## DCPI 1069/2011

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 1069 OF 2011

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##### BETWEEN

LEUNG SIU SUM Plaintiff

### and

SWIRE BEVERAGES LIMITED

trading as SWIRE COCA-COLA HK Defendant

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Before: His Honour Judge Alex Lee in Court

Date of Hearing: 4-6 November 2013

Date of Judgment: 8 January 2014

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JUDGMENT

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*Introduction*

1. This is the plaintiff’s claim against the defendant employer for damages for personal injuries he sustained during work on 23 June 2008. Very briefly stated, the plaintiff fell on a flight of concrete stairs (“the Stairway”) near a store in Mui Wo, Lantau and got his left thigh injured when he was conveying a large signboard (“the Signboard”) together with one of his colleagues. The plaintiff bases his claim on common law, breach of employment contract, breaches of statutory duties[[1]](#footnote-1) and occupier’s liability. The defendant has already paid the plaintiff $163,724.50 as compensation pursuant to the Employees’ Compensation Ordinance, Cap 282.

*The Issues*

1. The issues on liability can be summarised as follows:-
2. what the weight of the Signboard was;
3. what the condition of the Stairway was;
4. how the accident happened;
5. whether the defendant was negligent or in breach of its contractual and/ or statutory duties as employer or its duty as occupier;
6. if so, whether the defendant’s negligence caused the personal injuries of the plaintiff; and
7. if so, whether and to what extent the plaintiff was contributorily negligent;

3. Besides the question of liability, the defendant also takes issues of the amounts claimed by the plaintiff for pain, suffering and loss of amenities (“PSLA”), pre-trial loss of earnings, loss of earning capacity, post-trial loss of earnings, special damages and also future medical expenses. It is noted that the plaintiff has a pre-existing condition in his right knee.

*Undisputed Facts*

1. The following facts are not in dispute:-
2. the defendant carries on the business of sales and distribution of soft drinks and it also undertakes erection, maintenance and removal of signboards it sponsored;
3. at the material time the plaintiff was employed as a driver of the defendant and his job was to drive workers to sites to install, clean, maintain and repair the defendant’s signboards. At times, the plaintiff would also be required to move tools and loads;
4. on 23 June 2008, the plaintiff and three colleagues (Kwok Hing Man, Wong Po and Leung Shu Shing) were as a team tasked to remove and install signboards at Chau Kee Store (秋記士多) in Mui Wo, Lantau (“the Store”). They arrived at the Store at about 11 am. One of the signboards to be removed (the Signboard) was about 4 feet in width and 10 feet in length installed on the rooftop of the Store one-storey above ground level. To the right of the Store was an open concrete flight of stairs (“the Stairway”) consisting of 7 to 8 steps which led from the Store to the road below;
5. at about 11:30 am, after the Signboard was removed from the rooftop, the plaintiff held one end of it and walked in the front whilst Kwok (an electrician) held the other end and followed. They intended to descend the Stairway and move the Signboard to the side of the road near the Store where the service lorry was parked. At the time, Wong and Leung were working on the rooftop of the Store; and
6. whilst the plaintiff was descending the Stairway, he lost balance, fell down and suffered an injury to his left thigh as a result of the accident.

*The Evidence Adduced*

1. There were only two live witnesses in this case, namely the plaintiff and Kwok. The latter was called by the defence. Both of them adopted as their examination in chief their respective witness statements and supplemented them by oral evidence. So Hung Tak, the supervisor of the plaintiff and Kwok had also given a statement for the defendant. However, as So had not been called, his statement was not admitted into the evidence.
2. The plaintiff’s pleaded case was that the accident happened because he slipped on the third step of the Staircase from the top when he and Kwok were conveying the Signboard downstairs. The slip occurred because of the presence of sand and gravel, even though he was wearing safety shoes with non-slip soles provided by the defendant. In court, the plaintiff emphasized by saying that he was also affected by the weight of the Signboard which he said was about 50 pounds in weight. In cross-examination, Mr Poon, counsel for the plaintiff, suggested to Kwok that there was an alternative route to the lorry which was via a staircase in the direct front of the Store. It was suggested that the alternative route was safer as it was free of gravels and better maintained than the Stairway.
3. The other major evidence included the Joint Medical Report written by Dr Chan Sai Keung instructed by the plaintiff and Dr Lee Po Chin instructed by the defendant. There were also medical reports of the plaintiff prepared by his treating doctors and physiotherapists as well as sick leave certificates.

8. The plaintiff also sought to adduce a video demonstration conducted at the scene which showed how a prop having the same dimensions as the Signboard was moved by two workers acting under the instruction of the plaintiff. Mr Lim for the defence objected to the video demonstration, noting that the prop used was made of a different material (half inch thick plywood rather than aluminium sheet) which was heavier that the real thing. Mr Poon accepted that the board was heavier. However he submitted that the difference went to the issue of weight rather than admissibility. Mr Poon also submitted that the demonstration could show the interaction between the plaintiff and Kwok when they were moving the Signboard and that was relevant to one of the allegations contained in the Statement of Claim that the defendant had failed to provide a safe system of work. Having heard submissions from both sides, I allowed the video demonstration to be adduced by the plaintiff. However, I bore in mind the concession made by Mr Poon that the prop was heavier than the Signboard.

