Poh Kwee Eng v Hua Goi Co. (Pte) Ltd
[2006] SGHC 235

Case Number : Suit 331/2006

Decision Date : 21 December 2006

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : N Srinivasan and G Prasanna Devi (Hoh Law Corporation) for the plaintiff; M P Rai (Cooma & Rai) for the defendant

Parties : Poh Kwee Eng — Hua Goi Co. (Pte) Ltd

Employment Law – Employers' duties – Whether employer was in breach of statutory duties to ensure that hoisting system was of good mechanical construction, sound material and adequate strength and properly maintained -Sections 29 and 33 Factories Act (Cap 104, 1998 Rev Ed)

Tort – Negligence – Whether employer breached duty to provide safe system of work – Sections 29 and 33 Factories Act (Cap 104, 1998 Rev Ed)

21 December 2006

Tay Yong Kwang J:

1 The 55-year-old female plaintiff is currently unemployed. Between April 2004 and August 2004, she was employed as a packer by the defendant in its factory premises at 172 Tagore Lane, Singapore ("the site"). On 27 August 2004, she sustained serious injuries as a result of a fall while working at the site and has not resumed work since then. The accident is the subject of this trial on liability.

The plaintiff's case

2 The site is a 3-storey intermediate terrace unit with a driveway at its front. At the material time, the first storey was used as a storage area for big rolls of pre-printed paper used for the manufacture of gaming cards. The second storey, which housed a small office, was used for production work which involved the cutting of the gaming cards into the final product size and the packaging of the finished products. The third storey was used for production work involving the printing and pasting of a layer of backing paper to the pre-printed gaming cards and the cutting of the same into smaller sizes.

3 The front of the second storey had an opening with a metal folding door. There was also a metal gate between this door and the edge. A metal platform protruding some 57cm outwards was erected across the entire length of the door. The front portion of the third storey was similar to that of the second storey save for the absence of a metal platform across the opening. The metal gates on both levels comprised four panels, with the two middle ones opening outwards and protruding from the external wall of the site. The two middle panels could be latched together when the gates were closed while the two end panels could be latched to the floor.

4 The usual sequence of work at the site involved the big rolls of paper being hoisted up from the first storey to the third storey for processing. After the work on these rolls was done, the cut paper would be loaded into a cage on the third storey which would then be hoisted down to the second storey.

5 The cage was attached to the hoisting system by a single hook. The hoisting system allowed the cage to be hoisted up and down and to move horizontally into and out of the site at the third storey. The cage's movements were controlled by four directional buttons on a wired mechanical control.

6 The plaintiff worked on the third storey with a male worker called Ah Cai. Their duties were to monitor the general operations of the machinery used for the pasting of the backing paper and the cutting process. This involved stepping a pedal to activate the cutting blade of the machine and refilling the glue and ink tanks. Their duties also included the operation of the hoisting system to move the goods in the cage to the second storey. When the plaintiff entered the employ of the defendant, Ah Cai taught her how to operate the mechanical control. When she had to operate the hoisting system, she would first open the two middle panels of the metal gates on the third storey so that the cage could pass through the opening. She would then activate the "UP" button on the mechanical control until the cage was lifted to the highest possible level. She would next activate the "OUT" button to move the cage out of the third storey and then the "DOWN" button to lower it to the second storey where another worker would pull it in from the metal platform and unload the goods.

7 Once the unloading on the second storey was completed, a worker there would shout to the plaintiff who would then activate the "UP" button to bring the cage back up to the third storey. As the empty cage was lifted up, it would swing randomly. When it reached the third storey, it would usually knock the metal gates since the opening there was not much wider than the cage's dimensions. In such a case, the plaintiff would need to walk up to the metal gates to align the cage manually before continuing with the operation. While aligning the cage with one hand, she would use the other to activate the "IN" button, thereby returning the cage to the third storey's interior.

8 On 27 August 2004, she had to load some goods in the cage and hoist it down to the second storey. Ah Cai was absent that day and another female worker was therefore assigned to help her on the third storey. That other worker left the third storey at about 4pm and thereafter, the plaintiff was the only one on the third storey.

