiff for those injuries as a defence to the plaintiff's claim. In assessing the plaintiff's contributory negligence, I took into account all the plaintiff's acts and omissions that had contributed to the accident as a whole, whether they were in relation to the breach of the duty of care by TEE or Madhavan. Once the total damage less the contributory negligence of the plaintiff as a whole has been assessed, it is for the joint tortfeasors to sort out between themselves their respective portions (if they so wish), which would not be the concern of the plaintiff. The plaintiff could still proceed against Madhavan for 100% of his loss by virtue of the interlocutory judgment in default of appearance. If Madhavan chose to contest the default judgment on the merits, Madhavan would be able to argue, *inter alia*, that he should only be liable for 66.67% of the plaintiff's loss on the basis of the latter's contributory negligence which I assessed at one third after taking into account all the plaintiff's acts and omissions that had contributed to the accident as a whole.

Conclusion

88 For the above reasons, I found that TEE was liable to the plaintiff in negligence and occupier's liability. However, I also found that the plaintiff was contributorily negligent to the extent of one third of the losses sustained by him as a consequence of the accident. I ordered the damages to be assessed by the Registrar with costs of the assessment reserved to the Registrar. After hearing the parties on costs, I ordered TEE to bear 90% of the costs of the plaintiff up to the completion of this trial.

[note: 1] Plaintiff's AEIC, paras 4–9 (incorporating corrections to the timings which were made by the plaintiff on the stand)

[note: 2] NE, p 25

[note: 3] NE, p 31

[note: 4] NE, pp 31–32

[note: 5] NE, pp 25–26

[note: 6] NE, pp 25–29

[note: 7] *Ibid*

[note: 8] NE, pp 27–28

[note: 9] NE, pp 40–41

[note: 10] NE, p 34

[note: 11] *Ibid*

[note: 12] NE, p 35

[note: 13] *Ibid*

[note: 14] NE, p 68

[note: 15] NE, p 21

[note: 16] NE, p 18

[note: 17] NE, p 19

[note: 18] NE, p 23

[note: 19] NE, pp 22–23

[note: 20] NE, p 23

[note: 21] NE, pp 74–75

[note: 22] NE, pp 74–77

[note: 23] NE, p 43

[note: 24] NE, p 44–45

[note: 25] NE, p 36

[note: 26] NE, pp 71–73

[note: 27] Rex's AEIC, p 6

[note: 28] NE, p 46

[note: 29] NE, pp 49–50

[note: 30] NE, p 52

[note: 31] NE, p 51

[note: 32] NE, p 65

[note: 33] NE, pp 49 and 53

[note: 34] NE, pp 46–47

[note: 35] NE, p 46

[note: 36] NE, p 36

[note: 37] NE, pp 36–39

[note: 38] Plaintiff's Bundle of Documents, p 8

[note: 39] NE, pp 67–68

[note: 40] *Ibid*

[note: 41] NE, p 68

[note: 42] Rex's AEIC, para 8

[note: 43] Rex's AEIC, para 14

[note: 44] NE, p 80

[note: 45] NE, p 81

[note: 46] NE, p 83

[note: 47] NE, p 82

[note: 48] NE, p 85

[note: 49] NE, p 86

[note: 50] NE, p 86

[note: 51] NE, p 97

[note: 52] NE, p 98

[note: 53] NE, p 91

[note: 54] NE, p 90

[note: 55] *Ibid*

[note: 56] *Ibid*

[note: 57] NE, p 99

[note: 58] NE, p 101; see also pp 91 and 100

[note: 59] NE, pp 101–102

[note: 60] NE, p 114

[note: 61] NE, p 115

[note: 62] NE, p 105

[note: 63] NE, p 114

[note: 64] NE, p 109

[note: 65] NE, pp 106–109

[note: 66] NE, p 109

[note: 67] NE, pp 106–109

[note: 68] NE, p 111

[note: 69] NE, pp 111–112

[note: 70] Heng's AEIC, para 7

[note: 71] Heng's AEIC, para 9

[note: 72] Heng's AEIC, para 10

[note: 73] NE, pp 118–119

[note: 74] *Ibid*

[note: 75] NE, p 118

[note: 76] NE, p 118

[note: 77] Heng's AEIC, para 14

[note: 78] Heng's AEIC, para 15

[note: 79] NE, p 120

[note: 80] Liaw's AEIC, para 4

[note: 81] NE, pp 121–122

[note: 82] NE, p 121

[note: 83] NE, pp 122–124

[note: 84] NE, p 123

[note: 85] NE, p 128

[note: 86] *Ibid*

[note: 87] NE, p 126

[note: 88] Liaw's AEIC, paras 25–27; NE, pp 125–126

[note: 89] Liaw's AEIC, para 30

[note: 90] Plaintiff's Closing Submissions, para 47

[note: 91] NE, p 94

[note: 92] NE, pp 86 and 97

[note: 93] NE, p 90

[note: 94] NE, p 82

[note: 95] NE, p 91

[note: 96] NE, pp 18–19

[note: 97] Plaintiff's Closing Submissions, para 14