*LIABILITY*

*As to (i): the weight of the Signboard*

1. Regarding the weight of the Signboard, as noted above, Mr Poon accepted that the prop used in the demonstration was heavier. However, after the concession was made, when the plaintiff gave evidence on this matter he said that the weight of the Signboard and the prop was the same which was 50 pounds. In cross-examination, the plaintiff retreated and eventually agreed that the prop was heavier than the Signboard by a few pounds. On the other hand, it was Kwok’s evidence that the Signboard was only about 30 odd pounds in weight. Kwok said that the two men were sufficient to move the Signboard and there was no need for a third supporting person.
2. Having considered the conflicting evidence on the weight of the Signboard, I accept the evidence of Kwok and reject that of the plaintiff. My reasons are follows:-
3. the plaintiff’s evidence on this issue was shaken under cross-examination whilst that was Kwok was not;
4. neither the plaintiff nor the defendant had weighed the Signboard. However, it was Kwok who was responsible for dismantling the Signboard;
5. the plaintiff said in his evidence that when the Signboard accidentally fell from the rooftop to the awning,[[2]](#footnote-2) Kwok single-handedly pull it down from the awning onto the ground; and
6. the accident was the first and only occasion that the plaintiff ever moved the Signboard. On the other hand, Kwok had the opportunity to also move the replacement signboard (which had the same dimensions and was made with the same materials) on the following day and to feel its weight.[[3]](#footnote-3)
7. Although I do not accept the plaintiff’s evidence on this aspect, it does not mean that I have found the plaintiff to be dishonest or to have exaggerated. It is only that I have found the evidence of Kwok on this aspect to be more reliable.

*As to (ii): the condition of the Stairway*

1. Regarding the condition of the Stairway, I note that the photographs[[4]](#footnote-4) contained in the Trial Bundle were taken in October 2013 which was several years after the accident. I note also that by the time the photographs were taken, the Stairway had already fallen into disuse and a state of dilapidation. I am alive to the fact that the video and the photographs do not show the actual condition of the Staircase at the time of the accident. For what they are worth, however, the photographs show that the gradient of the Stairway was not steep and that the height of each step was less than its depth. Nevertheless, the evidence before me also shows that the Stairway had not been properly maintained. Moreover, the steps were rough, uneven and slanting slightly forward. The depth of each step was shorter than the sole of an adult foot so that the head of one’s shoe would protrude beyond the step. There were no handrails on the Stairway.
2. As to whether the steps were littered with sand and gravel at the material time, the plaintiff’s evidence was that it was and that caused him to slip. On the other hand, Kwok said that the condition of the steps was similar to that depicted in one of the photographs,[[5]](#footnote-5) that is to say that there were leaves and twigs on the steps. Kwok disagreed in cross-examination that there were in fact more sand and gravel on the steps than it was shown in the photographs.
3. There was an internal investigation by the defendant into the cause of the accident. In the Accident Investigation Report dated 3 July 2008, the supervisor[[6]](#footnote-6) who compiled in the Report put the underlying cause of the accident as “slipping leading to spraining injury”[[7]](#footnote-7) and the unsafe condition as “the presence of gravel on stairs”.[[8]](#footnote-8) On the face of the Report, these two pieces of information should have come from Kwok who was named as the eye-witness. However, Kwok said in cross-examination that he could not remember whether it was he who provided the information.
4. Having considered the evidence of the plaintiff and Kwok and also the demeanour in which they gave evidence, I accept the evidence of the plaintiff that there was sand and gravel on the steps. On the other hand, Kwok’s evidence in this regard is inconsistent with what was reported in the Accident Investigation Report. I bear in mind that Kwok was testifying on matters which happened five years ago and that at the time the plaintiff was walking in front of him so that the plaintiff would have a better view of the condition of the steps ahead. I also considered that given the location of the Stairway (a open route on Lantau) and the fact that it had not been as properly maintained, it is more probable than not that there would be sand and gravel, as well as leaves and twigs, on its steps at the material time.
5. I note that Kwok said in evidence that Wong Po, the leader of the team on that date, had walked up and down the Stairway a few times before the accident. However, I do not think that from that fact alone an inference could be drawn that the Stairway was safe for use. Kwok said in cross-examination that he did not see Wong conducting any site inspection.
6. Having considered all the evidence, in my view the Stairway was not safe for people moving a bulky or cumbersome object, especially when both of their hands were not free. Also, great care had to be exercised in order for one to maintain one’s balance whilst descending.