9 In her affidavit of evidence-in-chief ("AEIC"), the plaintiff affirmed the following after they were read over and explained to her in Mandarin:

> 27 After the goods had been unloaded onto the 2nd storey and on the instructions of the staff on the 2nd storey, I proceeded to hoist the Cage back onto the 3rd storey.
>
> 28 Thereafter, I am unable to remember what had happened but awoke several days later to find myself warded in Tan Tock Seng Hospital ("TTSH"). It was only then that I realised I was involved in an accident. I was informed that I had fallen from the 3rd storey of the Premises onto the 1st storey during the course of work as described in Paragraph 27 above.
>
> 29 The son of my boss, whom the other workers had addressed as Ah Heng, visited me after I was transferred to Ang Mo Kio Community Hospital. There and then I asked him what had happened and he told me that one of the bolts of the Cage had broken causing the Cage to fall from the 3rd storey to the 1st storey. I had also fallen together with the Cage.
>
> 30 As I was then working alone on the 3rd storey, none of my colleagues were able to tell me what had happened except for the fact that the Cage and I had fallen from the 3rd storey.

31 I wish to also inform the Court that no personal safety equipment were issued to me and that there were no protective fencing or guardrail provided/put in place, preventing me from falling from height.

10 In cross-examination in court, she said she was sitting on a chair while operating the hoist to bring the loaded cage down. She did not know what caused her to fall from the third storey. In re-examination, she said that she could not recall whether the cage was going up or down when it fell. She was sitting on a chair about five feet away from the opening on the third storey operating the mechanical control. She did not know whether anything dragged her down. She did not walk to the opening. Somehow, the cage fell and she did not know what happened thereafter.

11 During cross-examination of the plaintiff, the defence put it to her that Ah Heng did not tell her what she alleged he did in para 29 of her affidavit of evidence-in-chief. She maintained that he did. She agreed that she did not tell Dr V K Pillay about what Ah Heng said when she was reviewed by him in February and April 2006. She denied having told Ah Heng after the fall that it was the Chinese Hungry Ghost month and that she had felt someone push her. Asked about the dimensions of the cage, she estimated that it came up to her chest in height. It was also put to her that if she had followed the system of hoisting the cage taught to her, the accident would not have happened. Her retort was that she was not taught by the boss's son but by colleagues. She disagreed that there were banging sounds against the external wall of the site before the cage and she fell from the third storey.

The defendant's case

12 The defendant originally had two witnesses who had filed their affidavit of evidence-in-chief. One was the said Ah Heng (or Bay Puay Him) and the other was Raj Singh s/o Karnail Singh, engaged as an expert witness to make an independent assessment about the accident. At the start of the trial, counsel for the plaintiff objected to the expert witness as the report was only served on the plaintiff on 18 October 2006. Further, the plaintiff had no inkling that an expert was going to be called as the defendant had indicated at the summons for directions that none would be called. The plaintiff would have called her own expert if she had known the true position. After some submissions, counsel for the defence decided to withdraw the expert's evidence but the photographs of the cage and the site taken by him in July 2006 were admitted without objection.

13 At the conclusion of the plaintiff's case, the defendant elected not to call evidence and submitted that there was no case to answer.

The defendant's submissions

14 The defendant argued that the plaintiff had pleaded a specific case to establish negligence and/or breach of a statutory duty under the Factories Act (Cap 104, 1998 Ed). She was bound by her pleadings and bore the burden of proving all the facts pleaded. Failure to produce the requisite evidence or introduction of contradictory evidence would result in the burden being undischarged and hence, a dismissal of the action. Paragraphs 7 to 10 of the Statement of Claim averred:

7 Sometime on or around 27/8/04 ("the material day") in the course of her employment, the Plaintiff was hoisting some goods from the 3rd storey to the 2nd storey of the Premises by means of the Cage.

8 After the goods had been unloaded at the 2nd storey, the Plaintiff operated the Control in

order to hoist the Cage back to the 3rd storey.

9 When the Cage reached the 3rd storey and before the Plaintiff could manoeuvre it into the 3rd storey, one of the bolts of the Cage suddenly broke causing the Cage to fall from the 3rd storey to the ground level.

10 As a result of the accident, the Plaintiff fell a height of more than 6 metres from the 3rd storey onto the ground level and sustained multiple injuries.

