# DCPI 501/2008

# IN THE DISTRICT COURT OF THE

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 501 OF 2008

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BETWEEN:

LIU WAI LEUNG Plaintiff

and

ASIA CONSTRUCTION COMPANY LIMITED 1STDefendant

EXCEL ENGINEERING COMPANY LIMITED 2ND Defendant

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Coram: District Judge P. Li in Court

Dates of Hearing: 10th, 11th, 16th June 2008

Date of Handing Down of Judgment: 8th September 2008

JUDGMENT

Background

1. The Plaintiff was a general labourer at a construction site at Cheung Sha, Lantau Island (the Site). He was the employee of the 1st defendant. The 2nd defendant was the principal contractor of the Site. On 18 February 2004, the Plaintiff sustained injury while shovelling soil on a slope at the Site. He sprained his back leading to L5-S1 prolapsed disc and nerve root compression. He claimed damages against both Defendants based on common law duty of care and breach of statutory duties.
2. The Defendants dispute liability and put the Plaintiff on strict proof. Alternatively, they alleged contributory negligence on the part of the Plaintiff.

**Summary of evidence**

## *The Plaintiff’s evidence*

1. He adopted his statements in trial bundle B, pages 106—134, 172—193, 225—231 and 241A—241J.
2. He was a salesman before joining the 1st Defendant in 2003. His father was the most senior foreman of the 1st Defendant. He was introduced by his father to work with the 1st Defendant.
3. In his first statement dated 9 May 2007, he said he was not given work instructions/guidelines. He however admitted on cross-examination that this was not true. He had actually attended 5 seminars[[1]](#footnote-1) but he learnt nothing from them. On further cross-examination, he admitted that he learnt about posture in moving heavy objects. He was instructed to take a rest if tired. However, the instructions were not specific about shovelling.
4. Before the incident causing the injury, he had worked at the Site for over a year. He knew the job was physically demanding. His main duties included clearing waste material, shovelling soil, erecting work platform and pouring cement.
5. Initially, he maintained that he had not done shovelling formally. Later on further questioning, he agreed that he did shovelling at the Site. He was experienced in the task.
6. He had to work as hard as the others to avoid gossip about him and his father. Although he could consult his father about safety and difficulties at work, he had not done so.
7. The other main points are as follows:

*The nature of the work*

* + 1. Before the injury, he had been shovelling soil on the work platform for a few days.
    2. He had to shovel soil from a heap of soil at the work platform on his right. He then shifted both legs and turned to face the slope at his left. He had to exert some force to pour the soil forwards and upwards onto the slope at his left about knee level, i.e., 2 feet high. As the work platform was not level, he had to balance himself.[[2]](#footnote-2) He knew he had to be careful in controlling the swinging movement.
    3. The soil was heavy and it was not a cushy task. Initially, he estimated that the weight of each shovel was over 10 kg. He later amended it to 6 kg.[[3]](#footnote-3) However, he could control the amount of soil shoveled. He knew his physical ability and would only shovel the weight that he could manage.[[4]](#footnote-4)
    4. If he had to catch up with the work schedule, he could not afford shovelling less. In re-examination, he said Mr. Cheng, the foreman, asked him to be quick. However, he had not pleaded in the statement of claims that he had to work in haste. He insisted that he had told his lawyer.

*Intermittent breaks*

* + 1. There was no break in the morning. There was one hour lunch break. In the afternoon, he could take an unofficial tea break but not regularly. Each break was about 5 minutes.
    2. Although he could take a short break at times, it was not free to take a break as the person-in-charge would monitor the progress.
    3. While he maintained that there was no official break, he agreed in cross-examination that he could take a break whenever needed. He also agreed that everyone take a break at about 10 a.m. and 3 p.m. each day.
    4. In re-examination, he said workers might take breaks unofficially when tired.