*As to (iii): how the accident happened*

1. I remind myself that the burden is on the plaintiff to show how the accident had happened and the standard of proof is on balance of probabilities.
2. As aforesaid, Mr Poon’s primary position was that the cause of the accident was sufficiently known. However, he also sought to rely on the doctrine on *res ipsa loquitur* just in case his primary position did not find favour with the Court. With respect, I am unable to accept that the doctrine could apply to cases like the present one. This is because in my view it cannot be said that a person would not have fallen on a public staircase in the open and sustained injuries in the ordinary course of events without someone’s negligence. See *Frank Yu Yu Kai v Chan Chi Keung*.[[9]](#footnote-9)
3. Turning to the evidence, as to the plaintiff’s speed with which he descended the Stairway, he said that he moved “a bit faster than normal”[[10]](#footnote-10) and it was “a bit faster than his normal speed of descending stairs”.[[11]](#footnote-11) The plaintiff’s evidence was that he lived in a six-storey Chinese style tenement with no lift. At the material time, he was walking at a pace faster what he would normally do when descending stairs. When asked what steps he had taken to move the Signboard in “a careful manner”,[[12]](#footnote-12) he said by trying to finish quickly the moving of the Signboard onto the vehicle he had acted carefully.[[13]](#footnote-13) As to whether he had thought about his partner behind when he was descending the Stairway at a speed faster than normal, he said he had not thought about it.[[14]](#footnote-14) It should also be noted that the plaintiff’s team had been given two days for the dismantlement and installation of the signboards. The installation was scheduled to be done on the following day and they did not have the new signboards with them on the date of the accident. It was about 11:30 am when the accident took place and therefore the plaintiff was not in a worry to finish the day’s job.
4. As to how the accident actually happened, whether it was caused the plaintiff slipping or mis-stepping, the account given by the plaintiff in his witness statement was as followed. The plaintiff said that he lifted the front end of the Signboard and Kwok lifted its rear end, they moved the board in a very careful manner. He said that the steps were full of sand and gravel and was not flat. After descending for a few steps he lost balance, fell forward and eventually sat on the Stairway, sustaining injuries.[[15]](#footnote-15) In his evidence in court, the plaintiff said that he had hopped two to three steps on his left foot before he fell onto the ground.[[16]](#footnote-16) In cross-examination, the plaintiff said when he slipped he was also affected by the weight of the Signboard. The plaintiff said that because there was sand and gravel on the steps and the weight of the Signboard, he slipped. He said that had there not been sand or gravel, he would not have slipped. I note also that in his two witness statements, the plaintiff had attributed his fall to the presence of sand and gravel on the Stairway and the unevenness of the steps but not to the size of the Signboard.
5. On the other hand, Kwok’s account of the accident contained in his statement was that the plaintiff seemed to have suddenly missed his step and fell and sat on the ground. Kwok said that the plaintiff told him that he had slipped.[[17]](#footnote-17) In cross-examination, Kwok agreed that at the time he had to be watchful in order not to stumble and his attention was not on the plaintiff. He could not remember whether the plaintiff had hopped two or three times before falling.
6. In the Accident Investigation Report dated 3 July 2008, the plaintiff reported that the accident took place when he and Kwok were moving the Signboard and he stepped on some small stones and slipped for several steps.[[18]](#footnote-18) I note that the supervisor,[[19]](#footnote-19) who named Kwok as the eye-witness, put the underlying cause of the accident as “slipping leading to spraining injury”[[20]](#footnote-20) and the unsafe condition as “the presence of gravel on stairs”.[[21]](#footnote-21) However, Kwok could no longer remember whether it was he who provided these two pieces of information to the supervisor.
7. As regards the video demonstration, I bear in mind that the prop used was heavier than the Signboard and that fact reduces its evidential value. However, the video demonstration gives some idea as to how the plaintiff and Kwok went about conveying the Signboard down. It shows that the two workers (actors) did not lay the prop flat before conveying it. Instead, they lifted the prop vertically and by so doing they had to put it to one side of their body in order to balance themselves.[[22]](#footnote-22) The way that the actors carried the prop seems neither safe nor ergonomic.

1. Having considered all the relevant evidence, I find that there are no material inconsistencies in the evidence of the plaintiff or between the plaintiff and Kwok as to how the accident happened. I find as a fact that the plaintiff fell because he chose to walk at a quicker pace than necessary, when descending he slipped on the third step of the Stairway because of the presence of sand and gravel. I find also the bulkiness of the Signboard and the way in which it was carried made it difficult for the plaintiff to maintain or regain his balance. In so finding, I have taken into account the dimensions of the Signboard and my earlier finding that it was only about 30 odd pounds as said by Kwok rather than 50 pounds as said by the plaintiff. I find that the Signboard, if handled and lifted properly, did not require more than two persons to carry it down the Stairway.

*As to (iv): whether the defendant was negligent*

1. There is no dispute that the defendant, as the employer of the plaintiff, owed the latter at common law a single duty to take reasonable care for his safety, such duty entailed, among other things, the provision of a safe system of work: see *Cathay Pacific Airways Ltd v Wong Sau Lai*.[[23]](#footnote-23) As to what is meant by the term “system of work”, the learned authors of *Charlesworth & Percy on Negligence*, 12th edition, say describe it as follows:-
2. the organization of the work;
3. the way in which it is intended the work shall be carried out;
4. the giving of adequate instructions (especially to inexperienced workers);
5. the sequence of events;
6. the taking of precautions for the safety of the workers and at what stages;
7. the number of such persons required to do the job;
8. the part to be taken by each of the various persons employed; and
9. the moment at which they shall perform their respective tasks.

Furthermore:-

“it includes … or may include according to circumstances, such matters as the physical layout of the job – the setting of the stage, so to speak – the sequence in which the work is to be carried out, the provision in proper cases of warnings and notices, and the issue of special instructions. A system may be adequate for the whole course of the job or it may have to be modified or improved to meet circumstances which arise. Such modifications or improvements appear to me equally to fall under the head of system.” [[24]](#footnote-24)

1. On the other hand, irrespective of whether the duty of the employer arises in tort or out of a contract of employment, it is not an absolute one. The employer’s duty to his employees does not require the former to decide on every detail of the system of work or mode of operation. Where the operation is simple and the decision how it shall be done has to be taken frequently, it is natural and reasonable that it should be left to the foreman or workmen on the spot. In *Winter v Cardiff Rural District Council,* Lord Oaksey said:[[25]](#footnote-25)-

"In my opinion, the common law duty of an employer of labour is to act reasonably in all the 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 and reasonable that it should be left to the foreman or workmen on the spot."