15 The defendant submitted that the plaintiff gave contradictory evidence and has jettisoned her pleaded case and the evidence contained in her AEIC. She was asking the court to conjecture and speculate about the cause of her fall. The principle of *res ipsa loquitur* was wholly inapplicable here. It applied in situations where the occurrence of an incident was *prima facie* consistent with the want of care of the other party, the defendant, and did not apply where the accident could conceivably have happened within any one of a number of different permutations, some consistent with the defendant's negligence and some with the plaintiff's negligence or even a combination of negligence on the part of both parties (*see Cheong Ghim Fah v Murugian s/o Rangasamy* [2004] 1 SLR 628).

16 Far from proving her pleaded case, the plaintiff had gone on to deny it. All the equipment in question was under her sole control and management that day and only she could tell us the cause of the cage and her falling. Her evidence failed to show any negligence or breach of statutory duty on the defendant's part. The court has to act on evidence, not sympathy. It could not speculate or make conjectures on the plaintiff's behalf. It was submitted that an adverse inference should be drawn against her for refusing to tell the truth as to the events just before the accident and that she was not a reliable or honest witness at all.

17 Many other aspects of her evidence were also unsupported and raised for the first time in her AEIC. For instance, her allegation that it was her boss' son who told her how the accident occurred was raised for the first time in para 29 of her AEIC. It was not pleaded.

18 The plaintiff also failed to plead that the accident site was a "factory" within the meaning of the Factories Act and no evidence was led to establish this in any event. The Defence (at para 2) denied that the business premises fell within the meaning of "factory" under the said Act. No evidence was adduced to show breach of any statutory provision which led to the fall. There was no requirement in law that special precaution should be taken in the situation here where the plaintiff asserted that she was five feet away from the opening in the 3rd storey. The only applicable provisions of the Factories Act, if that Act applied, would be s 33(11) and (11A) but the defendant's procedure at the material time was expressly authorised by the Act.

The plaintiff's submissions

19 The plaintiff submitted that the defendant was in breach of its statutory and/or common law duty of care in the following ways.

(a) by failing to take any or adequate precautions or reasonable care for the safety of the plaintiff while she was engaged in her work by not providing her with appropriate safety equipment such as a safety belt or harness.

(b) by exposing the plaintiff to the risk of damage or injury while carrying out her work by instructing or allowing her to work on the third storey without any safety equipment when the

metal gates were opened.

(c) by failing to take reasonable care to ensure that the hook or other parts of the cage and the hoisting system were structurally sound and safe for use and to conduct regular inspections to ensure that they were so.

(d) alternatively, by allowing the said equipment to fall into disrepair, rendering it unsafe for use.

(e) by not having a safe system of work and proper supervision.

(f) by breaching s 29(1) and (2) and s 33(1)(a), (3), (7), (8), (9) and (10) of the Factories Act.

20 The plaintiff also relied on the doctrine of *res ipsa loquitur*. She submitted that her failure to recall how the accident happened after pressing the buttons on the mechanical control could not be held against her as she had suffered a traumatic fall from a height. The defendant was in a better position to explain the accident. The reasonable inference to be drawn from the evidence adduced was that she had gone to the edge of the third storey to check the cage when it fell or or to align it when it hit the beam resulting in her fall. Her work did require her to open and close the metal gates and to align the cage, necessitating her presence at the edge of the opening. She has shown that the cage fell and that fact was not disputed by the defendant as seen in paragraphs 7 and 10(l) of the Defence.

21 Relying on *Nimmo v Alexander Cowan & Sons* [1967] AC 107, the plaintiff argued that a complainant only has to prove that the defendant had failed to ensure, so far as he could reasonably do so, that the relevant premises were safe and without risk to health. The onus would then move to the defendant to prove that it was not reasonably practicable for him to eliminate the relevant risk or that there was no better practicable means than that which was used. In the present case, the plaintiff has proved that the premises were unsafe and the onus was now on the defendant to show the steps he had taken on the issue. Similarly, our Court of Appeal in *Awang bin Dollah v Shun Shing Construction & Engineering Co Ltd* [1997] 3 SLR 677 has held (at [47]) that:

> Having regard to the object and purpose of the Factories Act, the burden is on the occupier of the premises to show that he has taken all reasonable steps to make and keep the place of work safe for anyone working there. Only the occupier has the requisite knowledge and expertise in respect of such matters, and is in a position to ensure compliance with the Act.