*Work space [[5]](#footnote-5)*

* + 1. He had to stand at the work platform between the upper and lower water catchment channels. The work platform was an extension from the parapet specially erected for the construction work. It was 6 to 8 feet wide. There was a board of about 6 feet high at the other end.
    2. The work platform was not level. There was a heap of soil about one meter high on his right. The space he stood and worked was about 30 inches wide. There were soil and small stones on the work platform. It was also a bit wet and slippery. He had to stand with one foot in front and the other foot behind at about right angle to each other like a ‘T’.
    3. He had not pleaded in the statement of claim that the work platform was slippery and wet. At that time, he only roughly recalled the situation as he was busy preparing for his wedding.
    4. He did not tell his father about the slanting and slippery work platform. He did not want others to misunderstand him as evading work.
    5. At the material time, the parapet and the upper water catchment channel was under construction.[[6]](#footnote-6)
    6. There were three other workers shovelling soil in the vicinity, each at about 1 meter apart.

*The injury*

* + 1. On 18 February 2004, he started shovelling work at about 8 a.m. At about noon before lunch, when he was turning towards the slope with a shovel of soil, there was pain at his lower back. He fell on the ground.
    2. He informed the foreman, Mr. Cheng, who told him to take a rest. He did not continue the shovelling work in that afternoon.
    3. The pain subsided a lot the next day. He returned to work and was only assigned light duties for a few days. However, he had to take drugs to relieve the residual pain.
    4. On 23 February 2004, he felt pain at his back but managed to turn up for work. At about noon, while he was bending down to pick up some garbage, there was sharp pain at his right hip. He went to Princess Wales Hospital for treatment. He received an injection and the pain subsided.
    5. He continued work until 11 March 2004. Mr. Cheng, the foreman, reported that as the last day of work. That was why the ‘Work Injury Investigation Report’ had the record that the injury date was on 11 March 2004.[[7]](#footnote-7)
    6. Subsequently, he made a declaration on oath that the injury was sustained on 18 February 2004 on the advice from the Labour Department.[[8]](#footnote-8)
    7. On 12 March 2004, the pain was so serious that he could not turn up for work. He was referred to the Orthopaedics Department for treatment. He was granted sick leave until 2 June 2004.

*Treatment*

* + 1. After the injury in February 2004, he had physiotherapy treatments on 28 February, 2, 4 and 8 March 2004.
    2. He had an operation in June 2004 to remove his intervertebral disc at Prince of Wales Hospital. His condition improved a bit after the operation.

1. There was a video taken of the plaintiff on two days in February, 2007. The video was played during the trial. The following points are relevant:
   * 1. He walked on level grounds and stairs in normal gait. There was no abnormality in both aspects.
     2. He was seen pushing a hand cart with heavy load up a short slope with assistance from another person. He was seen loading goods into the trunk of a car without difficulties.
     3. He maintained that after the accident up to May 2007, his waist and right leg cannot move normally. His movement was slow. He often felt pain and numbness. He needed help from his family in daily activities.[[9]](#footnote-9)
     4. Under cross-examination, he agreed that there was no abnormality in his right leg. His mobility was better than he described above. This was the effect of painkiller.
     5. He only mentioned about taking painkiller occasionally in his supplementary statement. [[10]](#footnote-10)
2. The defendants called no evidence.

**Common law duty of care**

1. There is no dispute that an employer has a duty to take reasonable care in providing safe tools, a safe work place, a safe system of work and not to subject the employee to risk known to the employer. I would deal with each allegation by the Plaintiff as follows.

*Weight of each shovel*

1. The weight of the soil in each shovel is an important basis of the Plaintiff’s claim. In his statement dated 9 May 2007 (1st statement), he claimed that the soil in each shovel was 10 kg. In his statement dated 16th October 2007 (2nd statement), he maintained it was a heavy weight but did not specify. In his statement dated 29 January 2008 (3rd statement), he amended the weight to 6 to 8 kg. In court, he said he could control the amount of soil shovelled. He knew his physical ability and would only shovel the weight that he could manage. The weight of the soil in each shovel is an important aspect in support of the Plaintiff’s case. Even accepting that all these were estimates, the shift from 10 kg to ‘a weight he could manage’ shows that the Plaintiff is unreliable in this aspect.