1. As to when an employer should prescribe a system of work for his employees, the learned authors of *Charlesworth & Percy on Negligence* say the following:[[26]](#footnote-26)-

“It is a question of fact whether or not there is need for a system of work to be prescribed in any given circumstances. In deciding it, regard ought to be had to the nature of the work, that is whether properly it requires careful organisation and supervision, in the interests of safety of all those persons carrying it out or it can be left by a prudent employer confidently to the care of the particular man on the spot to do it reasonably safely.”

See also *Fong Yuet Ha v Success Employment Service Ltd[[27]](#footnote-27)* where the Court of Appeal emphasized that it is a question of fact in each case whether it is necessary for the employer to devise of system of work for the task in hand.

1. In the present case, the plaintiff’s evidence was that:-
2. his duty was mainly to drive workers to different places in Hong Kong to install, clean, maintain and repair signboards and to take of the lorry. On occasions, he would also be required to move objects and pass tools to the workers. However, he was generally not required to move heavy things;[[28]](#footnote-28)
3. regarding dismantling of signboards and moving of heavy objects, the defendant had not provided any proper training, instruction and supervision to him and he had not been warned of the dangers of the Stairway;[[29]](#footnote-29) and

(c) although he had driven workers to the Store before, he was not familiar with the place and on the date of the accident it was the first time that he moved a signboard there.[[30]](#footnote-30)

1. The evidence of Kwok was that:-
2. he had not been given any training by the defendant as to how to move signboards;
3. although the plaintiff was a driver, if the quantity of objects to be moved was large, the plaintiff would be required to help; and
4. he had not checked the condition of the steps before he descended.
5. I note also that in the Accident Investigation Report, the supervisor recommended that “before moving, regard should be had to the surroundings and a suitable route should be arranged (obstacles are to be removed before a staircase was used for getting up and down).[[31]](#footnote-31) The Safety Officer of the defendant also commented in the report that “the department should made an assessment for manual handling operations as this is the requirement of the law and there should also be regular training for employees”.[[32]](#footnote-32) I appreciate, of course, that the fact that recommendations for future improvement of work process were made does not necessarily mean that the existing work process was inadequate or deficient. In my view, the recommendations have to be viewed against all the circumstances to see whether they are indicative of any inadequacies or deficiency in the existing work process.
6. Based on the evidence, with respect I am unable to accept Mr Lim’s submission that the moving of the Signboard in the circumstances of the present case was a simple task which did not require any instruction from the defendant. The reasons are as follows:-
7. although the plaintiff’s main job duty was not moving loads, the defendant did not seek to argue that the plaintiff had acted outside his job duty when he helped Kwok to move the Signboard to the lorry;
8. on the other hand, it was accepted that helping workers to move objects (although not necessarily heavy loads) was incidental to the plaintiff’s main duty as a lorry driver;
9. given the nature of the plaintiff’s employment, the defendant must have either known or taken to have known that he would occasionally be required to help moving loads in work places of which he was not familiar with. It was also possible that some of those work places were potentially dangerous; and
10. in the circumstances, a prudent employer in the position of the defendant would reasonably be expected to provide training, safety instructions and supervision to drivers like the plaintiff.
11. In view of the above, I find that a prudent employer would not reasonably leave it to the workers on the spot without giving any instructions to them on the proper way of handling a bulky object like the Signboard and the attendant risks involved and the precautions to be taken. At the time, the leader Wong and the other worker were on the rooftop of the Store. The plaintiff was left to do with work with Kwok unsupervised. In my judgment, the defendant owed a duty to provide a safe system of work to the plaintiff which included (a) providing proper general and specific instructions concerning the moving of loads like the Signboard in question; (b) making preliminary assessment of the work place and the work concerned and giving adequate warning of the attendant risks of working in potentially dangerous environment like the Staircase; (c) supervising the plaintiff in his work and (d) providing relevant regular training.
12. I also find that defendant had breached the aforesaid common law duty of care. This is because:-
13. I accept the evidence of the plaintiff and I find as a fact that although the plaintiff had transported workers to the Store before, he was not familiar with the condition of the Staircase and the accident was the first time that he moved a signboard there. Kwok also agreed in cross-examination that on the previous occasions when the plaintiff went to the place, he was not required to go up to the Store;
14. given my earlier finding about the condition of the Stairway, the moving the Signboard down the steps could be dangerous and precautions should be taken in order to avoid accident or injury;
15. neither the plaintiff (a driver) nor Kwok (an electrician) was a skilled or experienced transportation worker and the defendant had not provided any of them with any instruction, warning and training which may have reduced the risks associated with moving signboards on a staircase; and
16. according to Kwok, he did not see their leader Wong conducting any inspection of the site or making any preliminary assessment of the work place before the accident or asked that sand or gravel be removed from the Staircase before work.

Accordingly, I find that the defendant was negligent.

