

DCPI 3618/2019

[2022] HKDC 29

**IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
PERSONAL INJURIES ACTION NO 3618 OF 2019**

BETWEEN

WU LAI SHUN

Plaintiff

and

CHAN KWAI YU trading as  
匯隆食品批發公司

Defendant

Before: His Honour Judge KC Chan in Court

Dates of Hearing: 14-16, 19 October & 30 December 2020 and  
11 February 2021

Date of Judgment: 13 January 2022

**JUDGMENT**

1. The plaintiff commenced HCPI 250 of 2018 against her employer to claim damages for personal injuries resulted from a slip and fall accident happened while she was on duty at the Store. In October 2019, the action was transferred to the District Court upon the increase of its

jurisdiction. This is the trial of the action. Both liability and quantum are disputed.

*Background and the accident*

2. Unless otherwise stated, the following are common ground or not disputed.

3. At all material times, the defendant owned and operated a traditional style medium-size grocery store under the name 匯隆食品批發公司 situated on Ground Floor, No 69 Fung Tak Road, Wong Tai Sin, Kowloon (“**the Store**”). The defendant and her husband Wong Chi Kin (“**Wong**”) worked in the Store together with 3 other employed shop attendants, the plaintiff being one of them.

4. Inside at the back of the Store was a storeroom (“**the Storeroom**”) in which volumes of various food, groceries and items for sale were stored there. Inside the Storeroom was also a lavatory and shelves for the defendant, Wong and the employees to put their personal belongings.

5. Linking the Storeroom and the Store front was a corridor area of about several feet in length and in width (“**the Corridor**”). Placed on the one side of the Corridor against the wall were stacked-up carton boxes of goods and a stack of shopping baskets for use by customers. Leaned vertically against the wall on the opposite side of the Corridor, right at the doorway of the Storeroom, were 2 flatbed carts (“**the Carts**” and any one

of them, “**the Cart**”). As depicted in the pictures<sup>1</sup>, the Carts were about 2.5 feet in length and about 2 feet in width. They were constructed with 4 swerving wheels attached to the underside of a wooden plank. The wheels were about 5 inches in diameter. The Carts were well used and worn.

6. It is not disputed that the Carts were stowed by only leaning them vertically against the wall, that they were not fastened or secured by any means, device or installation whatsoever. The floor of the Corridor, where the Carts were stowed, was laid with vinyl floor tiles.

7. The plaintiff was born in 1982. She was educated in Mainland China up to primary 3. She immigrated to Hong Kong to join her husband in 2011. She has 2 children. She started working as a shop attendant in the Store since December 2012.

8. It is not disputed that on 14 April 2015, the plaintiff as usual arrived at the Store at about 7 am to work. It is the plaintiff’s case, and disputed by the defendant, that also as usual, she was taking out various items from the Storeroom to replenish the shelves at the Store front, and at about 7:30 am that day, when she was carrying a carton box measuring 22 inches x 12.5 inches x 10 inches and weighing about 5 kg containing packages of biscuits and was walking out from the Storeroom onto the Corridor, her right foot stepped onto one of the Carts, which she did not see was there as her vision to the floor was blocked by the carton box. She thereby slipped and fell backwards. Her buttocks first hit the ground, while the Cart also toppled and flipped and hit her. She felt pain. She then sat on the floor for a short while and then pulled herself up by holding onto a

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<sup>1</sup> At p156 and 157 of the Trial Bundles

metal rack nearby. She put the biscuits on the shelves, and then she informed the defendant of the accident and that she need to go home and rest. Her home was situated at Tsui Fung Street which was just a very short walk away.

9. After resting for about 15 minutes at home, the plaintiff felt so painful at the back that she could not get up. She called 999 and was then taken by an ambulance to the Department of Accident and Emergency of Queen Elizabeth Hospital (“**QEH A&E**”) for treatment. Upon examination, there was tenderness at lower back area. X-ray of her lower back showed fractured coccyx. She was treated, discharged and referred to the Orthopaedic specialist out-patient clinic for treatment and management. She was given 14 days sick leave.

10. Since 21 or 22 April 2015 until 4 June 2015 and upon the instruction of the defendant and Wong, the plaintiff attended one 國際聯合現代中醫綜合診所 at Choi Tak Shopping Centre (“**the Chinese Clinic**”) on numerous occasions to receive treatment. All the medical expenses charged by the Chinese Clinic in the total sum of HK\$9,490 was at the time paid by the defendant.

11. It is common ground that after the accident the plaintiff has received from the defendant payment of certain sums. However, there are some divergence in the parties’ respective case as to the total sum paid, dates and circumstances of the payments. Succinctly, the plaintiff said certain sums were paid to her for her wages, or compensation in lieu of wages, while the defendant’s case is that a larger total sum had been paid

to the plaintiff pursuant to an oral agreement, and then a written agreement, to settle the plaintiff's claim.

*Breaches alleged against the defendant*

12. The gravamen of plaintiff's complaint is that the Carts were not safely stowed when not in use, that there was insufficient training, instructions, or system of work to ensure they were safely and properly stowed, such that the Carts, as they were customarily leaned against the wall next to the Corridor, posed as a risk and imminent danger of tripping, skidding or slipping. Though such risk and danger were clearly foreseeable, the defendant failed to remedy them, and the accident was thereby caused. Therefore, the defendant (a) was negligent, (b) has breached her non-delegable common law duty of an employer to reasonably ensure the safety of the plaintiff and to provide a safe place of work, (c) has breached the common duty of care as an occupier under Occupiers' Liability Ordinance Cap 314 and (d) has failed to ensure the safety and health of an employee under section 6 of the Occupational Safety and Health Ordinance Cap 509.

*Witnesses*

13. The plaintiff herself gave evidence for her case, while 5 witnesses gave evidence for the defence case, namely the defendant herself, her husband Wong, Wong Wai Chu ("**Ah Chu**") a shop attendant employed by the defendant, a neighbour Liu Ki Chung ("**Liu**") and Tai Lung Cheung ("**Tai**") an insurance agent.

A. *LIABILITY*

14. The defence case against liability is threefold.

15. First, the defendant puts the plaintiff to strict proof that the slip and fall accident did happen as alleged.

16. Second, the defendant contends that “the Plaintiff and the Defendant had entered into an oral agreement in or around the end of May 2015 at the Store for the full and final settlement of the alleged Accident”<sup>2</sup> (“**the Oral Agreement**”), and then “Subsequent to the Oral Agreement, the Plaintiff and the Defendant had also entered into a written agreement on 5 June 2015 for the full and final settlement of the alleged Accident”<sup>3</sup> (“**the Written Agreement**”). The defendant avers that pursuant to the Oral Agreement and the Written Agreement, the respective sums of HK\$25,000<sup>4</sup> and HK\$44,768<sup>5</sup>, both paid in cash, were paid to the plaintiff.

17. Third, the defendant also pleaded estoppel based on the Oral Agreement and the Written Agreement.

*A.1 Did the accident happen as alleged?*

18. It is common ground that no one in the Store at the time witnessed the accident.

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<sup>2</sup> §11 of the Defence

<sup>3</sup> §15 of the Defence

<sup>4</sup> §12 of the Defence

<sup>5</sup> §16 of the Defence

19. In her witness statement, the plaintiff described how the accident happened, thus:-

“8. 於意外當天即 2015 年 4 月 14 日早上大約 7 時，本人一如慣常，開始替該舖面補充及添加有關貨品，過程之中本人沒有使用上述該雜貨店內的滑板車。當時在該舖面補充及添加貨品，本人需多次來回該貨倉及該舖面以將該貨倉內之有關貨品搬運及補充、添加到該店舖面。其中本人用上述方法搬運及添置到該舖面包括有數箱內有多盒餅乾的箱子搬到該舖面並將內裏一盒盒的餅乾添加至該舖面。到了大約 7 時 30 分，本人需再次到該貨倉將另外一箱大約長 22 吋，高 12.5 吋，闊 10 吋，約重 5 公斤，內有多盒餅乾的貨箱搬到該舖面並將內藏的餅乾添加到該舖面（該箱餅乾）。在搬運該箱餅乾時，本人用雙手在本人胸前拿着該箱餅乾預備將之拿出該舖面。但在本人拿着該箱餅乾從該貨倉出來的時候，不知怎地本人右腳甫踏出該貨倉門口即踏在上述該雜貨店內的其中一架滑板車上，該滑板車跟着跌向前，本人亦隨着該滑板車向着該舖面往前衝。跟着該滑板車撞到該雜貨店內之鐵架已反彈起，本人亦隨之失平衡跌下，臀部以至右手手肘撞到地上，手上拿着的該箱餅乾亦撞到本人腹部。該滑板車反彈起後亦撞到本人後腦及背部，以致造成身體多處受傷。本人隨即感到背部有強烈的痛楚。”<sup>6</sup>

20. In her witness statement, the defendant contended that the above account was “impossible”, thus:-

“14. 據我所知，原告人申索陳述書聲稱，她當天是被指示去儲物房拿餅乾去店面，這是不可能的。

15. 原告人是收銀員，拿貨到店面從來都不是她的職責，當天也沒有人指示過她去拿餅乾。如果有人需要搬貨，那必定阿珠或者我先生去搬，因為他是男人。”<sup>7</sup>