*Intermittent breaks*

1. The Plaintiff maintained that there was no official break. It was only after repeated questioning that he finally agreed that there were unofficial breaks at times. He finally agreed in cross-examination that he could take a break whenever he was tired. He also agreed that everyone take a break at about 10 a.m. and 3 p.m. The Plaintiff was evasive in answering questions in this aspect. His insistence on the distinction between official and unofficial break is farfetched.

*Training or instructions*

1. In the 1st statement, the Plaintiff stressed that the Defendants failed to provide work instructions and guidelines. In his 2nd statement, he admitted having attended weight lifting training seminars but it was not related to shovelling. In his 3rd statement, he mentioned the ‘Tool Box Talk’ but he found the talk too simple and of no practical use.
2. He admitted during cross-examination that he had actually attended 5 seminars although he learnt nothing from them. On further cross-examination, he admitted that he learnt about posture and movement in manual labour. He knew he should take a rest if tired. However, the instructions were not specific about shoveling.
3. The Plaintiff is unreliable. He said he learnt very little from the seminars but he admitted that he was briefed about weight lifting and movement in these seminars. He was also told to take a rest when tired. As a matter of fact, one of the Plaintiff’s duties as manual labourer at the Site was shovelling. He had been working at the Site for over a year before the accident. He was experienced in shovelling. In my view, the principle of weight lifting applies equally to shovelling. The latter involves little additional skill. The Plaintiff’s criticism that the seminar taught nothing about shovelling is unreasonable.

*Time pressure*

1. The Plaintiff had not pleaded in the statement of claim that he had to work under time pressure. There was nothing mentioned in the 1st statement that he was under time pressure to finish the shovelling task. In his 2nd statement, he only mentioned time pressure indirectly in these words, “*…..other workmates were undertaking the work at the same time. The work progress of each person had to be more or less the same. Therefore a certain degree of pressure did exist while the work was performed*.” There was no evidence as to the extent of time pressure. Nor was there any evidence how fast the others were shovelling.
2. Dealing with the same issue in court, the Plaintiff said the foreman asked him to be quick. This is inconsistent with his statements.
3. I find that the defendant was exaggerating the issue of time pressure to boost his case. I do not accept his evidence in this aspect.

*Work platform*

1. The Plaintiff gave evidence that the work platform was a bit wet and slippery. There is no mention in the 1st statement that the work platform was slippery. In the 2nd statement, he mentioned that the platform was a bit slippery. In his 3rd statement, he mentioned wearing safety shoes himself. There was no evidence how the slippery platform affected the Plaintiff while shovelling. In fact, he did not plead this specifically in his statement of claim. The Plaintiff explained that he was busy preparing for his wedding. He just roughly recalled the incident. I find this explanation unacceptable.

*Use of painkiller*

1. The defendant claimed in the 1st statement that after the accident, his waist and right leg could not move normally. There was frequent numbness, pain and weakness. He needed help from his family in daily routine. He agreed in court that this condition continued up to May 2007.
2. The video recorded in February 2007 showed that he could manage staircases and walking without difficulty. His gait was normal. He could even load goods (about 10 kg) into the trunk of a car. The Plaintiff explained that he had taken painkillers on those days of the video. This would make a lot of difference.
3. The Plaintiff did not mention taking painkillers in his 1st statement when he described his condition set out in paragraph 22 above. Even in his 2nd statement, the Plaintiff only mentioned taking painkiller occasionally after the injury.
4. I find that the Plaintiff exaggerated his condition. His explanation that he had taken painkiller at the time of the video was not convincing. It is an obvious act to salvage his case from the contradiction revealled in the video.