1. Similarly, to issue no directive or warning in the circumstances of the present case was a dereliction of the duty of care the defendant owed to its employees, putting the defendant in breach of its employment contract with the plaintiff: see *So Chung Kwong v Ho Kuen & Anor*.[[33]](#footnote-33)

*As to (v): whether the plaintiff’s injury was caused by the defendant’s negligence*

1. In the present case, there is nothing to suggest that even if the defendant had given proper instructions to the plaintiff and his colleagues, those instructions would not have been taken heed of by the plaintiff and his colleagues.
2. According to Kwok, after the accident the defendant gave instructions to leaders that they should inspect work sites and check for any dangers. A form had to be filled in before the commencement work, apparently to ensure that the defendant’s instruction had been carried out.
3. I find that it was more likely than not that had similar instructions been given before the accident, they would have been followed by the plaintiff and his colleagues. I also find, on balance of probabilities, that the accident could have been avoided, had those instructions been given or had there been adequate supervision. In short, I find, using a common sense approach, that the failure of the defendant to provide a safe system of work in the present case was a cause contributing to the occurrence of the accident which in turn resulted in the plaintiff’s injuries: See *Lee Kin-kai*, *a patient by his father and next friend* *Li Wah v Ocean Trumping Co Ltd t/a Ocean Trumping Workshop*.[[34]](#footnote-34) I find that the defendant is liable to pay damages to the plaintiff for his injuries.
4. Given my finding that the defendant had breached its common law duty of care by failing to provide a safe system of work, it would not be necessary for me to address the other causes of action relied upon by the plaintiff. However, for the sake of completeness I will deal with them briefly as follows:-
5. As regards the suggestion made to Kwok in cross-examination that the steps in front of the Store was a safer alternative route, I accept Mr Lim’s submissions that this point should have been pleaded specifically and evidence led to demonstrate that it was safer and also a viable alternative route. As this had not been done, the point should not be considered by the Court. In any event, Kwok disagreed that it was viable to take the route in front of the Store. There is no evidence to contradict him on this point.[[35]](#footnote-35)
6. As regards occupiers’ liability, with respect, I do not think that it has any application to the present case, as the Stairway was a public staircase and there is no evidence that the defendant had any control over it: see *Wheat v E Lacon & Co Ltd*.[[36]](#footnote-36) The mere fact that the Stairway was being used by the defendant’s employees at the time of the accident did not mean that the defendant had control over it.
7. Concerning Mr Poon’s reliance on certain alleged breaches of statutory duties, as he did not elaborate or explain such alleged breaches in his written or oral submissions and given my findings on common law negligence, I do not think that I need to deal with them at length. It suffices for me to say that:-
8. as far as the provisions made under the Occupational Safety and Health Ordinance and its subsidiary legislations are concerned, the statutory duties relied upon by Mr Poon are co-extensive with the common law duty of care owed by an employer to his employee and, to that extent, add nothing in the context of an action for damages for personal injuries arising out of an accident to an employee in the course of his employment. See *Rashad Muhammad v Gurung Amrit Singh trading as FEWA Company & Anor.*[[37]](#footnote-37)
9. as regards the statutory provisions made under the Factories and Industrial Undertaking Ordinance and its subsidiary regulations which are relied up by Mr Poon, I do not think that they are applicable to the present case which was about an accident occurred in on a public staircase in the open of which the defendant was not the occupier and did not have control. In particular, s 19 of the Factories and Industrial Undertakings expressly provides that the ordinance does not confer a right of action in civil proceedings in respect of a failure to comply with section 6A and affect the extent (if any) to which breach of any other provision is actionable. As such, the right to plead a breach of s 6A of Cap 59 as a cause of action in a civil claim is plainly precluded by statute.

*As to (vi): whether the plaintiff was contributorily negligent*

1. In considering whether the plaintiff was contributorily negligent, I am mindful of the legal principles that where the employee’s claim is based on the employer’s breach of statutory duty, the underlying policy of the legislation is also a factor setting the standard of care for contributory negligence. In some instances an allegation of contributory negligence simply points to a breach of the employer’s duty to take reasonable care to protect employees from their own carefulness or inadvertence.[[38]](#footnote-38)
2. I remind myself also that an employee undertaking activity in the course of his employment owed a duty of care to himself and would be liable to a reduction of any award if found in breach. Whilst each case must be founded on its own facts, factors for consideration included:-
3. the level of skills and experience the employee had attained;

(b) the degree of pressure imposed upon an employee by his employer to maintain or increase output at the expense of caution; and

(c) the degree of familiarity the employee had with that activity which put his own safety at risk.

See *So Chung Kwong v Ho Kuen & Anor*.[[39]](#footnote-39)

