DCPI459/2003

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 459 OF 2003

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BETWEEN

CHIN SIU FONG, the administratrix

of the estate of MAK CHUN SING, deceased Plaintiff

and

LIK HING ENGINEERING COMPANY 1st Defendant

LIMITED

YUEN CHEONG ENGINEERING COMPANY 2nd Defendant

LIMITED

HENG TAT CONSTRUCTION COMPANY 3rd Defendant

LIMITED

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Coram: H H Judge Carlson in Court

Date of Hearing: 19 January 2004

Date of Judgment: 19 January 2004

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J U D G M E N T

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1. This is a fatal injury claim in which the deceased, Mr Mak Chun‑sing, who was a plumber by occupation, was killed on 30 December 1998 in the course of his employment with the 1st defendants at a building site at Phase III, Metro City, Junk Bay, New Territories. The 2nd defendants were the plumbing services subcontractors, who had in turn subcontracted part of this work to the 1st defendants. The 3rd defendants were the principal contractors on the site.
2. The plaintiff is the deceased’s widow who brings these proceedings as administratrix of his estate for the benefit of his dependants and of his estate.
3. Quantum has been agreed at $1,706,802 plus interest. From this sum there must be deducted $1,417,500, being the award under the Employees Compensation proceedings, therefore leaving over a balance of $289,302. I am therefore only required to determine whether the defendants are liable for the deceased’s death, and if that is so, whether there should be a deduction on the ground of contributory negligence by him.
4. This trial has been short. The plaintiff has called one witness, Mr Lo King‑lok, the Occupational Safety Officer who was employed by the Labour Department. The defendants have called no evidence. As a result, I have not heard from any of the deceased’s fellow workmen, although Mr Lo, in preparing his report, which starts at page 48 of the documents bundle, has interviewed all of the people concerned. I have also got a transcript of the Coroner’s Inquest, when some of these workmen were also called and examined by the Coroner. There is also a transcript of the trial in the Magistrates’ Court, the 3rd defendants having been prosecuted as a result of this accident for an offence under Regulation 32(2) of the Construction Sites (Safety) Regulations, Cap.59, which provides as follows:

Where a workman operating a hoist does not have a clear and unrestricted view of the hoist’s carriage, platform or cage throughout its travel (except at points where such a view is not necessary for safe working), the contractor responsible for the hoist shall make effective arrangements for signals for operating the hoist to be given to the workman from each landing place at which the hoist is used and to enable him to stop the carriage, platform or cage at the appropriate level.