*Work space*

1. The Plaintiff pointed out that the space on the work platform, at which he could stand, was about 30 inches wide. It was too narrow for him to move freely during shovelling. According to his evidence, he was to shovel soil from a heap on his right which was about 3 feet high. He then poured the soil over the slope on his left which was about 2 feet high. According to the sketch[[11]](#footnote-11), the Plaintiff’s movement was unobstructed from waist upwards. Although he had to turn his trunk, the swing required was not great as he could shift his legs so that he faced the slope. Taking into account the weight of each shovel, coupled with the height of the slope which was about two feet, the swing demonstrated in the serial photographs[[12]](#footnote-12) is an exaggeration. I do not accept that the space of 30 inches was causing obstruction to him leading to awkward movements.

*The act of shovelling*

1. As described by the Plaintiff, he was required to shovel soil from a heap of soil on his right from the work platform. The heap was about 3 feet high. He then moved his legs a bit and turned his waist so that he was facing the slope. He then exerted some force to pour the soil onto a slope which was over 2 feet high on his left.[[13]](#footnote-13) The sketch in appendix 1 of his 2nd statement showed the relative positions. This must be assessed in the light of the finding above in paragraphs 13 to 25. The shovelling was by all standard a simple task. The Plaintiff was experienced in shovelling since he joined the 1st defendant more than one year before the incident. Given the above, I do not think there need to be special instruction from an employer nor was there need to be special precautions apart from those related to weight lifting.
2. An employer is not required by law to provide a perfectly safe work system. He is not required to control and give instructions on each detailed steps of a task. Provided that the task is not complicated or exceptional in nature, there must be some aspects of the task which could be left to the judgment of an employee.
3. I find support of the above in the case of **Cheung Suk Wai v AG [1996] 4 HKC 288**. The Plaintiff was a workman of the ‘Regional Services Department’. One of her duties was to put bags of garbage into the containers at the refuse centre. The Plaintiff had to swing the bags over the side of the container. There was no instruction as to how full should the bags be filled. The Plaintiff was left to decide herself. The Plaintiff injured her back one day while performing this duty. The Plaintiff claimed damages on the basis that the defendant failed to provide safe tools and a safe system of work.
4. In dismissing the claim of the Plaintiff, Leung J (as he then was) held that the operation of putting bags of garbage into containers was a simple operation. It was an operation that the Plaintiff had performed since she took up employment as a cleaning worker. It was an operation where the plaintiff could have freely decided on the weight of the bags and how to carry it out in a way most suitable to her physical ability. There was no strict time limit to perform her work.
5. Leung J. cited with approval the judgment in **Winter v Cardiff Rural District Council [1950] 1 All ER 819, 822.** Lord Oaksey commented as follows:

“In my opinion, the common law duty of an employer of labour is to act reasonably in all circumstances. One of those circumstances is that he is an employer of labour, and it is, therefore, reasonable that he should employ competent servants, should supply them with adequate plant, and should give adequate directions as to the system of work or mode of operation, but this does not mean that an employer must decide on every detail of the system of work or mode of operation. There is a sphere in which the employer must exercise his discretion and there are other spheres in which foremen and workmen must exercise theirs….where the system or mode of operation is complicated or highly dangerous or prolonged or involves a number of men performing different functions, it is naturally a matter for the employer to take the responsibility of deciding what system shall be adopted. On the other hand, where the operation is simple and the decision how it shall be done has to be taken frequently, it is natural that it should be left to the foreman or workmen on the spot.”