1. However, a momentary lapse in attention or inadvertence by an employee does not mean that he was guilty of contributory negligence. [[40]](#footnote-40) Further, where the defendant's breach of statutory duty resulted in the plaintiff not being able to adopt a safe method to carry out his work and was a substantial cause of the injury, the court would not easily hold that the plaintiff was contributorily negligent: see *Mak Woon King v Wong Chiu*.[[41]](#footnote-41) The situation would be different if the worker consciously chose and adopted a work method which was not safe and, to an extent, voluntarily assumed risk: see *Lam Cheuk Leung v Erawan Co Ltd & Others*.[[42]](#footnote-42)
2. Although the burden of proving contributory negligence was on the defendant, it could be inferred from the evidence adduced on the plaintiff’s behalf or from the primary facts found by the court, on a balance of probabilities.
3. The moving of a signboard on a level ground of itself was not a hazardous work. However, in the present case the plaintiff was a driver rather than a skilled or experienced transportation worker and he was not familiar with the vicinity of the Store and the risks involved in using the Staircase which, I have found, was not safe for use in the circumstances. It was not a case that the plaintiff and Kwok were moving the Signboard in the way which the defendant expected them to do it. The plaintiff and Kwok used the Staircase for transport out of convenience and as a matter of tacit understanding between them without having discussed about the matter beforehand. Whilst I have found that the failure by the defendant to provide a safe system of work was a cause of the accident leading to the plaintiff’s injuries, I have also found as significant that the plaintiff chose to descend the Staircase with the Signboard at a pace which was faster than normal in the circumstances when he was not under any time pressure to do so. That there was a degree of carelessness on the part of the plaintiff in so doing can also be gleaned from the plaintiff’s answer that he had not thought of Kwok who was behind and that he just wanted to finish moving the Signboard as quickly as possible.
4. In *Wong Tang Keung v Lee Wai Engineering Co Ltd*,*[[43]](#footnote-43)* an electrician climbed a wooden ladder in order to repair a faulty ceiling fluorescent tube above an escalator in a shopping mall, during which he lost balance and fell to the ground, thereby sustaining injuries. It was found that the accident occurred first of all because no working platform was stored at the shopping mall; and secondly, the employer provided no supervision to remind the electrician before he started work that he should pay attention to safety when working at a height, should carry out the work on a working platform and should arrange to have the working platform delivered to the shopping mall. Therefore the primary cause of the accident was the employer’s failure to provide proper supervision and not the electrician’s wilful disregard for safety when he was fully aware of the danger. The Court of Appeal set aside the trial judge’s finding of 50% contributory negligence and substituted it with 25%.
5. In the present case, the defendant had already provided the workers with non-slipping safety shoes and the plaintiff had put them on. However, the accident still occurred because the defendant had failed to provide adequate instruction, supervision and training to its workers. On the other hand, the plaintiff chose to walk at a faster pace on a staircase which was littered with sand and gravel whilst carrying a bulky load in circumstances when there was no need to hurry. He did so without regard to his partner Kwok who was carrying the other end of the Signboard and following him. Having considered the above mentioned legal principles, I find that the plaintiff was contributorily negligent. I assess that the extent of his contributory negligence is 30%.

*QUANTUM*

*Medical evidence*

1. The defendant was aged 49 years at the time of the accident on 23 June 2008 and is now aged 55.
2. Immediately after the accident, the plaintiff attended the Accident & Emergency Department of Princess Margaret Hospital (“PMH”). He was found to have tenderness over left upper arm and left thigh and the range of his left knee movement was limited by pain on movement. X-ray examination showed no fracture. The plaintiff was transferred to the Orthopaedics and Traumatology Department where he was diagnosed to suffer sprain injury of left thigh. [[44]](#footnote-44)
3. On 5 July 2008, the plaintiff was transferred to Caritas Medical Centre for rehabilitation. The plaintiff showed gradual improvement in the range of motion. He was discharged on 19 July 2008.[[45]](#footnote-45)
4. Afterwards, the plaintiff was referred to Kwong Wah Hospital where he started a course of physiotherapy treatment on 16 September 2008. At a re-assessment on 9 December 2008, the plaintiff was able to walk unaided without limping.[[46]](#footnote-46) By 2 June 2009, after the completion of 35 sessions of physiotherapy the flexion range of his left knee was full at 125 degrees. Nevertheless, on 10 June 2009, the plaintiff complained of both knee pain and right foot pain. Then on 13 November 2009, he also complained of right elbow pain. Another course of physiotherapist consisting of 20 sessions was given and completed.[[47]](#footnote-47)
5. Between 2008 and 14 August 2012, the plaintiff attended the Specialist Outpatient Clinic of PMH. It was noted that he showed gradual improvement until the progress of improvement became static. There were improvements in left knee movement and motor power. The tenderness was deceased. The plaintiff could walk unaided without any limping but he could not fully squat.[[48]](#footnote-48)

53. The MRI taken in June 2012 showed the following:[[49]](#footnote-49)-

1. the imaged musculatures are unremarkable;
2. there was no abnormal edematous change;
3. there was no evidence of muscle sore;
4. there was no space-occupying lesion;
5. there was no evidence of myositis;
6. there was no evidence of muscle tear; and
7. there was no evidence tenosynovitis.

The MRI also showed that an area of subcortical bone marrow oedema (2.7 cm) was identified at posterior aspect of right lateral femoral condyle which could represent an area of bone contusion or is degenerative in nature. Besides, the posterior horn of the right lateral meniscus is deficient, which is suggestive of post-operative change.[[50]](#footnote-50)