1. From these transcripts I therefore know what these persons have had to say about the incident.
2. I need to come to a view, if I can, as to what caused the plaintiff’s death from Mr Lo’s investigations and from the transcripts and statements taken by Mr Lo as part of that investigation. In the absence of any direct evidence as to how the deceased came to his death I need to come to a conclusion really by drawing what I hope will be proper inferences from the facts that can be established beyond any serious doubt.
3. The background appears to be this.
4. On the morning of 30 December 1998 the deceased was asked by Mr Wu, his foreman, to install a section of specimen piping on the staircase of the 14th floor of the tower block that was being built there. At page 98 is a photograph of the block in question. Running up the building was a material hoist from which building materials could be raised to the appropriate floor of the building for installation. Mr Wu took the deceased and his fellow workman, Mr Liu Hing‑tung, to the 14th floor and showed them what needed to be done. Then at the ground floor Mr Wu showed the deceased the brackets that needed fixing.
5. Mr Liu loaded brackets onto the hoist at the ground floor and the platform was raised by Mr Wu, who was the operator of the hoist, to the podium. At the podium, further pipes and brackets were loaded onto the hoist by the deceased, a fellow workman Mr Yee Ming‑yum and by Mr Liu.
6. The deceased was the first to leave the podium and he made his way up to the 14th floor by using the builders lift. Mr Liu and Mr Yee remained behind to complete the loading of the materials, and then Mr Liu also departed to get to the 14th floor by using the builders lift. He took with him a walkie‑talkie so that he could communicate with Mr Wu who would be operating the hoist from ground level and who could not see, from where he was, the precise position of the hoist platform in relation to the required floor.
7. At 11.30 am Mr Liu got to the 14th floor, arriving some minutes after the deceased would have got there. He found that the platform of the hoist had been raised to a position that was higher than the 14th floor and that some of the pipes and brackets had already been unloaded from the hoist and had been placed on the ground on the 14th floor, close to the entrance to the hoist. He could not find the deceased. He spoke to Mr Wu on the walkie‑talkie to tell him to lower the hoist down to the floor level of the 14th floor but could get no response. That was because Mr Wu had been called away by another workman to find the deceased lying on the ground at the bottom of the hoist, presumably dead from his injuries.
8. Mr Lo describes the operation of the hoist at page 51 of the bundle.
9. There are two modes of operation. One is automatic, whereby all the operator has to do is to punch in the required floor on the control panel and the platform will go to the desired level. This mode of operation was not working on this particular day so that the hoist had to be operated manually. This was done by the operator having two buttons. One was to engage the hoist at full speed and the other gave a finer control at a slow speed to enable the operator to adjust the platform to be level with the required floor. A signaller on the required floor would give the operator the instructions that he needed in order to guide him to the correct position.
10. As one might expect, the hoist comes with a number of safety features. Each floor has a gate to the hoist (see pages 59 and 60). Once a gate is open, the hoist is disabled until the gate is closed. When Mr Lo arrived at the site about an hour after the police had called his department, he found that the hoist was on the 15th floor and level with that floor. The hoist still had some of the pipes and other materials in it. What Mr Lo also discovered was that the safety mechanism at the 15th floor gates had been disabled by the insertion of a piece of wood, which meant that at this floor the hoist could be operated even if the gates were open. He found that the gates at the 14th floor were shut.
11. It is clear from this that what Mr Lo observed was not the final position at the time of the accident. I say that, having regard to what Mr Liu had told him and, indeed, had also told the Coroner that when he got to the 14th floor the hoist was there but above the level of the floor and that the gates to the hoist were closed. A Mr Lo Kin‑ping, who was also interviewed, said that he had seen the deceased get to the 14th floor, and shortly after that he saw Mr Liu arrive, looking for him.
12. These are the primary facts from which I need to come to a conclusion.
13. I am able to safely infer to the required degree ‑ that is to say on a balance of probabilities ‑ that once the deceased arrived at the 14th floor he found the hoist at that floor, as Mr Liu has described, at about a metre above the level of the 14th floor itself. I am also satisfied that notwithstanding that it was not level he decided to open the gates and he started to unload some of the brackets and pipes. The hoist, if anything, would have been at a more convenient level for him because he would not have had to bend down to get hold of the pipes and brackets. The platform would have been at about waist level for him. I am also satisfied that whilst in the course of doing this work he must have lost his footing and slipped to his death through the gap between the floor on the 14th floor and the platform of the hoist. What is also clear is that somebody then shut the gates to the 14th floor after the deceased had fallen through the gap, and the platform to the hoist was then raised to the 15th floor.
14. Nobody has been found or is willing to say precisely when, why and by whom this was done. Nobody has been found or is willing to say who then disabled the safety mechanism to the gates at the 15th floor, or why this had been done. All I am able to say is that the closing of the gates at the 14th floor and the removal of the hoist up to the 15th floor and the jamming of the safety device to the 15th floor gates happened after the fatal fall.
15. Where does all this take the plaintiff’s case in terms of proving her case?
16. The gravamen of the case is that the defendants failed to provide a procedure whereby the deceased could not open the gates on the 14th floor unless the hoist platform was level with the floor. The manual operating system did not provide for this. That being so, a proper signalling system needed to be employed so that the operator could fine tune the level of the platform to floor level position by means of instructions from the signaller. On this occasion, the signaller arrived at the 14th floor after the deceased and who had, in fact, obviously started to discharge the equipment from the hoist.
17. This represented a major failure in providing a safe system of work in the prevailing circumstances; these circumstances being that the automatic mode of the hoist’s operation was not functioning. Any system that enabled a workman to carry out this sort of work with a 1 metre gap between the floor and the platform was seriously wanting. I have no doubt that the defendants are guilty of negligence in allowing that to happen.
18. This also includes the 2nd defendant, who was the plumbing subcontractor. This work was, after all, being conducted as part of their works on the site and they too should have seen to it that the works which they had been subcontracted to do were to be carried out in a safe manner.
19. I therefore find that negligence has also been made out against them on the basis that I have just described.
20. There has been an element of speculation as to whether the deceased had disabled the safety mechanism to the gates of the hoist on the 14th floor. This can amount to no more than speculation, and so I have no regard to it.
21. What I now need to consider is the defendants’ plea of contributory negligence.
22. I find that there has been a real element of this on the part of the deceased. He has worked on building sites for 20 years or so and he is therefore an experienced man. It was negligent of him to have started to unload the piping and other equipment when the platform was about 1 metre above floor level. He should have waited for Mr Liu to arrive to talk to Mr Wu, the operator, so that he could lower the platform to where it was level to the floor of the 14th floor. By doing this, he disregarded his own safety.
23. I would discount the damages by 20 per cent to reflect his own negligence in the way that I have described. The agreed damages of $289,312 must therefore be reduced by 20 percent. I will also award interest, which I believe the parties are in fact also agreed on.

(Discussion re interest and costs)

Court adjourns ‑ 4.35 pm

Court resumes ‑ 5.10 pm

Appearances as before.

(Further discussion on interest and costs)

1. Costs to the plaintiff up to 4 October 2002 at District Court scale. Costs to the defendants after that date on High Court scale up to 15 September 2003 and thereafter at District Court scale. These costs to include costs reserved by Sakhrani J on 15 September 2003 on High Court scale and costs reserved by me on 20 November 2003.
2. Judgment to the plaintiff for $22,253.55.
3. Legal Aid Taxation of the plaintiff’s costs up to 24 October 2002.

(Ian Carlson)

Judge of the District Court

Mr H Chung, instructed by B Mak & Co., for the Plaintiff

Mr Kenny Lin, instructed by Messrs Simmons & Simmons, for all Defendants