1. Having considered the analysis above, I reject that there was negligence on the part of the Defendants. I find the following:
   * 1. The weight of each shovel could be adjusted by the Plaintiff according to his physical ability. In any event, it would be around 6 kg. This weigh was not so heavy that demands special procedures for lifting.
     2. There were intermittent breaks whenever needed, be it official or unofficial.
     3. There were instructions in relation to weight lifting and body movement about manual labour work. The Plaintiff was instructed to take a break when tired.
     4. There was no time pressure to finish the shovelling task.
     5. The work platform was not wet and slippery to such an extent that it created a risk to the Plaintiff.
2. Counsel for the Plaintiff, Mr. Hung, submitted that the Defendants had not called any evidence to challenge the evidence of the Plaintiff. He invited this court to draw adverse inference against the Defendants. He relied on **Li Sau Keung v Maxcredit Engineering Ltd. & Another [2004] 1 HKC 434**.

1. In **Li Sau Keung**, the Plaintiff alleged that he had fallen from a height of 15 feet while working at a building site. He had fractured his spine at ‘L4’ region. He was interviewed by an employee of the principal contractor (second defendant in that case) who prepared an accident report. In the report, there was no mention of a fall. The judge rejected that there was a fall for two main reasons. Firstly, there was no persuasive medical evidence to corroborate that there was a fall. Secondly, there was no mention in the accident report about a fall.
2. The Court of Appeal found that the Plaintiff’s evidence was unequivocal about the fall. Besides, he insisted that he had told the employee of the second defendant during the interview. The medical evidence was not incompatible with that of a fall. Given these evidence, the employee of the second defendant, who compiled the accident report, was expected to give evidence in the circumstances. However, he was not called. The Court found that the importance which the trial judge attached to the absence of the mention of a fall in the accident report was unwarranted. Le Pichon JA cited with approval the following passage from **O’Donnell v Reichard [1975] VR 916 at 929**:

“It is sufficient to say that in our opinion for the purposes of the present case the law may be stated that where a person without explanation fails to call as a witness a person who he might reasonably be expected to call, if that person’s evidence would be favourable to him, then although the jury may not treat as evidence what they may as a matter of speculation think that that person would have said if he had been called as a witness, nevertheless it is open to the jury to infer that that person’s evidence would not have helped that party’s case; if the jury draw that inference then they may properly take into account against the party in question for two purposes, namely; (a) in deciding whether to accept any particular evidence, which has in fact been given, either for or against that party, and which relates to a matter with respect to which the person not called as a witness could have spoken…..”

1. In the present case, not only was the Plaintiff’s evidence equivocal, his evidence was contradictory in several important aspects set out above. I do not think the state of the Plaintiff’s evidence entitles this court to draw adverse inference against the Defendants because of any failure to call defence evidence.

**Breach of statutory duties**

1. I have carefully considered the provisions of Occupational Safety and Health Ordinance, Cap 509 (OSHO) and Occupational Safety and Health Regulation, Cap 509A (OSHR). The purposes of OSHO, as stated in s.2 of the ordinance, are to ensure safety and health of employees; to prescribe measures to improve safer and healthier workplace, and to improve safety and health standards.
2. OSHR is made under s.42 of OSHO. While the regulations go into details of various aspect of safety at workplace, the subsection most relevant to the present case is s.42 (j)—providing for activities undertaken at workplaces to be assessed in order to determine the extent of risk.
3. Having considered the provisions of OSHO and OSHR, I am of the view that the purposes of these provisions are clear for the promotion and protection of the safety and health of the workers at workplaces. Civil liability will arise where a breach contributes to the causation of injury or loss.
4. I shall deal with individual sections and regulations as follows.

*Sections 6 & 7 OSHO*

1. Plaintiff alleged that there was a breach of sections 6 and 7 of OSHO. The Plaintiff in gist alleged that the work system and the work place were not safe. The details include that the work platform was wet and slippery. The work space was only 30 inches wide limiting movements. There was insufficient training and the weight of each shovel was too heavy.
2. No particulars about the slippery work platform were pleaded in the statement of claim or the amended statement. Nor was there any mention that the work platform was slanting. There was no specific evidence from the plaintiff showing how these conditions of the work platform affected him. Take it to the highest, the plaintiff could only say that the work platform was “*a bit wet and a bit slippery*”. In fact, he had safety boots on while at work.
3. Given the analysis in paragraph 13—21 and 26 above, I find no breach of these sections.