22 A submission of no case to answer could succeed if either the plaintiff's evidence, at face value, did not establish a case in law or the evidence led by the plaintiff was so unsatisfactory or unreliable that his burden of proof had not been discharged (see *Bansal Hermant Govindprasad and Anor v Central Bank of India and Anor* [2003] 2 SLR 33, a decision of our Court of Appeal).

The decision of the court

23 The Factories Act has since been repealed but it was the applicable statute in 2004. Section 6 defines a "factory" thus:

> 6(1) Subject to this section, "factory" means any premises in which, or within the close or cartilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes:

(a) the making of any article or of part of any article;

(b) the altering, repairing, ornamenting, finishing, cleaning, or washing, or the breaking up or demolition of any article; or

(c) the adapting for sale of any article,

being premises in which, or within the close or cartilage or precincts of which, the work is carried on by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control.

24 Although the Statement of Claim does not plead expressly that the defendant's premises constituted a factory within the meaning of the Factories Act, paragraph 2 thereof refers to the defendant as the occupier of "the 3-storey *factory* premises". The subsequent paragraphs of the plaintiff's pleading allege breach of various provisions in that Act and there could be no doubt that the plaintiff was effectively saying that the site was a "factory" as defined above. That was why the Defence in paragraph 2 seeks to deny that the site was a "factory" or that the Act and the regulations made thereunder applied.

25 The plaintiff has described the work on the site and it appears clear to me that the site is a "factory", particularly as defined in s 6(1)(a). Her evidence on this was not challenged in any way and the defendant has not adduced anything that would put the site outside the statutory definition.

26 Section 29(1) and (2) of the Act state:

29. —(1) No hoist or lift shall be used unless —

(a) it is of good mechanical construction, sound material and adequate strength, and is properly maintained;

(b) in the case of a lift, it has been tested and thoroughly examined before installation by or on behalf of the manufacturer and a certificate of such test and examination, specifying the safe working load and signed by or on behalf of the manufacturer, shall be kept available for inspection; and

(c) it has been tested and examined by an approved person after installation and a certificate of such test and examination, specifying the safe working load and signed by the approved person, shall be kept available for inspection.

(2) Every hoist or lift shall be thoroughly examined at least once in every 6 months by an approved person and a report of the result of every such examination in the prescribed form shall be prepared in duplicate signed by the person making the examination.

27 Section 33(1) to (11A) of the Act provide as follows:

33. —(1) All places of work, floors, steps, stairs, passages, gangways and means of access shall —

(a) be of sound construction and properly maintained; and

(b) so far as it is reasonably practicable, be kept free from any obstruction and from any

substance likely to cause persons to slip.

(2) All openings in floors shall be securely fence except in so far as the nature of the work renders such fencing impracticable.

(3) There shall, so far as is reasonably practicable, be provided and maintained safe means of access to and egress from every place at which any person has at any time to work and every such place shall, so far as is reasonably practicable, be made and kept safe for any person working there.

(4) For every staircase in a building or affording a means of exit from a building, a substantial handrail shall be provided and maintained, which, if the staircase has an open side, shall be on that side, and, in the case of a staircase having 2 open sides, such a handrail shall be provided and maintained on both sides.

(4A) Any open side of a staircase shall be guarded by the provision and maintenance of a lower rail or other effective means.

(5) All ladders shall be —

(a) soundly constructed and properly maintained; and

(b) securely fixed, or held by a person, to prevent them from slipping.

(6) Sufficient clear and unobstructed space shall be maintained at every machine while in motion to enable the work to be carried on without unnecessary risk.

(7) Where any person has to work at a place from which he would be liable to fall a distance of more than 3 metres or into any substance which is likely to cause drowning or asphyxiation, a secure foothold and handhold shall be provided so far as practicable at the place for ensuring his safety.

(8) Where it is not practicable to provide a secure foothold and handhold as required under subsection (7), other suitable means such as a safety belt and fencing shall be provided for ensuring the safety of every person working at such places.

(9) Where a safety belt is provided pursuant to subsection (8), there shall be sufficient and secured anchorage, by means of life line or otherwise for the safety belt, and the anchorage shall not be lower than the level of the working position of the person wearing the safety belt.