21. Wong in his witness statement gave similar evidence. In his supplemental witness statement, Wong again said:-

<sup>6</sup> §8 of her witness statement at p124 to 126 of the Trial Bundles

<sup>7</sup> §§14 & 15 of her witness statement at p161 of the Trial Bundles

“8. 原告人從來沒有參與過收銀以外的任何工作，包括任何搬運工作。

9. 如需要搬運，這是阿珠負責的。我在第一份證人陳述書也說過，我是男人，當然會幫手。

10. 我太太作為老闆娘，也會在有我的陪同下，幫忙搬運。

11. 但是，搬運從來都不是原告人的工作。因為匯隆的員工崗位很清晰。再者，她是店舖唯一的收銀員，不能離開崗位。如果店舖任何崗位有需要人，我或者我太太都會去幫忙，不用原告人離開崗位。”<sup>8</sup> (my emphasis)

22. Though such factual case and contention were pursued in the cross-examination of the plaintiff, the same were effectively abandoned as they were no longer mentioned in the defendant’s written and oral closing submissions. I would in any case unhesitatingly reject them for the following reasons:-

(1) I find that the Store was a very tradition styled grocery store, and as shown by the pictures, (a) there was no dedicated cashier counter or an area for a cashier to sit or be stationed, (b) customers did not pay by electronic means but paid cash, (c) the money collected, in respect of the coins, were put in 2 shallow baskets placed on the shelf, while the bank notes were put in a basket placed on a shelf underneath the one where the coin baskets were placed. The spot where these 3 baskets were placed was at the Storefront behind a tabletop and

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<sup>8</sup> §§8 to 11 of his supplemental witness statement at p179 of the Trial Bundles



some sundry items so that the baskets were made relatively hidden and inaccessible.

(2) It was the plaintiff's evidence, which was not seriously disputed, and I accept, that the defendant would be present in the Store most of the time, and she would collect the bank notes from the said basket from time to time; while Wong would be present for a while from 7 am to ready the Store for the day's business, and often times he would not be present at the Store during the daytime but would return briefly in the evening. Wong therefore would not always be present in the Store to take the goods from the Storeroom to replenish the shelves at the Store front as and when required.

(3) As seen from the pictures, and it is indisputable, that the Store carried many items for sale. I find it highly improbable that the plaintiff would attend the Store at 7 am, and not help at all with taking out the goods from the Storeroom to replenish them, but merely left Wong and Ah Chu to do it while she stood by and watched.

(4) It is quite clear from the cross-examination of the defendant and Wong that the so-called “搬貨”, “搬運” and “搬運工作” repeatedly referred to in their witness statements concerned moving the **heavier items** like bags of rice; and the plaintiff did not seriously dispute that generally she was not required to move heavy

items, save that she added that there were some occasions when she and other shop attendants would also help.

(5) I find it highly and inherently improbable the defence case that only Ah Chu, the defendant and Wong (the latter 2 being the bosses) would undertake the jobs of moving heavy items as well as replenishing all the shelves with goods stored in the Storeroom, while the other employed shop attendants, including the plaintiff, were not required to do so at all.

(6) It is the defendant's own admission, given in cross-examination, that it was also the plaintiff's responsibility to weight out and sell the rice to customers.

(7) Rather, I accept the plaintiff's evidence, as I find her a truthful and reliable witness, and such evidence is in my view highly and inherently probable, and I find, that (a) usually at 7 am, all the shop attendants, the defendant and Wong would work to ready the Store for business, (b) some of the shop attendants would be taking out from the Store tables and shelves to be set up at the frontage of the Store, (c) while the others, including the plaintiff, would replenish the goods at the Store front, (d) she was instructed this routine during the job interview, and as this was a routine, she did not need to

be, or was not actually, instructed on this each day or on the day of the accident, and (d) though her main responsibility was collecting money from customers, other shop attendants would also collect money from customers when the plaintiff was not free or was not present.

23. I thus find that the evidence given by the defendant and Wong that the plaintiff's duty was exclusively that of a cashier and she was never required to replenish the goods on the shelves with those stored in the Storeroom was entirely untrue and I think they well knew it was so.

24. While challenging whether the accident indeed took place as alleged, the defendant does not dispute that the plaintiff did attend the Store at about 7 am on 14 April 2015 and that the plaintiff has immediately, at around 7:30 am that day, reported the accident to the defendant, as the defendant herself said: “突然，原告人從儲物房出來，跟我說，她”跣“到。之後，她自己回家先搽藥油。... 當天下午，原告人打電話給我，說她去了醫院。”<sup>9</sup>. It is also indisputable that the plaintiff attended QEH A&E that morning for a slip and fall accident.

25. Moreover and importantly,

(1) It is common ground that upon the instruction of the defendant and Wong and since 22 April 2015 until

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<sup>9</sup> §§12 & 13 of her witness statement at p160 & 161 of the Trial Bundles

4 June 2015, the plaintiff, on occasions accompanied by Wong, attended the Chinese Clinic for treatment.

(2) It is not disputed at trial that the defendant at the time has been paying the Chinese Clinic directly the treatment costs totalling to HK\$9,490.

(3) According to the defendant's own case, she entered into the Oral Agreement around the end of May 2015 and then the Written Agreement on 5 June 2015 to settle the plaintiff's claim in connection with the accident. And according to her pleaded case, as mentioned above, respectively HK\$25,000 and HK\$44,768 were paid to the plaintiff pursuant to these 2 agreements.

(4) Wong filed on behalf of the defendant a Notice of an Accident ("**the Form 2**") with the Labour Department dated 7 February 2017 in which the date, time and address of the accident were reported as respectively 14 April 2015, 7:30 am and the address of the Store. While the description of the accident was reported to be "胡麗純 [the plaintiff] 當時要取大約 5 公斤的餅乾，在舖後面剛踏上滑板，失去平衡而跌倒受傷"<sup>10</sup>.

(5) There was no evidence of any contemporaneous communication whatsoever from the defendant or

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<sup>10</sup> P543 to 547 of the Trial Bundles

Wong that they doubted or challenged that the accident in fact took place as alleged.

26. In my view and evidently, the defendant's such contemporaneous conducts were clearly consistent with none other than that the defendant had accepted that the accident happened as alleged, especially, when the defendant herself had reported to the Labour Department the description of the accident which was in gist the same as what the plaintiff now says.

27. In the defendant's closing submissions, the thrust of her submission was a forensic one - that there were "inconsistencies" and "improbability" in the answers given by the plaintiff during cross-examination as to the precise description of how she fell and how her back and the back of her head could have been hit by the Cart. The submission, as I understand it, was premised on the plaintiff having given evidence clearly on the sequence of events that she had fallen backwards, then flat with her back on the ground, and then the Cart toppled and bounced from hitting the racks and then allegedly hit her back and back of her head. It is therefore submitted it was inconsistent and improbable and such. That however, I find, was not her evidence or the effect of her evidence. She had been repeatedly pressed in cross-examination, but had not agreed, that she had fallen flat with her back on the ground, as counsel now understood and put forth. Rather, her evidence given in cross-examination was that the accident happened very quickly in a split second. The best she could recollect and describe was that when she walked right out from the Storeroom, her sight to the ground was blocked by the box of biscuits, she suddenly realized her right foot stepped on the Cart, she slipped, she fell

backwards, the Cart slipped away from her foot and toppled and bounced in the tight space of the Corridor, her buttocks hit the ground first, then while still carrying the box and falling she instinctively tried to reach out her right hand to press on the floor, and then at or around this instant and amidst the confusion she felt the side of the back and the back of head hit the Cart. Thus, I am unable to agree that there were such inconsistencies or improbability as submitted and I do not accept the submission.

28. Having observed and heard the plaintiff giving evidence, I find her an unarticulated witness, but she answered questions instantaneously, directly and concisely. I find her oral evidence as to why and how the accident occurred and as to the manner she fell consistent with that spoken to in her witness statement. She was unshaken in cross-examination. I find her a reliable and honest witness and I accept her evidence.

29. In the premises, I find the accident happened as the plaintiff described and alluded to above.

#### *A.2 Breach of duties of an employer and occupier*

30. It is only submitted on behalf of the defendant that since there are “inconsistencies” and “improbability” in the evidence of the plaintiff regarding how the accident happened, the court should give no weight to her evidence and thus “there is no factual basis to find any breach on D’s part”<sup>11</sup>. As I find against the defendant’s submissions against the plaintiff’s evidence as to how the accident happened, this submission fails with it.

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<sup>11</sup> §§14 & 15 of the defendant’s Closing Submissions

31. As noted, there is no dispute as to where and how the Carts were stowed in the Store. There is also no evidence adduced by the defendant to contradict the plaintiff's evidence that there was a practice of the other shop attendants not properly stowing the Carts after use, and that there was no training, instructions, or system of work to ensure that the Carts were safely and properly stowed. There is also no evidence adduced to contradict the plaintiff's complaints of breach as mentioned in paragraph 12 above. Nor was there any to show either it was not a foreseeable risk or that reasonable steps have been taken to remedy it. The only piece of evidence proffered by the defendant was, which she only mentioned for the first time while giving oral evidence, that the Carts were indeed put there for the use of outside transportation workers transporting goods presumably from the lorries into the Store, and they were not meant for use by the shop attendants. I reject this piece of evidence as a disingenuous afterthought because if that had been the case for such a long time, there was no reason why it was not mentioned at all in any of the witness statements of the defendant herself, of Wong and of Ah Chu. I also reject it as being highly and inherently improbable as outside transportation workers no doubt would have their own carts to do their job and not relying on the Store to provide them.