*Regulation 23, OSHR*

1. This regulation requires a responsible person to conduct a preliminary assessment of the risks of manual handling operations. The definition of ‘manual handling operation’ is very wide. It would be impracticable to assess and to provide guidance to each kind of manual task at a construction site. In my view, this regulation does not mean to create a mandatory duty of such scale. There must be a real risk of injury foreseeable by the responsible person before a preliminary assessment is necessary. In assessing a real risk, I would take account of the nature of the manual handling operation, the experience of the Plaintiff and the type of training provided.
2. During the trial, the Plaintiff had not given any evidence to support the breach of this regulation. Be that as it may, I have found that the workplace and the system of work were not unsafe. Shovelling was one of the Plaintiff’s duties since he joined as a manual labourer at the Site. He was not a new starter at the material time. He admitted having been trained about the precautions in weight lifting. He was aware of these precautions at the time of the shovelling task. Having considered all the above and the findings in paragraph 32, I do not think there was a real risk of injury foreseeable to the Defendants or their foremen. I find no breach of this regulation.

*Regulation 24, OSHR*

1. This regulation requires the person responsible to avoid the need for employees to undertake manual handling operation so far as reasonably practicable. There was no evidence from the Plaintiff as to how the shovelling task could have been done by other means instead of using manual handling. The task was to pour soil onto a slope along which water catchment channels were built. Having considered the evidence in the trial, I am convinced that the shovelling task required manual handling. It was not reasonably practicable to avoid the need for the Plaintiff to undertake manual handling operation in the circumstances of this case. I find no breach of this regulation.

*Regulation 25, OSHR*

1. This regulation requires a person responsible to make a further assessment of manual handling operation which ‘*may create safety and health risks*’ if it is not reasonably practicable to avoid the need for any manual handling operations. This regulation is complementary to regulation 24. In my view, the phrase ‘*may create safety and health risks*’ implies a real risk foreseeable to the person responsible. As I have held above in paragraph 44 & 45, the shovelling was not a task which a real risk of injury was foreseeable given the circumstances of this case. In particular, the Plaintiff was trained about weight lifting precautions. I do not think there was a need to make a further assessment taking into account matters raised in schedule 3. I find no breach of this regulation.

*Regulation 27—30, OSHR*

1. All these regulations apply to manual handling operation which *‘may create safety and health risks*’. For the same reasons as in paragraph 44—45 & 47, a real risk of injury was not foreseeable. Again, the Plaintiff had not adduced any evidence supporting the allegation of any breach of these regulations. For the sake of completeness, I would deal with the requirements of each regulation as follows:
   * 1. Regulation 27, in gist, requires appropriate steps to reduce the safety and health of the employees to lowest level; to provide information on the weight of each load; provision of mechanical aids and teamwork. Given the findings in paragraph 32, coupled with the nature of the shovelling task, further steps to reduce risks of injury to its lowest level was not reasonably practicable. Besides, the weight of each shovel was controlled by the Plaintiff. There was no need for mechanical aids. As to teamwork, it is not applicable in the present case. In the circumstances, I find no breach of regulation 27.
     2. Regulation 28 requires the appointment of assistants where 10 or more employees are undertaking manual handling operations. There is no evidence as to the number of fellow employees undertaking similar shovelling task as the Plaintiff did at the material time at the Site. The Plaintiff mentioned that there were three others performing the shovelling task nearby. I find no breach of this regulation.
     3. Regulation 29 requires relevant comprehensible information as to the safety and health risks and the preventive measures. There was weight lifting training. The Plaintiff was allowed to take a break when tired. He could control the weight of each shovel according to his ability. There was little further information needed. There was no breach of this regulation.
     4. Regulation 30 requires an employer to assess the capabilities of the employees before allocating manual handling operations. The Plaintiff was not a new starter to the shoveling task. In fact, he had experience of shovelling task for over a year before the injury. He received training on weight lifting. There was nothing which indicated to the defendants that the Plaintiff was not suitable for the shovelling task. I find no breach of this regulation.