(10) No person shall require, permit or direct any person to work at a place from which he would be liable to fall a distance of more than 3 metres or into any substance which is likely to cause drowning or asphyxiation unless the requirements of subsection (7) or (8) have been complied with.

(11) Every teagle opening or similar doorway used for hoisting or lowering goods or materials, whether by mechanical power or otherwise, shall be securely fenced, and shall be provided with a secure handhold on each side of the opening or doorway.

(11A) The fencing shall be properly maintained and shall, except when the hoisting or lowering of goods or materials is being carried on at the opening or doorway, be kept in position.

28 The objective facts are that the heavy metal cage which the plaintiff was controlling at work fell from a height and that the plaintiff also fell, together with the cage or immediately thereafter. She was working on the third storey of the defendant's premises at a height of more than 3 metres.

29 The plaintiff has given uncontroverted evidence as to her system of work and that her fellow worker had taught her how to operate the hoisting system. She has also testified (in para 24 of her AEIC and in court) that the cage tended to move sideways and hit the metal gates and that in such a situation, she was required to walk to the metal gates, which would be open then, to manually align the cage before continuing with the operation. The defendant has not adduced any evidence that this was not what she had been taught or that the routine was different from what she had described.

30 Unfortunately, the plaintiff is unable to recall the events leading to her fall in the afternoon of 27 August 2004. The last thing she remembered was operating the hoist, either to bring the cage up or down, and being seated on a chair some 5 feet away from the opening. The next thing she knew was waking up in hospital several days later. It would appear that whatever she knew about the fall was a reconstruction of the events through third parties.

31 We do know that the cage, suspended as it were from a single chain with a movable metal hook, is capable of swinging from side to side and of rotating around the hook, even without any wind. Common sense and experience testify to this. So do the plaintiff's and the defendant's photographs taken of the cage in motion. The plaintiff's evidence about having to walk up to stabilize the cage is therefore entirely credible.

32 Did the cage fall away from the hook? Did it come plunging down together with the hook and chain attached? These are matters within the knowledge of the defendant as the plaintiff was rendered unconscious by the fall. If we are imaginative enough, we could always conjure up some possibility why the plaintiff could have fallen. Counsel for the defendant in cross-examination even suggested the possibility of some spiritual force at work. In the absence of evidence to the contrary, I think common sense should prevail and common sense dictates that the plaintiff must have fallen when she walked up to stabilize the moving cage by holding onto it just before it plunged to the ground, dragging her along with it suddenly. There is no evidence to suggest that she was suicidal and had deliberately unhooked or otherwise caused the cage to fall. If the cage was intact and nothing on it was broken, only the defendant knew. It could easily have put in photographs or some evidence that the cage was examined and found to have no mechanical or structural fault whatsoever. Instead, it chose silence. The photographs that it adduced in court were all taken almost 2 years after the incident. They do not help to explain why the cage fell.

33 Having established these facts, what then was the duty that the defendant breached? In my view, it was the failure to ensure that the hoisting system, particularly the cage, was of good mechanical construction, sound material and adequate strength and was properly maintained (see s 29(1) Factories Act) and in failing to ensure a safe system of work. As I have stated, we know that suspended heavy equipment fell dragging the plaintiff along with it while she was trying to stabilize it. In normal circumstances, it would not have fallen suddenly if something had not given way. There was no suggestion of any foul play by anyone. The defendant was aware of the way things were being done on the third level and that that system of work was being passed from worker to worker. The worker had to come into contact with the cage regularly although there was a remote control. Therefore, if some part of the cage broke, the worker could be injured. That happened in this case, fortunately not with fatal consequences.

34 I do not think there were breaches of the other provisions of the Act, in particular, s 33 as

pleaded. The gates had to be open while the hoisting system was being worked. There were gates to prevent workers from falling when the cage was not being used. There was a secure foothold and handhold and therefore no question of having a safety belt arose. The plaintiff would not have fallen if the system of work did not demand that she walk up to the moving cage to stabilize it and if the cage had been mechanically sound.

35 For the above reasons, I find that the plaintiff succeeds in her action against the defendant. However, as she was not altogether successful in establishing liability on the various grounds pleaded, I order that she be awarded 85% costs in respect of the trial on liability. There is to be interlocutory judgment for the plaintiff with damages to be assessed. The costs of the assessment are reserved for the registrar conducting the assessment.