32. In my judgment, it is evident that the Carts so stowed on the Corridor posed a serious and obvious risk of tripping, skidding or slipping. The floor, as said, was laid with vinyl tiles which would easily become slippery. A shop attendant leaning the Carts there in a hurry, or in any case not with special care to make sure they were leaned entirely squarely and at the optimal angle, would make the Carts liable to sliding down and be

caught in the tight area of the Corridor right at the doorway of the Storeroom. It would thereby become a trap to whoever walking by, especially when there was a real likelihood that the person walking by would be carrying goods.

33. I have no doubt that the said risk was foreseeable. The defendant had taken no steps whatsoever to eliminate the risk, which clearly could have been easily fixed by installing the appropriate device to fasten and secure the Carts and giving the appropriate instructions and training to all persons to do so; or simply stowing the Cart in some other more appropriate place in the Store. I conclude that the defendant had breached her duties as an employer in failing to take reasonable care of the plaintiff's safety and in failing to provide a safe place of work, and that she also had breached her common duty of care of an occupier of the Store.

### A.3 *Contributory negligence*

34. The defendant contends that, in the circumstance, the plaintiff was not only contributorily negligent, but she should be held to be 60% negligent, if not wholly so.

35. Factually, the defendant relies on the following and submits that the plaintiff had "foresight of slip and fall"<sup>12</sup>:-

- (1) The plaintiff must have been familiar with the interior of the Store, having worked there for two and a half years.

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<sup>12</sup> §§17 to 21 of the defendant's Closing Submissions



(2) There was in any case a small step at the doorway of the Storeroom (of about 2 inches in height).

(3) The box she was carrying blocked her vision of the floor.

(4) when the accident happened, it was not her first time going in and out of the Storeroom.

(5) “on P’s own evidence, she has knowledge of how the [Carts] were used by other employees [B/145/§4]”.

36. While the factual matters stated in sub-paragraphs (1) to (4) above are common ground, I do not see how they would establish that the plaintiff “had foresight of slip and fall”. Moreover, as explained below, I do find what the plaintiff said in paragraph 4 of her supplemental witness statement established that “she has knowledge of how the [Carts] were used by other employees”.

37. In paragraph 2 of her supplemental witness statement, the plaintiff spoke about having taken 6 photographs of the Store on 26 March 2019, and then in paragraph 3 described how the Carts so stowed would pose a risk, and then in paragraph 4 said

“4. 縱使有上述的風險問題，被告人從來沒有採取適當的措施將之消除，亦沒有提醒員工包括本人在工作時須留意那兩部滑板車的位置，及/或那兩部滑板車有否塌下或被不正當放置而阻塞通道及造成危險。而被告人

一向只指示員工在用完滑板車應將之如相片(六)所示以打側直立式倚放在上述通道近貨倉門口。”<sup>13</sup>

38. Evidently and clearly, the plaintiff was only saying, with hindsight after the accident had happened, that the defendant had not taken certain measures. Therefore and with respect to counsel, I do not find what they submitted as being the correct representation or effect of the evidence. Thus, I do not find it proved that the plaintiff had any foresight, prior to the occurrence of the accident, of a slip and fall accident caused by the Carts sliding down onto the floor of the Corridor from where they were leaned.

39. The defendant further relied on 2 cases of alleged slip and fall on staircase. They are *Yau Tsz Hin v Broadway Theatre Co Ltd* (HCPI 674/2010, unrep, 3 April 2013, G Lam J) and *Pak Sai Ming v J.V. Fitness Limited* [2019] HKCFI 2268 (HCPI 1387/2014, unrep, 10 September 2019, Q Au-yeung J). In both cases, the claims were dismissed, but it was opined by the respective learned Judges, *obiter* and for completeness, that the respective plaintiffs there would have been held to be 50% and 60% contributorily negligent. In coming to those assessments in both cases, the learned Judges took into account the inherent and known risk of slip and fall when walking down a flight of stairs, which additionally were known to be wet and potentially slippery (according to the respective plaintiffs' cases), and that both flights of steps in both cases were not particular steep or the steps particularly narrow, among other minor features.

40. Walking on the Corridor, which was a flat piece of ground, and descending a flight of stairs known to be wet and potentially slippery

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<sup>13</sup> P146 of the Trial Bundles

are two very different scenarios, not to mention other distinguishing features between those two cases and the present one. I thus find the above two cases distinguishable and not of assistance here.

41. Rather, I find pertinent the reminder advocated by Ms Cheng, counsel for the plaintiff, that an employee should not be judged too harshly in the context of contributory negligence when she was injured due to a risk associated with her work, which risk was her employer's duty to prevent, citing *General Cleaning Contractors Ltd. v Christmas* [1953] AC 180 and this passage by Lord Reid therein:-

“Where a practice of ignoring an obvious danger has grown up I do not think that it is reasonable to expect an individual workman to take the initiative in devising and using precautions. It is the duty of the employer to consider the situation, to devise a suitable system, to instruct his men what they must do and supply any implements that may be required.” (at p194)

42. In my view, the defendant's contention now in effect is that despite she had allowed a trap (which was her non-delegable duty to remove in the first place) to be laid on the Corridor over which she well knew her employees in performance of their work duties would walk by frequently carrying goods like the box of biscuits, yet the plaintiff ought to have taken extra effort (by holding the box up above her head, or walked sideways, or somehow, to gain vision of the floor which vision was otherwise blocked by carrying the box) and to take precautions (even though there is no evidence that the plaintiff has foreseen that there might be a trap there), failing which the plaintiff ought to be held liable. In my judgment, it falls ill out of the defendant mouth to allege so and it is unreasonable and unmeritorious. That and considering the

blameworthiness and causal potency, I do not hold the plaintiff contributorily negligent at all.

*A.4 The payments and the alleged settlement agreements*

43. As mentioned, there are some divergences in the parties' case over the payments on top of the dispute as to whether the Oral Agreement and the Written Agreement were entered and had the terms as alleged by the defendant.

*A.5 Disputes regarding the payments*

44. The defendant's case as to the payments, as made clear in the course of trial, is that a total sum of HK\$101,198 has been received by the plaintiff consisting of the following:-

(1) Since about 21 April 2015, the defendant has been paying for the plaintiff's treatment given by the Chinese Clinic, ultimately in the total sum of HK\$9,490.

(2) On 8 May 2015, the plaintiff was given a cheque by Wong in the amount of HK\$17,000 ("**1<sup>st</sup> Cheque Payment**") as compensation in lieu of wages for the period between 14 April to 21 May 2015.

(3) “Around the end of May 2105” (as pleaded in the Defence<sup>14</sup>) or on 29 April 2015 (as said in Wong’s oral evidence in chief), pursuant to the Oral Agreement, HK\$25,000 was paid in cash by Wong to the plaintiff.

(4) On 5 June 2015, pursuant to the Written Agreement, HK\$35,278, rather than HK\$44,768 as pleaded in §16 of the Defence, was paid in cash to the plaintiff.

(5) On 15 June 2015, the plaintiff was given another cheque by Wong in the amount of HK\$14,430 (“**2<sup>nd</sup> Cheque Payment**”). According to the witness statement of the defendant<sup>15</sup>, the cheque was given to the plaintiff upon her demand and the amount was calculated according to her way (HK\$37 x 13 hours x 30 days) and represented the wages of the 30 days prior to 15 June 2015. According to the oral evidence of Wong, this payment was for compensation for June as she had leave of one month.

45. The defendant denied having paid the plaintiff HK\$3,848 as mentioned in paragraph 46(3) below.

46. The plaintiff’s evidence is:-

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<sup>14</sup> §11 of the Defence

<sup>15</sup> §35 of her witness statement at p164 of the Trial Bundles

(1) On about 21 April 2015, she was instructed by Wong and accompanied by him to the Chinese Clinic for treatment, which she did not need to pay for and therefore at the time she did not know the amount.

(2) On about 8 May 2015, she was given the 1<sup>st</sup> Cheque Payment by Wong and was told that it was compensation for sick leave from 21 April 2015 to 21 May 2015<sup>16</sup>.

(3) The plaintiff said that she should be compensated from 14 to 21 April 2015 as well. Days later, the defendant paid her cash in the sum of HK\$3,848, being HK\$37 an hour (which according to the plaintiff was her rate of pay) x 13 hours (which were the hours she usually work per day) x 8 days, as compensation for that period<sup>17</sup>.

(4) In mid to late June 2015, she was given the 2<sup>nd</sup> Cheque Payment by Wong representing compensation in lieu of pay for the entire month of June 2015 (HK\$37 x 13 hours x 30 days). She received it on the day she signed the Disputed Document (defined below)<sup>18</sup>.