*Regulation 31, OSHR*

1. This regulation requires an employer to provide such training as will be necessary to avoid or minimize the risks. According to the Plaintiff’s own evidence, he learned weight lifting and trunk movements in a seminar. He was told to take a rest when tired. In fact, he could adjust the weight of each shovel according to his physical ability. Given all this, I find no breach of this regulation.
2. Alternatively, even if I am wrong in the analysis in paragraphs 44—48 above, there was breach of OSHR because the risk was foreseeable. In my view, breach of the OSHR had not contributed to the cause of the injury. The risk should have been met by the Plaintiff taking more precautions which he was aware. To say the least, he should be more careful in his posture during each shovel. He should have adjusted the shovelling task according to his physical ability.
3. I appreciate that an employee cannot be expected to exercise caution all the time especially when the task involved repetitive movements. This argument is not persuasive in the light of the Plaintiff’s evidence. In his 1st statement, he mentioned that while shovelling, he had to be careful in controlling the swinging bodily movement and the force as the shovel itself and the earth loaded thereon were very heavy. As the place of work was so confined, he had to make efforts to stabilize his body while shoveling the earth.[[14]](#footnote-14) In my view, he was fully aware of the necessary precautions at the material time.

**Conclusion**

1. The Plaintiff was injured in the course of his work. He was compensated under the Employees’ Compensation Scheme. The fact that the Plaintiff was injured did not necessary indicate that his employer was at fault. The Plaintiff must prove that his employer failed to exercise reasonable care.
2. Having considered the analysis above, I conclude that the Plaintiff fails to prove on the balance of probabilities that the Defendants were negligent on 18 February 2004 under common law. The defendants were not in breach of any statutory duties. The claim for damages is dismissed. Judgment entered for the Defendants with costs.

Patrick Li

District Judge

Representation:

Mr. Andy Hung, instructed by M/S. Huen & Partners for Applicant.

Mr. Ashok Sakhrani, instructed by M/S. Winnie Leung & Co. for 1st and 2nd Defendant.

1. Trial bundle B, page 265, paragraph 6. [↑](#footnote-ref-1)
2. His description is at trial bundle B, page 199, 11th line from the bottom until page 200. The serial action is shown in the photographs in trial bundle B, pages 184—189. [↑](#footnote-ref-2)
3. Statement of Claims, para 5 and amended Statement of Claims. See also trial bundle B, page 238, 4th line from the bottom. [↑](#footnote-ref-3)
4. Trial bundle B, page 238, lines 8—12 [↑](#footnote-ref-4)
5. See sketch at trial bundle B, page 211. [↑](#footnote-ref-5)
6. See trial bundle B, page 133. [↑](#footnote-ref-6)
7. See trial bundle B, page 260 and 272. [↑](#footnote-ref-7)
8. See trial bundle B, page 190. [↑](#footnote-ref-8)
9. Trial bundle B, page 153, paragraph 43. [↑](#footnote-ref-9)
10. Trial bundle B, page 181, paragraph 14. He needed to take painkiller occasionally. [↑](#footnote-ref-10)
11. Appendix 1 of the 2nd statement. [↑](#footnote-ref-11)
12. Appendix 2 of the 2nd statement. [↑](#footnote-ref-12)
13. See trial bundle B, the second statement of the Plaintiff at page 199, the last ten lines from the bottom. [↑](#footnote-ref-13)
14. Plaintiff’s 1st statement—trial bundle B, page 141, last few lines of para. 14. [↑](#footnote-ref-14)