DCPI2136/2006

# IN THE DISTRICT COURT OF THE

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 2136 OF 2006

BETWEEN

TSANG CHING FEI Plaintiff

and

MO KING GUO Defendant

Coram: Her Honour Judge H C Wong in Chambers (Open to public)

Date of Hearing: 25 July 2008

Date of Decision: 25 July 2008

D E C I S I O N

1. The defendant applies for leave to appeal against my judgment on 2 April 2008 finding against the defendant, ordering him to pay the compensation claimed. The defendant’s grounds of appeal today are:

*Ground 1*

The court has failed to address the issue and analyse whether an industrial accident had occurred on 27 March 2004 at the construction site.

1. Mr Leung informs me today that the defendant does not dispute the plaintiff had an injury on 27 March 2004 and was admitted into hospital on the same day. He questions only that the injury was caused by an accident at the construction site as alleged by the plaintiff in the manner described by him. Obviously, the medical record from the hospital had already clearly indicated that the plaintiff was admitted into the hospital on 27 March 2004 sometime after 1 pm.
2. The defendant denied in para. 2 of the Defence that the plaintiff was employed by him on 27 March 2004. He admitted he had built the house at the construction site which was completed on June 2003 and that no further work was carried out by him after that date, this was also pleaded in the Defence. He further denied the plaintiff was at the site on 27 March 2004 or that there was an accident there.
3. In my findings as to whether the plaintiff was employed by the defendant at the site on 27 March 2004, I have gone through the reasons why I accepted the plaintiff was employed by the defendant on 27 March 2004. It was not disputed by the plaintiff that he did not take part in the construction of the house itself before June 2003 and this has been expressed in paragraph 20 to 21 of my judgment.
4. In paragraphs 22 and 25 of my judgment, I had explained why I accepted Mr Tsang’s evidence based on his description of the site at the time. In paragraph 27, I expressed that I was satisfied the plaintiff was a truthful and honest witness and I found he had an accident at the site while working for the defendant.
5. When coming to that conclusion, I have gone through the plaintiff’s detailed description of the toolshed and the site as opposed to the defendant’s claim that the plaintiff had only visited the toolshed once before. It is therefore clear that I have made a careful analysis of the circumstances of the accident in my findings and, in conclusion, that the plaintiff was employed by the defendant at the site on 27 March 2004.
6. The plaintiff’s case was, the brick wall had collapsed on to his foot and he was taken by the defendant and his staff, Mr Law, in Mr Mo’s car (i.e., the defendant’s car) to the Tai Po Nethersole Hospital immediately after the accident (see paragraphs 3 and 4 of the judgment). I have further expressed that I accepted the plaintiff’s evidence as true. It is therefore clearly implicit that I have made a finding that that was what happened to the plaintiff on the day of the accident at the site of the accident.
7. It does not matter whether the work done on the day of the accident was to thicken the wall or to raise the height of the wall. The evidence was the plaintiff was working on the wall when it collapsed on him. At the time, the height of the wall, according to the plaintiff, was 1.5 metres high. The photographs at pages 16 to 18 of the hearing bundle (today’s application bundle) showed a wall much higher than the1.5 metre wall the plaintiff was working on on the day of the accident. There was no evidence from the defendant as to whether the wooden form boards or the brick wall would collapse when concrete was poured over or between them. It was never made an issue at the trial when the defendant gave evidence or when the plaintiff was being cross-examined. As Mr Leung was not the counsel at the trial he may not be aware of this.

*Ground 2*

The defendant’s payment of money to the plaintiff after the accident.

1. Again, I do not think this is an aspect of importance as to why the payment was not exactly fourth-fifths of the plaintiff’s former salary or that the payment for March 2004 was $5,000 and not $6,000. The evidence is, the plaintiff recorded the money he received from the defendant on a piece of paper. The defendant denied he had ever made such payments because the defendant denied the plaintiff had ever worked for him. The defendant consequently denied he had ever paid any money whatsoever to the plaintiff. The issue was, whether the plaintiff was telling the truth about the accident and about the money he received after the accident from the defendant.
2. I accepted the plaintiff’s evidence based on the documentary evidence in support produced by him. Issues, such as the plaintiff’s evidence of the plaintiff’s residence and the plaintiff’s allegation that the defendant took him to the construction site in his car from the toolshed are not issues that require further analysis. Mr Leung mistook the reference to this transport to the site as being from the plaintiff’s home but in fact it is clear in my judgment that based on the plaintiff’s evidence, the Plaintiff took public transport and walked to the toolshed from the bus stop, waited for Mr Law at the toolshed, he was then transported from the toolshed to the construction site. After finishing work during the day he would return to the toolshed each day while he was working for the defendant. This was the evidence of the plaintiff in support of the fact he was employed by the defendant and was so employed on the day of the accident. It was accepted by me based on which, I found he was a truthful and honest witness.
3. I do not think the defendant has shown a good case on appeal. I do not believe the defendant has any chance of success on appeal. I therefore dismiss the defendant’s application with costs, to be taxed if not agreed and the plaintiff’s costs to be taxed in accordance with Legal Aid Regulations.

(H C Wong)

District Court Judge

Mr C.L. Wong of Messrs Hobson & Ma, for the Plaintiff

Mr K. Leung, instructed by Messrs Pansy Leung Tang & Chua, for the Defendant