47. The plaintiff completely denies having reached the Oral Agreement with the defendant or having received HK\$25,000 in cash as

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<sup>16</sup> §9 of her supplemental witness statement at p149 of the Trial Bundles

<sup>17</sup> Also §9 of her supplemental witness statement

<sup>18</sup> §10 of her supplemental witness statement at p.150 of the Trial Bundles

alleged by the defendant. She also denies having received HK\$35,278 when she signed the alleged written agreement dated 5 June 2015<sup>19</sup> (“**the Disputed Document**”). Her evidence in gist was that she signed the Disputed Document not on 5 June 2015, but sometime in mid June 2015, and that at the time she signed, she received from Wong only the 2<sup>nd</sup> Cheque Payment together with a small piece of paper containing certain calculations explaining how the HK\$35,278 was arrived at (namely, HK\$3,848 + 1<sup>st</sup> Cheque Payment + 2<sup>nd</sup> Cheque Payment). She was then told by Wong to sign the Disputed Document to acknowledge receipt of the medical expenses of HK\$9,490 and the said total sum of HK\$35,278.

48. Before me are the following piece of documentary evidence:-

(1) In respect of the 1<sup>st</sup> Cheque Payment,

- (a) a copy of a cheque number 040347 dated 8 May 2015 (a Friday) issued by Wong as the drawer and the plaintiff as payee<sup>20</sup>;
- (b) a true copy of the back of the said cheque which bears a printed mark showing the cheque was cleared on 11 May 2015<sup>21</sup> (a Monday), and
- (c) a receipt written on a standard form “Cash Memo” with, among others, the date of 8 May 2015, the amount of HK17,000, the words “4 月 14 日至 5 月 21 日工資” and “票號 04034” (“**1<sup>st</sup> Cheque Payment Receipt**”). In evidence,

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<sup>19</sup> P538 of the Trial Bundles

<sup>20</sup> P550 of the Trial Bundles

<sup>21</sup> P550 of the Trial Bundles

Wong accepted that all these, save “票號 04034”, were hand-written by him. It is common ground that there was a signature of the plaintiff there acknowledging receipt.

- (2) In respect of the 2<sup>nd</sup> Cheque Payment,
- (a) a copy of a cheque number 075706 dated 15 June 2015 issued by Wong as the drawer and paid to the plaintiff<sup>22</sup>; and
- (b) a true copy of the back of the said cheque which bears a printed mark showing it was cleared<sup>23</sup>.

- (3) In respect of the medical expenses charged by the Chinese Clinic, there were 2 receipts respectively dated 24 May 2015 and 4 June 2015<sup>24</sup> in the respective amounts of HK\$7,960 and HK\$1,530, totalling to HK\$9,490.

- (4) The plaintiff also produced a small note containing calculations showing how the amount of HK\$35,278 was arrived at (“**the Note**”). As mentioned, it was the plaintiff’s evidence that Wong handed the Note to her when she signed the Disputed Document to explain to her how HK\$35,278 was arrived at. Wong initially disputed that the Note was written by him.

<sup>22</sup> P551 of the Trial Bundles

<sup>23</sup> P551 of the Trial Bundles

<sup>24</sup> The date on the receipt was “4/6 – 2016 年” which evidently was a typo error as the date of treatment was stated thereon to be “29/5 – 4/6 2015 年”



A.6 *The Oral Agreement and the alleged payment by cash of HK\$25,000 pursuant thereto*

49. To recap, the defendant's pleaded case was that "the Plaintiff and the Defendant had entered into an oral agreement in or around the end of May 2015 at the Store for the full and final settlement of the alleged Accident"<sup>25</sup>, and that "the Defendant paid to the Plaintiff the amount of HK\$25,000 in cash on the same day of the Oral Settlement Agreement"<sup>26</sup>.

50. The plaintiff did not seriously dispute that she had sought compensation, but just disputed that any settlement agreements having been reached, or payments made, as alleged.

51. The evidence given by the defendant and Wong on the Oral Agreement are scanty and far from clear.

52. The defendant only said in her witness statement:-

"28. 2015年5月29日，據我所知，原告人的傷勢快痊愈。原告人跟我和我先生商議後，說她很快可以繼續工作，但她需要一些賠償才滿足。於是，透過我先生代表匯隆，給了原告人現金\$25,000，作為她在工作時受傷的全部賠償。付款地點為匯隆貨倉部。"

53. Likewise, all that was said about the Oral Agreement by Wong in his witness statement was this:-

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<sup>25</sup> §11 of the Defence

<sup>26</sup> §12 of the Defence

“17. 2015 年 5 月 29 日，據我所知，原告人的傷勢快痊愈，但需要一些賠償金才能繼續工作。我、我太太和原告人，經過協議後，我給了原告人現金\$25,000，作為她在工作時受傷的全部賠償。現金交收地點為匯隆貨倉部。”

54. Thus, even accepting such evidence from the defendant and Wong, all that was said was that the plaintiff demanded certain compensation, and Wong paid her HK\$25,000 as “all the compensation”. The way it was expressed suggested that it was the defendant’s/Wong’s own thinking or intent that the amount would be “all the compensation”. It was not even said by the defendant or Wong that the plaintiff had in fact agreed that the sum would be received as “all the compensation” and/or for “the full and final settlement of the alleged accident”.

55. On such evidence, I find that the Oral Agreement was simply not proved.

56. When asked in his evidence in chief why he wrote out the 1<sup>st</sup> Cheque Payment Receipt and asked the plaintiff to sign it, Wong answered that because there was a prior incident when the plaintiff has in fact received money but later denied it, that was why “after 14 April 2015 when the amount was given to [the plaintiff] details were written down clearly on paper for safety” and “for proof”. Therefore, even for the 1<sup>st</sup> Cheque Payment which Wong in all likelihood knew would be evidenced by the copy of the cheque and bank statement showing the clearance and payment of the amount of the cheque, Wong still insisted on the plaintiff signing a written acknowledgment. That being Wong’s stance and bearing also in mind that the amount of HK\$25,000 was a greater amount than the 1<sup>st</sup> Cheque Payment and allegedly was paid in cash, I find

it incredible and highly improbable that had that sum been really paid to the plaintiff as alleged, that Wong did not write out any receipt for the plaintiff to sign. In evidence, Wong also did not proffer any explanation as to why he did not do so.

57. While the defendant's pleaded case was that the Oral Agreement was reached "around the end of May 2015", and in their witness statements the defendant and Wong both said the date was 29 May 2015, however, in Wong's oral top-up evidence given in chief, he adamantly insisted it was on 29 April 2015 that the alleged Oral Agreement was reached and cash in the sum of HK\$25,000 paid to the plaintiff; and he continued to maintain that after Mr Boyton, counsel appearing for the defendant (with him Mr Stony Chan), tried to clarified with Wong with a number of questions.

58. If the Oral Agreement were reached and the payment in cash of HK\$25,000 were made on 29 April 2015 as "all the compensation" and "full and final settlement", there was no reason for the defendant/Wong to make a further payment by way of the 1<sup>st</sup> Cheque Payment to the plaintiff only 9 days later on 8 May 2015, and further, there would be no reason to make yet another payment in cash of HK\$35,278. All the more, after the Written Agreement was reached and the payment of HK\$35,278 made, there would have been absolutely no reason at all to yet again make the 2<sup>nd</sup> Cheque Payment just 10 days after the alleged Written Agreement.

59. Moreover, the Disputed Document was so drafted that the medical expenses of HK\$9,490 was recorded as a sum that the defendant agreed to pay on behalf of the plaintiff. Yet, if the defendant's case were

true that in addition to the HK\$35,278 and HK\$9,490, HK\$25,000 in cash has already been paid on 29 April 2015/end of May 2015 and the 1<sup>st</sup> Cheque Payment in the sum of HK\$17,000 has already been paid on 8 May 2015, it is in my view highly improbable and most incredible that these payments, particularly the payment of HK\$25,000 in cash, were not at all mentioned in the Disputed Document.

60. Further, in a letter dated 7 February 2017 addressed to the Labour Department signed by Wong as the representative of the defendant, while the sum HK\$9,490, HK\$35,278, the 1<sup>st</sup> Cheque Payment and the 2<sup>nd</sup> Cheque Payment was there alleged to have been made to the plaintiff, however, there was no mention at all about a payment of HK\$25,000.

61. In evaluating the evidence given by witnesses, it is a trite that where a witness is shown to have been discredited over one or more matters over which he has given evidence or where he is found to have lied over a central issue, that may have a significant adverse impact on the credibility of his or her evidence as a whole (see *MA (Somalia) v Secretary of State for the Home Department* [2011] 2 All ER 65; *Lee Fu Wing v Yau Po Ting Paul* [2009] 5 HKLRD 513; and *Progetto Jewellery Co Ltd v Lau Chiu Ying And Another* [2020] HKCFI 209. Here, I find that the defendant and Wong were not truthful regarding their evidence that it was never the plaintiff's duty to take goods from the Storeroom to replenish the shelves and regarding their evidence that the defendant paid the shop attendants a fixed monthly salary of HK\$6,000 a month (a matter I will deal with below). I also find that Wong was evasive and calculating when giving evidence. I was not impressed at all that he was trying to tell the truth when he was giving evidence. I think he was trying to tell a story that seemed to

him would best advance the defendant's case. In all, I do not find him a truthful or reliable witness.