*The joint medical examination*

1. The plaintiff was jointly examined by on 27 April 2012 by Dr Chan and Dr Lee. He complained to the two experts about his current status as follows:[[51]](#footnote-51)-
2. unable to squat fully due to bilateral knee pain, thus he has difficulty in using squatting-type toilet;
3. left hip pain after operative treatment for the swell in his left buttock.[[52]](#footnote-52) The pain is caused by hip movement, some particular posture of his left hip and lying down on his left side; and
4. pain over the ligament on the posterior aspect of his right knee.
5. As regards the opinions of the experts, I have the following observations:-
6. Dr Chan opined that probably the plaintiff had suffered rectus tendon injury or tear in the accident. The tendon injury or tear had healed. Dr Chan opined that the residual pain over left distal thigh is probably due to scar pain. However, Dr Chan’s opinion about scar pain is not supported by the MRI findings.
7. Dr Chan opined that the degeneration of the plaintiff’s right knee is aggravated by the left knee injury which caused him to increase weight bearing to his right knee. On the other hand, Dr Lee opined that the degeneration of the plaintiff’s right knee is due to his previous meniscus injury and surgery and the osteoarthritic changes seen are pre-existing changes not caused by the accident. Dr Lee supported his opinion by the fact that the plaintiff’s left thigh is 0.5 cm larger than his right one, which suggests that the plaintiff has been using the left knee more often than the right. Therefore, it is unlikely that the right knee had been subjected to significant increased weight bearing that has led to aggravation of the degeneration. Dr Lee said that the right knee pain the plaintiff complained of at the joint examination is due to the pre-existing degeneration and not related to the injury. In addition, there is no clinical sign such as effusion or increased warmth that suggests ongoing arthritis to support the plaintiff’s complaint of significant right knee pain. Having considered all the relevant evidence as a whole, I accept Dr Lee’s opinion in this regard. I note also that the first documented complaint by the plaintiff of right knee pain was in June 2009, which was almost a year after the accident and just a few days after he had finished the first course of 35 sessions of physiotherapy treatment for the left knee and after he had been discharged.[[53]](#footnote-53)
8. As to the flexion range of the plaintiff’s left knee, by 2 June 2009, after the first 35 sessions of physiotherapy, it was full at 125 degrees. In cross-examination, the plaintiff claimed that he had pain at the end of the range and he had complained to the physiotherapist. However, there was no record of this. At the joint medical examination, the range decreased to 115 degrees. Dr Lee said that such slight impaired range of movements does not affect function. However, he suspected that the decrease in range was due to inadequate subjective effort.[[54]](#footnote-54) I find that Dr Lee’s suspicion is well founded.
9. Both doctors agree that the plaintiff’s impairment is permanent. Yet, Dr Chan said the total body impairment of his left distal thigh injury resulted from the accident is 3%, whilst Dr Lee put the figure at only 1%. The plaintiff also gave evidence that he went to the gymnasium four times a week and he exercised his left leg. Besides, he has to climb 6 stories of stairs to reach his home on every working day. Having observed the plaintiff in court, he strikes me as a healthy and strongly built man who can walk unaided without limping. It also appears to me that the plaintiff has made a good recovery from the accident. I accept Dr Lee’s opinion that the slightly impaired range of movements of the plaintiff’s left knee does not affect function significantly. I also accept that Dr Lee’s opinion that the plaintiff may suffer impaired endurance when prolonged extension using the left thigh or knee is required. Having considered all the relevant evidence, I find that the plaintiff’s impairment resulting from the accident is 2% of the whole person and his loss of earning capacity is 3%.

*PSLA*

1. The plaintiff lives alone as his wife had passed away. He used to enjoy doing bodybuilding exercises and jogging in gymnasium and he also participated in bodybuilding competitions. After his injury, he stopped practising those exercises that he used to do and he does stretching exercises instead.[[55]](#footnote-55) He can perform all self-care and hygiene activities and he does housework by himself. However, he said that he cannot walk for a long period of time. He said that he can climb stairs but slowly. He said that he can carry objects of about twenty pounds at the most.[[56]](#footnote-56) He said in court he goes to gymnasium four times a week for 40 minutes on each occasion.

57. I note that the plaintiff has a pre-existing condition in his right knee. By relying on the opinion of Dr Lee, I do not accept that but for the accident, the plaintiff would not have suffered right knee pain. I find that the degeneration of the plaintiff’s right knee is the natural result of his previous meniscus injury and surgery which would come as a matter of time in any event and the degeneration has not been brought forward or aggravated by the accident.

58. In *Chan Kam Hoi v Dragages et Travaux Publics*,[[57]](#footnote-57) it was held that where a pre-existing condition is likely to lead to disability and loss in the absence of the injury for which the plaintiff is entitled to recover, the usual method of assessing the recoverable loss is to take account of the risk by an appropriate assessment of general damages. The pre-trial loss of earnings might also be reduced if the risks during the years concerned were sufficiently high.

59. Mr Poon on behalf of the plaintiff seeks damages under this head in the amount of $450,000. He relies on the following cases:-

1. *Ho Kar Chee v Tam Kwong Man* [[58]](#footnote-58)
2. *Choi Pak Sum v Lam Lung Ki & Anor*[[59]](#footnote-59)
3. *Frances Christine Keeling v Hebe Haven Yacht Club Ltd*[[60]](#footnote-60)
4. *Wong Kwok Ming v Cheung Ki Cheung*[[61]](#footnote-61)
5. *Cheng Kwok Sang v Maxim’s Caterers Ltd*[[62]](#footnote-62)
6. *Kwok Wing Ming v Mong Lin Lung & Anor* [[63]](#footnote-63)

I note, however, that in the above cases the damages for PSLA awarded ranged only from $100,000 to $360,000. Even taking the effect of inflation into account, as Mr Poon asked the Court to do so, the damages awarded would not be as high as $450,000.

60. On the other hand, Mr Lim on behalf of the defendant put the damages under this head at only $80,000. Mr Lim relied on the following cases:-

1. *Mohammed Ashaq v Royal Honour Industrial Ltd*[[64]](#footnote-64)
2. *Yip Tung Fung & Ors v Pun Chi Leung*[[65]](#footnote-65)
3. *Wong King Hung v Chan Wai Ming*[[66]](#footnote-66)
4. *Hussain Tanweer v Focus Roller Shutter Ltd*[[67]](#footnote-67)

61. In my view, the plaintiff’s injury falls well below the serious injury category indicated in *Lee Ting Lam v Leung Kam Ming,*[[68]](#footnote-68) that is to say, an injury which "leaves a disability which mars the general activities and enjoyment of life, but allows reasonable mobility to the victim, for example, the loss of a limb replaced by a satisfactory artificial device, or bad fractures leaving recurrent pain”.Having considered the case authorities relied upon by the plaintiff and the defendant respectively, in my view that the plaintiff’s injury is more similar to but not as serious as that of the claimant in *Choi Pak Sum’s case* above. Having regard to the effect of inflation, my assessment is that the plaintiff’s damages under this head should be $150,000. However, I consider that it is appropriate to discount the damages under this head by one-third due to his pre-existing condition. The amount of damages award for PSLA is therefore $100,000.

