###### DCPI 956/2009

### IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 956 OF 2009

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##### BETWEEN

## WONG CHEUNG CHUNG Plaintiff

### and

#### MTR CORPORATION LIMITED Defendant

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Coram: H.H. Judge Chow in Chambers (Open to Public)

Hearing date: 7th September 2010

Date of handing down Decision : 28th September 2010

Decision

1. This is the Defendant’s application for leave to appeal to the Court of Appeal in respect of the Judgment handed down by this Court on 2nd July 2010.
2. In the Judgment I reached the conclusion that the Plaintiff could not be expected to notice a raised gate rail on the ground of the level landing at a short distance ahead of him, where the lighting was dim. Never before had he come across a raised gate rail at that spot which he walked through many times before. This part of his evidence was not challenged and was accepted by me. On this basis I held that there was no contributory negligence on his part, because he had no prior notice of the risk of tripping over a raised gate rail.
3. Under paragraph 2 of the draft Grounds of Appeal the Defendant submits that the gate rail on which the movable metal gate slid was there to be seen and would in any case as a matter of common sense be expected, particularly having regard to the Plaintiff’s admission in cross-examination that with the metal gate there would be a gate rail which might protrude from the ground. But the Plaintiff also said that some of these gate rails are embedded in the ground. So it is wrong to say merely that the gate rail was there to be seen. If it is embedded in the ground, it cannot be seen.
4. In respect of paragraph 3 of the draft Grounds of Appeal, the Defendant argues that even if no or no adequate oral warning had been given by the Defendant’s staff to the Plaintiff of the presence of the gate rail, it was the Plaintiff’s own evidence that he had seen the staff member closing the sliding metal gate at Exit D1 and had shouted out to that staff member who then pulled open the metal gate to a width of about 3-4 feet to allow him to pass, whereby it ought to have been obvious to the Plaintiff that there would be or would likely be a gate rail and that reasonable care for his own safety was required when walking through the 3-4 feet gap. I do not accept this argument. The actual circumstances must be considered and canvassed. When the MTR staff re-opened the metal gate, the Plaintiff was hurrying to go up the stairs. Then he reached the level landing on the top of the stairs. There is no evidence to show that it was obvious to him that there would likely be a raised gate rail at a short distance head of him, where the lighting was dim. When he was ascending the stairs his attention focused on the stairs and his steps, and upon reaching the top of the stairs, his attention was on the other side of the exit in the direction of the downward stairs. Hence there is his evidence that upon reaching the level landing on the top of the stairs he looked forward for Lockhart Road. The landing was short. After walking for 1 or 2 steps his right foot tripped over something and he lost his balance. At about this time he saw that he had tripped over a raised gate rail on the floor at the base of the metal gate.
5. Under paragraph 5 of the draft Grounds of Appeal, the Defendant argues that the movable gate and gate rail were there to be seen by the Plaintiff as he was ascending the stairs which led to the metal gate and that he would at some point on the stairs have been at around the eye level with the gate rail and metal gate. When the Plaintiff was ascending the stairs his attention was still on the steps. This must be true as the lighting there was dim and he had to pay attention to where his feet landed, otherwise he might place his foot on the wrong place. It is reasonable for him to have done so. The Defendant’s argument may likely to succeed if the lighting was normal or good.
6. The Defendant submits in ground 6 of the draft Grounds of Appeal that the Plaintiff’s two co-workers had passed through that gate a little earlier without incident. There is simply no evidence to show the circumstances of the Exit D1 when these two co-workers used it. According to the Plaintiff’s evidence, which I accepted, there is no evidence to show that when the 2 co-workers exited Exit D1 earlier on, the MTR guard had placed the gate rail on the ground.
7. Regarding the award for PSLA, the sum of $440,000 awarded to the Plaintiff cannot be faulted. The injuries suffered by the Plaintiff were serious. Sick leave was granted, for a total of about 22 months. He must have suffered great pain at the time of the fall and shortly afterwards. The loss of amenities to his life is great. In my view the award of $440,000 is totally justified
8. The application has no merit. I therefore dismiss it, with an order nisi for costs to the Plaintiff, to be made absolute in 14 days’ time, to be taxed, if not agreed, with certificate for Counsel. The Plaintiff’s own costs to be taxed in accordance with Legal Aid Regulations.

(S. Chow)

District Judge

The Plaintiff : represented by Miss Phillis Loh, instructed by Messrs. Cheung Wong & Associates, Solicitors

The Defendant: represented by Mr. Ashok K. Sakhrani, instructed by Messrs. Deacons, Solicitors