62. The defendant was illiterate and was a simple witness. In oral evidence, it became very clear that the 1<sup>st</sup> and 2<sup>nd</sup> Cheque Payments were handled by Wong, that it was Wong who accompanied the plaintiff to the Chinese Clinic and it was Wong who related to her the alleged discussion(s) between him and the plaintiff pertaining to the alleged Oral Agreement and the Written Agreement. She was equally not truthful in the 2 matters mentioned in the previous paragraph. I also find her evidence generally unreliable.

63. For all of the above reasons, I find for the plaintiff's case and find that the Oral Agreement was not proved, and find that Wong or the defendant had never paid to the plaintiff HK\$25,000 in cash as alleged.

*A.7 The Written Agreement and the alleged payment by cash of HK\$35,278 pursuant thereto*

64. It is pertinent first to note what the defendant's pleaded case is. In paragraphs 15 and 16 of the Defence<sup>27</sup>, the defendant pleaded:-

"15. Subsequent to the Oral Settlement Agreement, the Plaintiff and the Defendant had also entered into a written agreement on 5 June 2015 for the full and final settlement of the alleged Accident (the "Written Settlement Agreement").

Terms of the Written Settlement Agreement

<sup>27</sup> The defendant herself signed the Statement of Truth to the Defence on 11 April 2018 after having the same translated to her by her solicitors.

- (1) The Defendant will pay the amount of HK\$9,490 to the Plaintiff for fees relating to medical treatment of the Plaintiff from 21 April 2015 to 4 June 2015.
- (2) The Defendant will pay the amount of HK\$35,278 to the Plaintiff.
- (3) The Plaintiff will not pursue and/or will waive any claims arising out of and/or in connection with the alleged Accident against the Defendant and the receipt of the above amount of money (HK\$9,490 and HK\$35,278) by the Plaintiff will be for the full and final settlement of the alleged Accident.

16. In performance of the Written Settlement Agreement, the Defendant paid to the Plaintiff the amount of HK\$44,768 in cash on the same day of the Written Settlement Agreement.” (my emphasis)

65. The defendant’s own evidence clearly contradicts her pleaded case in that:-

- (1) It is the defendant’s own case, in oral evidence as well as shown by the receipts mentioned in paragraph 48(3) above, that the medical expenses of HK\$9,490 had already been paid by Wong directly to the Chinese Clinic at the time of the alleged Written Agreement. The payment of the fees to the Chinese Clinic must have been very much in the mind of the defendant and Wong on 5 June 2015. Thus and against such clear background, the term pleaded to have been agreed that “the defendant will pay the amount of HK\$9,490 to the plaintiff” did not make any sense at all.
- (2) It is the defence case, as said in the witness statements and at trial, that cash in the sum of HK\$35,278 was paid

to the plaintiff that day. Moreover, according to her witness statement, the defendant was the person “preparing the cash”. There she said “我簽了協議書後，到櫃面準備需要的現金，然後把現金交給我先生。我先生然後把現金交收給原告人。”<sup>28</sup>. It seems to me that had the defendant actually took out and then counted the cash in the substantial sum of HK\$35,278 and paid it over to the plaintiff, she would have a clear and distinct recollection of the event and the amount. Yet, she signed the Statement of Truth to the Defence confirming the truth of her said pleaded case that HK\$44,768 in cash was paid to the plaintiff that day.

66. Moreover, according to her witness statement (quoted in §65(2) above), the defendant went to the “counter” to “prepare” the cash. I have described “the counter” area at the Store front in paragraph 22(1) above. In the course of trial evidence was taken on the understanding that the defendant went to “the counter” at the Store front to fetch the cash. However, towards the end of her cross-examination when asked whether it would be risky to store so much cash at the counter, the defendant then said that the cash were actually stored in a drawer, and when further pressed and shown the 5 photographs of the Store produced as Exhibit P-1 to identify the location of the drawer, she then said the drawer was in fact situated inside the Storeroom and the cash of HK\$35,278 was in fact taken from the same drawer at the time.

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<sup>28</sup> §32 of her witness statement at p163 of the Trial Bundles

67. In the context of the parties' factual dispute, I take the view that the location from which the defendant allegedly fetched the cash was an important detail, and one, that had it been true that the defendant actually fetched the cash therefrom, that she would not easily forget or be confused with "the counter" (櫃面), and she would not have said "went to the counter to prepare the needed cash" (到櫃面準備需要的現金) because the drawer was right inside the Storeroom where, as is common ground, Wong and the plaintiff were at the time of signing the Disputed Document.

68. The defence's version, attested by Wong in his witness statement<sup>29</sup>, was that on 3 June 2015, which was several days after he paid the plaintiff the cash of HK\$25,000, the plaintiff's uncle came and he, the uncle and the plaintiff had a meeting in a Chinese café restaurant nearby. In that meeting, the uncle said that the compensation the plaintiff received was not enough and she needed another HK\$35,000. After discussion, the defendant and Wong decided to pay the HK\$35,000 and asked the plaintiff to come to the Store on 5 June 2015 to sign the Disputed Document. On that day, ie 5 June 2015, the plaintiff produced 3 receipts relating to hospital charges and "transportation costs" (車資) totalling HK\$278 ("**the 3 Receipt**"). According to Wong, the plaintiff further said that she needed to use money in a hurry, so she wanted cash instead of cheque, and Wong asked the defendant to sign first, then go fetch the cash, which he then handed to the plaintiff in front of Liu.

69. The plaintiff's version was that her uncle did meet with her and Wong in the Chinese café restaurant in early June 2015 to discuss about

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<sup>29</sup> §§18 to 23 of his witness statement



compensation for the work injury. In the meeting, Wong said that he would pay another month's wages to the plaintiff calculated at HK\$14,430. Initially in her witness statement, the plaintiff said on 5 June 2015 Wong asked her to sign the Disputed Document, which was written in traditional Chinese characters and not in simplified Chinese. As she was educated up to primary 3 only and did not read traditional Chinese she signed, as asked, to acknowledge receipt. In her supplemental witness statement, she corrected the date and said that she went back to the Store to work in mid June 2015 and it was after she returned to work that she received the 2<sup>nd</sup> Cheque Payment and at the same time was asked to sign the Disputed Document. She denied ever receiving the cash of HK\$35,278. The Disputed Document was kept by the defendant/Wong after she has signed and she was never given a copy. In oral evidence, she added that the Note was given to her by Wong at the same time she signed the Disputed Document to explain to her how the sum of HK\$35,278 was calculated.

70. On the Note was written in handwriting the following:-

"14/4	8 天	= 3,848.	
8/5		= 17,000	} 35,278.
/6	30 天	= 14,430	

”

71. The plaintiff said that she was explained by Wong that the “17,000” written on the Note was the 1<sup>st</sup> Cheque Payment, the “14,430” was the 2<sup>nd</sup> Cheque Payment, which represented wages for June 2015 (calculated at \$37 an hour x 13 hours a day x 30 days), while the “3,848” was the amount of 8 days’ pay paid to her earlier. If I accept the plaintiff’s version that HK\$35,278 consisted of the 1<sup>st</sup> and 2<sup>nd</sup> Cheque Payments, and there is undisputable documentary evidence that the 1<sup>st</sup> and 2<sup>nd</sup> Cheque

Payments were made by cheques, then it follows that the defendant has not paid the plaintiff cash in the sum of HK\$35,278 as she alleged.

72. The 3 Receipts were not referred to in Wong's witness statement. It was only in oral evidence that Wong identified the 3 Receipts, which consisted of (a) a receipt which is illegible save showing payment of HK\$30 by Octopus<sup>30</sup>, (b) another receipt issued by Accident and Emergency Department dated 23 April 2015 showing receipt of HK\$60<sup>31</sup>, and (c) the last one was said by Wong to be a taxi fare receipt that was completely illegible save that there was a bar code printed on the top<sup>32</sup> ("**the so-called Taxi Receipt**"). By subtraction and according to Wong's evidence, the amount paid in the so-called Taxi Receipt should be HK\$188 (\$278 - \$60 - \$30).

73. The plaintiff's evidence was that she remembered having given some receipts to Wong, but how many, the amount, when they were given to Wong and particularly whether they were the 3 Receipts she could not recall.

74. I do not accept Wong's evidence that the so-called Taxi Receipt was indeed a taxi receipt and evidenced a payment of taxi fare of HK\$188, for the following reasons:-

- (1) The so-called Taxi Receipt measures 8cm x 11cm and is much larger than a usual taxi receipts.

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<sup>30</sup> P737 of the Trial Bundles

<sup>31</sup> P738 of the Trial Bundles

<sup>32</sup> P736 of the Trial Bundles

(2) It contains a bar code which was not found in taxi receipts.

(3) At the time, the plaintiff only attended Queen Elizabeth Hospital for treatment. The hospital was situated in Ho Man Tin which was about 8 km from where the plaintiff lived, and therefore it was highly improbable that a taxi trip would cost HK\$188; and it was not suggested by Wong what otherwise the trip would be that entitled the plaintiff to claim the fare from the defendant.

75. On the other hand, I find the plaintiff's version highly probable and believable, for the following reasons:-

(1) As mentioned, it is most improbable that after having reached the Oral Agreement, and then the Written Agreement, that the defendant would yet pay the plaintiff the 2<sup>nd</sup> Cheque Payment. There simply was no explanation offered, or was it explainable, nor was it plausible even accepting the defendant's version in its entirety. In my view, it is most probable that the 2<sup>nd</sup> Cheque Payment was made not in addition to, or at a time later than the signing of the Disputed Document. I therefore think it much more probable that the 2<sup>nd</sup> Cheque Payment was made at the time of the signing of the Disputed Document.

(2) I thus find that the Disputed Document was signed on the date of the 2<sup>nd</sup> Cheque Payment, namely 15 June 2015, as that cheque was cashed on 16 June 2015.

(3) Even for untrained eyes, it can be readily observed that the handwritings on the Note and those on the 1<sup>st</sup> Cheque Payment Receipt and another receipt (as is common ground, written by Wong dated 2 September 2016)<sup>33</sup>, are very much alike and bear distinct characteristics: the thousand separator in all the numbers were written as “、” rather than the usual comma “,” and the numbers “2” “5” “7” “8” are written very distinctively.

(4) Wong was clearly very evasive when asked about the Note. Initially, he denied he had written it or that he had given it to the plaintiff. When asked whether the number “35,278” related to the sum written on the Disputed Document, he said to the effect it was not clear. Then, he answered to the effect that the Note was immaterial and was irrelevant. He did not give direct answers when asked to compare the above-mentioned distinct characteristics in the handwritings between the Note and other receipts accepted to be hand-written by him.

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<sup>33</sup> Also contained in p549 of the Trial Bundles

(5) The mathematics just match completely and perfectly:  
8 days wages at \$37 an hour x 13 hours x 8 days =  
HK\$3,848 and adding that to the 1<sup>st</sup> and 2<sup>nd</sup> Cheque  
Payments equal to HK\$35,278.

(6) Considering all the above and bearing in mind my  
views expressed above on the credibility and reliability  
of the respective witnesses, I accept the plaintiff's  
evidence that the Note was handed to her by Wong to  
explain how the sum of HK\$35,278 written on the  
Disputed Document was arrived at.

76. Moreover, the evidence given in the witness statements of the  
defendant and Wong regarding the events pertaining to the signing of the  
Disputed Document was scanty and lacking in any degree of details and  
specifics. Yet, in oral evidence, Wong added for the first time that in fact  
he had in the Storeroom read through the contents of the Disputed  
Document to the plaintiff. He further added, again for the first time, and  
with abundant details, that there was in fact another version of Disputed  
Document on which the sum was typed out as "HK\$35,000", but because  
the plaintiff unexpectedly produced the 3 Receipts making the sum to be  
paid totalled to HK\$35,278, he telephoned his daughter to change the  
amount on the Disputed Document and to print out a revised version, and  
that the defendant went out to the Store front to receive it from the daughter,  
and such. None of these were mentioned at all in his witness statement,  
and also not mentioned at all in his supplemental witness statement dated  
21 June 2019. It is utterly incredible that all these important details were  
omitted in those witness statements and yet now at trial he could recall and

recount them in so much details and so vividly. I have no hesitation in rejecting all these new details as untrue and as afterthoughts made up by Wong in the witness box to try to booster his story regarding how the sum of HK\$35,278 came to be written on the Disputed Document. As will be seen, Wong's version of when and how the 3 Receipts were produced by the plaintiff was not only unsupported, but was contradicted, by the evidence of Liu.

77. The defendant called Liu, a renovation worker, as witness to say that he witnessed the payment of cash HK\$35,278 to the plaintiff in the Storeroom on 5 June 2015. He was a close friend of Wong. His evidence in gist is that he so happened came to visit Wong that day, he came in the Store unannounced and barged into the Storeroom, and happened to witness the payment. Though he did not know the plaintiff, he was allowed to be a part of the whole event "as a witness". Yet, Wong did not ask him to sign on the Disputed Document as a witness. The plaintiff denies that he was even present at all.

78. Liu filed a short witness statement consisting 6 paragraphs. I will quote in entirety the pertinent parts:-

- “3. 2015 年 6 月 5 日，我到匯隆坐坐，找王志堅聊天。
4. 我到了匯隆的貨倉部找王志堅，發現他在手拿着很多現金，包括很多\$500 和\$1,000 紙幣。
5. 我問王志堅為什麼會那麼多現金，他跟我說，因為有員工早前在匯隆跌倒，所以要賠償給員工。那個時候是下午 1 時左右。
6. 於是，因為我在現場，所以王志堅請了我做個見證，見證他給了現金\$35,278 給相關員工，即原告人。王志堅在交收的時候也有在我和原告人面前數那些現金，總共\$35,278。”

79. Having listen to his evidence and observed him carefully, I am singularly unimpressed by him as a witness. On the material matters, he was not listening to the questions or giving direct answers. Instead, it seemed to me that he was just keen to proffer what he had memorized to say. As I will allude to below, in many instances what he said in oral evidence were different from what he said in his witness statement, or were matters totally unmentioned in his witness statements and were said for the first time. He was evasive when asked to explain why there were such discrepancies and why so many details were not said in his witness statement and yet he could now recall so vividly. I do not find him a reliable or truthful witness. I do not accept his evidence.

80. In cross-examination, Liu was carefully asked by Ms Cheng in sequence as to what he saw from the time he first entered the Store. When asked how he could know the plaintiff was in the Storeroom inside when he first entered the Store, without answering the question, he quickly said that there was a desk in the Storeroom with a lot of cash and the settlement agreement placed thereon. That evidence was entirely different from what he said in paragraph 4 of his witness statement, which was that when he arrived at the Storeroom, he found Wong holding a lot of cash in his hand(s) including many \$500 and \$1,000 notes.

81. Moreover, as can be seen, Liu there had never even mentioned about any settlement agreement at all in his witness statement.

82. In cross-examination, Liu quickly proffered quite detailed evidence that Wong had read out the entire Disputed Document to the plaintiff and such. When pressed, he further said that he too also read the

Disputed Document after it was read out by Wong. He explained he was asked by Wong to read it as Wong asked him to be a witness. Later, he also further added that after the Disputed Document was read to the plaintiff, the plaintiff actually acknowledged that she understood it. These evidently were clearly important pieces of evidence, if true, it would be most hard to understand why they were not set out in his witness statement in the first place. Not only so, they were not even elicited as top-up evidence during his evidence in chief. I find it completely incredible that almost 2 years after he signed his witness statement on 15 November 2018 that he could now at trial recall all these additional details that he was not able to remember earlier.

83. Moreover, when asked whether he noticed there were other documents, Liu quickly and clearly answered there was none. Shortly after when asked about the sum HK\$35,278, he quickly referred to the 3 Receipts and said they were for hospital fees and taxi fare. When asked when he first knew about the 3 Receipts, what they were about and the total amount of HK\$278. He answered he knew several days after the injury. He was asked again and he confirmed the same timing. He also said he was told them by Wong. Then shortly after, he said he wanted “to explain” and changed the time when he first learned about them to several days before he went into the Store and witnessed the payment and that he was so told by Wong then. It was abundantly clear to me, and I find, that Liu was lying in all the evidence he has been giving about the 3 Receipts, which again, was never mentioned in his witness statement. Indeed, all versions of his above answers contradicted the evidence of Wong, which was that Wong received the 3 Receipts on the date the Disputed Document was signed.



84. In all, I find Liu a dishonest and unreliable witness and I completely reject his evidence.

85. Considering all of the above and in the premises, I completely reject the defendant's evidence regarding the Written Agreement and the circumstances of the signing of the Disputed Document. I prefer and accept the plaintiff's evidence and I find (a) the defendant sometime in early May 2015 did pay to the plaintiff cash in the sum of HK\$3,848 equivalent to 8 days' wages of the plaintiff, (b) the plaintiff's uncle did talk to Wong about matters relating to compensation to be paid to plaintiff in the Chinses café restaurant, (c) the plaintiff has expressed then that she was still in pain, (d) Wong agreed to pay the plaintiff her wages for June 2015 as compensation calculated at HK\$14,430 (e) on 15 June 2015, and not 5 June 2015, Wong paid the plaintiff the 2<sup>nd</sup> Cheque Payment as her wages for June 2015, gave her the Note and explained that the sum written in the Disputed Document of HK\$35,278 was the total amount of the 1<sup>st</sup> and 2<sup>nd</sup> Cheque Payments and the HK\$3,848 paid to the plaintiff earlier for 8 days' pay, (f) at the same time, the plaintiff was asked by Wong to sign the Disputed Document to acknowledge receipt, (g) Wong never read or explained the contents of the Disputed Document to the plaintiff or explained that the payment of the medical expenses and the payment of the said sum of HK\$35,278 was for the "full and final settlement" of all the defendant's liabilities, (h) the plaintiff has at no time agreed with the defendant and/or Wong that the said sum would be received by her as "full and final settlement of the accident", (i) the defendant and/or Wong never paid to the plaintiff cash in the sum of HK\$35,278, (j) the Disputed

Document was written in traditional Chinese characters, and (k) the plaintiff was not particularly conversant with traditional Chinese characters.

86. In her closing submissions, the defendant asked the court to rule that the Disputed Document “embodied party’s [sic] intention to settle the whole matter when it was entered into”<sup>34</sup>.

87. The relevant part of the Disputed Document reads:-

“ 協議書  
--- 關於意外傷治療賠償事宜

顧員[sic] 胡麗純 [女...身份證...],於 2015 年 4 月 14 日,在工作時意外跌傷,聯合醫院就診治療; X 光:尾骨部骨折。

...

經雙方協議,一致認為傷痛已痊愈,願意終決本事件。

顧主[sic] 陳桂如願意為顧員[sic] 胡麗純支付中醫醫療費用港幣 9490 元;另外,給予胡麗純港幣 35278 元作為終決本事件補償費。

胡麗純願意接受賠償費和決定以後不再追究任何責任。

[signed etc]  
2015 年 6 月 5 日”

88. As I find above, it has never been discussed or agreed between the plaintiff and the defendant that there would be a “full and final settlement” of all the defendant’s liabilities in connection with the accident. It follows that I find that the Disputed Document did not embody the parties’

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<sup>34</sup>§35 of the defendant’s closing submissions

intention as alleged, and I find essentially that the defendant/Wong slipped those wordings in the Disputed Document and asked her to sign as an acknowledgment of receipt.

89. For the reasons expressed in the following 2 paragraphs, I would also hold that as a matter of construing the Disputed Document, that the wording “本事件” meant the plaintiff’s claim for Employees’ Compensation, and was not meant to include the plaintiff’s claim for negligence under common law, and the expression “以後不再追究任何責任” was referable to the defendant’s responsibility as employer to pay Employees’ Compensation.

90. As I find above, all along and on the 3 occasions (the 1<sup>st</sup> Cheque Payment, HK\$3,848 and the 2<sup>nd</sup> Cheque Payment) the defendant has been compensating the plaintiff in term of wages that she would have earned but for the absence from work resulted from the injury; all along, the “compensation” the parties have been discussing was along that line – the uncle’s request for more “compensation” and Wong’s proposal and agreement to pay the plaintiff also the month’s wages for June 2015. It is the defendant’s own evidence that several days after the accident, she and Wong asked Tai to come to the Store to discuss matters relating the insurance concerning Employees’ Compensation and related matters. The plaintiff’s oral evidence given in cross-examination, which I accept, that at the time she knew nothing about the common law claim based on negligence. There is no evidence to even suggest that the defendant and/or Wong were aware of the potential liability in common law based on negligence, or that they have mentioned that to the plaintiff. It is abundantly clear to me and I find that, as a matter of factual matrix to the

signing of the Disputed Document, that both parties did not have in their contemplation at all the defendant's potential liability under common law.

91. I accept Ms Cheng's submission that if there is any ambiguity in construction, the maxim of *contra proferentem*, namely that the ambiguity should be interpreted against the interests of the party that created the document, should apply. As it was the defendant who has created the Disputed Document and applying the maxim against the above-mentioned factual matrix, I hold, as I do, in paragraph 89 above.

#### A.8 *Estoppel*

92. For completeness, I also hold against the defendant's case of estoppel pleaded in the Defence because from my findings above, I conclude that there was no representation made by the plaintiff that she would not make a common law claim of negligence against the defendant.

#### A.9 *Conclusion on liability*

93. In the premises, I find the defendant fully liable.

#### B. *QUANTUM*

##### B.1 *Injuries and treatment*

94. As mentioned, on the date of the accident, the plaintiff was treated in QEH A&E. On examination, there was tenderness at lower back area and X-ray of her lower back showed fractured coccyx. She was

treated, discharged and referred to the Orthopaedic specialist out-patient clinic for treatment and management. She was given 14 days sick leave.

95. The plaintiff was followed up at the fracture clinic of QEH 6 times from 23 April 2015 until she was discharged on 18 August 2015. She was given sick leave continuously by that clinic until 25 August 2015.

96. In the meantime from 22 April to 24 May 2015, and then from 29 May to 4 June 2015, the plaintiff also attended the Chinese Clinic for treatment. Also, in May 2015, she has returned to her home city in PRC for about a week to receive treatment there.

97. The plaintiff returned to the Store to work from mid June 2015 onwards, albeit with lighter duties and worked for fewer hours. She was either terminated or she has resigned from working in the Store on 2 September 2016.

98. On 13 January 2016 and on her way home after work, the plaintiff felt severe pain at her lower back. She attended QEH A&E the next day for treatment. She was given 4 days sick leave and was again referred to the Orthopaedic specialist out-patient clinic. The Physiotherapy report from QEH dated 8 January 2019 reported that a telephone interview was conducted by that department with the plaintiff on 22 January 2016, and no significant neurological deficit was noted.

99. The report from the Department of Orthopaedics & Traumatology (“O&T”) of QEH dated 14 March 2017 reported that the plaintiff consulted O&T only some 8 months later on 27 September 2016,

and that physical examination showed slight tenderness at the coccygeal region and there was no neurological deficit noted at the limbs. X-ray showed “angulation noted at the coccygeal spine with no definite cortical break appreciated”. Analgesics and physiotherapy were recommended to the plaintiff.

100. From 14 March 2017 to 4 May 2017, the plaintiff received 7 sessions of physiotherapy from QEH. However, thereafter she was discharged due to deterioration of condition and medical consultation was suggested for further investigation. A report in simplified Chinese dated 16 June 2017 from Shanwei People’s Hospital apparently indicated that the plaintiff underwent a DR examination there and nothing significant was found.

101. The Physiotherapy report from QEH dated 8 January 2019 also reported that the plaintiff received 17 sessions of physiotherapy from 31 July 2018 to 14 November 2018. She was discharged on 14 November 2018 upon her own request to terminate her course of therapy as she had to resume work duty.

102. The sick leave certificates produced<sup>35</sup> showed that the plaintiff attended QEH A&E 6 times in 2017, but then from 29 November 2017 onwards, she had been continuously attending a number of family and out-patient clinics every 4 to 5 days until August 2018.

## *B.2 Present complaints*

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<sup>35</sup> P429-514 of the Trial Bundles

103. The plaintiff's complaints, as noted in the joint expert report of Dr Miu Yin Shun Andrew, for the plaintiff, and Dr Tsoi Chi Wah Danny, for the defendant, dated 5 January 2019 ("**the Joint Expert Report**") were intermittent low back pain and sacrococcygeal pain, which was exacerbated by wet and cold weather, walking slope or stairs, carrying 5kg weight for a short distance. The plaintiff also said that she took painkiller everyday. She also complained of headache and vomiting.

*B.3 The Joint Expert Report and my findings*

104. The Joint Expert Report was a short one.

105. Dr Miu opined, which was not really disputed by Dr Tsoi, that the fracture of the coccyx was the direct result of the accident, and that the plaintiff also suffered from soft tissue sprain injury of her low back.

106. Dr Miu opined that the prognosis would likely be satisfactory only as the plaintiff would very likely suffer from persistent pain that might require symptomatic treatment. Dr Tsoi opined that residual pain, if any, should be minimal, and would not be as serious as the plaintiff described, as there was no major structural damage identified in MRI. Dr Tsoi opined that the overall prognosis was good.

107. On sick leave, Dr Miu endorsed those given by the treating doctors while Dr Tsoi opined that sick leave should be limited to 6 months.

108. Dr Miu opined that the plaintiff could return to her pre-injury job with impairment in work capacity and efficiency, while Dr Tsoi opined

that the plaintiff should be able to resume her pre-injury job in “almost full capacity” and the pain should be so mild that it would not affect her ambulation capacity and sitting tolerance.

109. Both experts in fact were agreed that the plaintiff would suffer some residual pain. They differed as to the degree.

110. I accept that the plaintiff in a way was eager to return to work as she did so in mid June 2015, albeit in much reduced capacity. I believe that she did have an episode of severe pain on 13 January 2016 necessitating her to seek treatment from QEH A&E the next day. From the medical reports, however, it was recorded that she consulted O&T only 8 months later in September 2016. She then attended QEH A&E intermittently for 6 times in 2017 and received only 7 sessions of physiotherapy that year. She only resumed physiotherapy in mid July 2018 which was terminated upon her own request.

111. A closer look at the sick leave certificates produced showed that from late November 2017 onwards until August 2018, there was a clear pattern that she would continuously visit 4 clinics, each for 2 or 3 times in a row on a day immediate upon the expiry of the last sick leave period, and then rotate to another one and visiting it again for 2 to 3 times, and so on, and on each visit, she was given 3 to 4 days sick leave. The clinics she so visited were (a) Our Lady of Maryknoll Hospital Family Medicine Clinic on Shatin Pass Road, (b) Wu York Yu General Outpatient Clinic on Sheung Fung Street, (c) Wang Tau Hom Jockey Club General Out Patient Clinic on Junction Road, and (d) Our Lady of Maryknoll Hospital East Kowloon Family Medicine Clinic on Hammer Hill Road. I do not think such pattern



proved that she genuinely required medical treatment. It seems to me that such pattern shows that she was attending those clinics for obtaining sick leave certificates. To present the full picture and be fair to the plaintiff, all along and in this period, there were in addition to the above-mentioned a few occasions when she attended QEH A&E and Tseung Kwan O Hospital A&E for treatment. I believe that she suffered serious pain on those occasions.

112. In the circumstance, I would not accept Dr Miu's opinion of endorsing the sick leave granted by the treating doctors insofar as the leave certificates issued by these clinics are concerned. I would accept, particularly in the earlier period up to mid to late 2017 that the plaintiff continued to suffer on occasions residual pain and sometimes the pain was persistent. I think since then it has become relatively milder. I would think that the degree of residual pain the plaintiff may still suffer is somewhat between what the two experts opined.

113. Taking the above into account, I prefer the opinion of Dr Tsoi in respect of the period of sick leave, which is 6 months, while I incline towards the opinion of Dr Miu regarding that the plaintiff will be affected by the residual pain in her working capacity.

#### *B.4 Pain, suffering and loss of amenities*

114. The plaintiff submitted that the appropriate award for PSLA is HK\$300,000. She cited as comparable the cases of *Lau Li Wing v Secretary for Justice* HCPI 481/1996, unrep, 29 October 1999, Seagroatt J, *Law Ka Fong v Best City Limited* HCPI 436/2004, unrep, 27 May 2005,

Suffiad J, *Chan Kwei Duen v East Country Company Limited* DCPI 665/2005, unrep, 3 February 2006, DDJ Marlene Ng (as she then was), and *Leung Lee Jasmine v Go Fresh (Hong Kong) Company Limited* DCPI 2425/2014 unrep, 28 October 2016, HHJ Andrew Li.

115. The defendant submitted that HK\$100,000 is appropriate, citing *Lo Wing Kwong v Wong Ka Wai Ruby* DCPI 1617/2006, unrep, 18 December 2007 HHJ Marlene Ng (as she then was), *Lam Mei Wan v Ngai Keung James & Another* DCPI 1054/2016, unrep, 1 February 2019, HHJ KC Hui, and *Tsang Yuet Shan v Tsuen King Home for the Aged Limited & Another* DCPI 2795/2014, unrep, 18 June 2019, HHJ Harold Leong.

116. The cases cited by the defendant involved injuries that were much less serious, such as right elbow abrasion injury and low back injury that did not involve fracture in *Lo Wing Kwong*, and soft tissue contusion to the lower back and coccyx region in *Tsang Yuet Shan*. In *Lam Mei Wan*, though coccygeal fracture was involved, but the court there expressly found against some of the complaints by the plaintiff and the degree of seriousness as attested by her. I do find them of assistance.

117. All the cases cited by the plaintiff involved either fracture or subluxation of the coccyx. I find they are comparable to a degree to the present case. The PSLA awarded in those 4 cases ranged from HK\$200,000 to HK\$500,000. Having considered them, I think the PSLA in the present case is somewhat less serious than that in *Lau Ka Fong* (awarded in 2005) and *Leung Lee Jasmine* (awarded in 2016) in which the respective sums of HK\$300,000 and HK\$350,000 were awarded.

Considering that fractured coccyx bone could produce long lasting pain and discomfort, and as I find that the plaintiff is still suffering from some such residual pain, and bearing in mind she was born in 1982, I consider an award of **HK\$300,000** reasonable and appropriate.

*B.5 Pre-trial loss of income*

118. Ms Cheng submitted that pre-trial loss of income should be awarded up to September 2020 with deduction of incomes she earned from her various intermittent employments in this period. The amount so claimed totalled to HK\$780,365.

119. Having refused to endorse the sick leave certificates given by those clinics, I would not accept the plaintiff's said claim for pre-trial loss. I have above explained why I prefer the opinion of Dr Tsoi and find that the reasonable sick leave period would be 6 months.

120. The plaintiff returned to work in the Store from mid June 2015 until September 2016, earning much less then, and afterwards had worked intermittently for various employers; in between these employments, she was given various intermittent sick leave. Instead of an otherwise complicated calculation involving calculating the loss in periods when she lost her income entirely and various periods when she lost her income partially and such, in the round I think it more appropriate to award to the plaintiff loss of income for 6 months.

121. The defence case is that such should be calculated on the basis of a monthly salary of HK\$6,000, which was the amount of salary stated

in MPF records. I have no hesitation in rejecting it, for the following reasons:-

(1) The defendant recorded on monthly calendars the working hours of each of the shop attendants and in the Trial Bundles were 14 pages of such calendar covering April 2015 to September 2016<sup>36</sup>. I find that such records were made for the purpose of calculating the wages to be paid to each shop attendant.

(2) In the Form 2, Wong reported to the Labour Department on behalf of the defendant that the income of the plaintiff was paid at a rate per hour and her monthly income was HK\$12,500.

(3) The version given by the defendant, Wong and Ah Chu that a shop attendant worked 13 hours a day for 25 to 30 days a month earning only HK\$6,000 a month is completely unbelievable.

(4) The defendant paid the plaintiff 1<sup>st</sup> and 2<sup>nd</sup> Cheque Payments and the HK\$3,848 all calculated on the basis of HK\$37 per hour x 13 hours x number of days.

(5) I accept the plaintiff's evidence that she was paid by hourly rate.

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<sup>36</sup> P.722 to 735 of the Trial Bundles

122. Thus, I find in favour of the plaintiff's case pleaded in her Revised Statement of Damages that her average monthly income immediately prior to the accident was HK\$12,987.

123. I would calculate her loss of MPF based on her real earnings and not the false one as stated in the MPF records. Thus, the plaintiff's loss of pre-trial income, including MPF, is  $\text{HK\$}12,987 \times 6 \times 1.05 = \text{HK\$}81,818$ .

*B.6 Loss of earning capacity*

124. The jobs so far undertaken by the plaintiff were those of a cashier, shop attendant and the like which involved sitting or standing for long hours and/or some manual work. As said, I accept Dr Miu's opinion that because of residual pain, the plaintiff would work at a reduced capacity, albeit only mildly. I think she thereby would suffer disadvantage in the labour market.

125. Ms Cheng submitted an award equalled to a year's wages was appropriate. The defendant made no submission on quantum but just disputed that this item should not be awarded at all. In the round, I think an award equivalent to 4 month's wages is reasonable. Thus, I award  $\text{HK\$}12,987 \times 1.05 \times 4$ , totalling to **HK\$54,545**.

*B.7 Future medical expenses*

126. As the plaintiff would suffer from residual pain, I accept Dr Miu's opinion that symptomatic treatment may be required. I however do not think such should be awarded based on the rates in private sector since the plaintiff has not been receiving treatment from private sector. Based on the rate charged in the public sector and assessing it in a broad-brush manner, I would award HK\$4,000 for this item.

*B.8 Special damages*

127. The amount of medical expenses in the sum of HK\$10,000 (which I understand was in addition to the medical expenses of the Chinese Clinic of HK\$9,490) was agreed. I so award. For travelling expenses and a reasonable amount for tonic food, I would award respectively HK\$2,000 and HK\$3,500.

*B.9 Summary of amounts awarded*

128. In the premises, I award:-

PSLA	HK\$300,000
Pre-trial loss of income	HK\$81,818
Loss of earning capacity	HK\$54,545
Future medical expenses	HK\$4,000
Special damages	HK\$15,500
<b>Total :</b>	<b>HK\$455,863</b>

*C. DISPOSAL*

129. In the premises, I find the defendant fully liable and assess the plaintiff's loss and damage at the total sum of HK\$455,863. I would award interest on general damages for PSLA at 2% per annum from the date of Writ to the date of this judgment and interest on pre-trial loss of earnings and on special damages at half judgment rate of 4% per annum from the date of accident to the date of this judgment, and interest on any outstanding amount thereafter would be at judgment rate until full payment.

130. From the award above (together with interest) will need to be deducted the Employees' Compensation the plaintiff has received. The plaintiff has received in DCEC 818/2017 (a) a sanctioned payment of HK\$200,000 and (b) per my findings above the payment of HK\$35,278. As said, I find against the defendant's case that she has paid the plaintiff cash in the amount of HK\$25,000 and HK\$35,278. Moreover, the medical expenses of HK\$9,490 was only paid on the plaintiff's behalf and should not be deducted from the award herein. Thus, judgment will be entered for the balance after HK\$235,278 is deducted from the award of HK\$455,863 plus interest.

131. I will order costs, on a nisi basis, that the defendant do pay to the plaintiff the costs of this action, with a certificate for counsel, to be assessed on District Court Scale (including the costs incurred while this action was proceeding in High court) to be taxed if not agreed, and the plaintiff's own costs to be taxed in accordance with the Legal Aid Regulations. This costs order nisi will become absolute after 14 days unless any party applies by summons to vary before then.

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132. Lastly, I thank all counsel for their assistance.

( KC Chan )  
District Judge

Ms Cheng Suk Yee Flora, instructed by Sammy Ip & Co Solicitors,  
assigned by the Director of Legal Aid, for the plaintiff

Mr David Rex Boyton and Mr Stony SW Chan, instructed by T K Tsui &  
Co, for the defendant

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