*Pre-trial loss of earnings*

62. In the Form 2 submitted by the defendant dated 7 July 2008,[[69]](#footnote-69) the plaintiff’s income per month for the month immediately preceding the accident was said to be $12,102 (comprising a basic salary of $10,920 and overtime & allowances of $1,182) and the average monthly income for the past 12 months was $9,771.

63. The plaintiff income for the month of June 2008 was $11,921.50.[[70]](#footnote-70)

64. Based on the above, Mr Poon submits that the monthly income of the plaintiff should be taken as $12,102. Mr Lim, however, says $11,541.68 instead.

65. Noting that the difference of the parties regarding the monthly of the plaintiff is small, that there was an element of variable allowances included in the figure of $12,102, taking into account that the accident happened five years ago and the effect of inflation in recent years, in my view it is fair to adopt the figure of $12,000 per month for the purpose of calculating damages under this head.

66. As regards the length of the plaintiff’s sick leave, he was granted a total of 422 days (from 23 June 2008 to 18 August 2009) by the treating doctors. In *Tam Fu Ip v Sincere Engineering and Trading Ltd*,[[71]](#footnote-71) it was held that in assessing the reasonable period of loss of earnings, sick leave certificate is just one piece of evidence.  If the findings are that the plaintiff could have return to work in a shorter period, that is the period that is relevant to the assessment of pre-trial loss of earnings and no other.

67. In this regard, it is pertinent to note that even Dr Chan, expert for the plaintiff, would endorse the sick leave from 23 June 2008 up to 19 May 2009 only which was about 11 months. On the other hand, Dr Lee opined that for contusion injury limited to the soft tissue of the left thigh, the recovery should be about six to nine months.[[72]](#footnote-72)

68. I note that after the sick leave, the plaintiff was deployed by the defendant to maintain drinking machines and refrigerators and he worked in sitting position which did not require him to handle heavy objects.[[73]](#footnote-73) Dr Lee opined that the plaintiff should be able to return to his pre-accident job as lorry driver for advertisement signboard installation works.[[74]](#footnote-74) He also opines that even with his right knee degeneration and left buttock pain, he should still be able to drive a lorry.[[75]](#footnote-75) Besides, if light duty such as what the plaintiff was doing at the time of the joint examination could be arranged, the plaintiff should be able to return to work about six month after the injury.[[76]](#footnote-76) Dr Lee’s opinion is supported by the Physiotherapy Report of Kwong Wah Hospital that by December 2008 the flexion range of the plaintiff’s left knee was from 0 to 120 degrees and that he could walked unaided without limping.[[77]](#footnote-77)

69. Based on the evidence, I find that the reasonable period of sick leave in the plaintiff’s case is 9 months. As such, the damages under this head (including a 5% for the MPF) for the sick leave period should be:-

$12,000 x 105% x 9 = $113,400

70. During the period between 19 August 2009 and the trial (which is approximately 51 months), the plaintiff was deployed by the defendant to do non-driving work and his monthly was $11,332. The difference in monthly before and after the accident is therefore around $668 ($12,000 - $11,332). But for the accident, the plaintiff would not have suffered this reduction of income. Therefore, the plaintiff is entitled to further damages (including MPF) for this period as follows:-

$668 x 51 x 105% = $35,771

71. Therefore, the total amount under this head is $149,171 ($113,400 + $35,771). This total amount is not to be subject to any discount for the pre-existing degeneration of the plaintiff’s right knee. This is because, based on the evidence of Dr Lee which I accept, the risks relating to the pre-existing condition must have been relatively small during the pre-trial period.

*Loss of earning capacity*

72. The plaintiff had been employed by the defendant as a lorry driver for over 20 years. After the accident, the defendant had not re-tested him for driving and the plaintiff had not keenly asked for re-testing. Although the plaintiff was deployed him to some non-driving job, driving is his skill and he possesses the requisite licence to drive various types of vehicles including taxi, public light bus, light goods vehicle and private car. I note also that the plaintiff has now reached the retirement age with the defendant and he is required to look for another job elsewhere. The plaintiff expressed the wish to work until 65 years old and said that he intended to look for a driving job. He said, however, that he would not consider driving taxi as he did not like the financial risks involved and the long working hours.

73. Dr Chan opined that it is not safe for the plaintiff to resume his pre-accident job as a lorry driver because of his right knee degeneration and the fact that right lower limb function was important for brake control. He opined that the plaintiff was fit for light duty as well as other jobs that do not require prolonged standing or walking.

74. On the other hand, Dr Lee saw no problem of the plaintiff returning to work as a lorry driver for advertisement signboard installation works, although his efficiency may be reduced in case of carrying heavy objects for long distances. Dr Lee also opined that the plaintiff’s right knee degeneration and the left buttock pain produce more significant impairment in his driving, although he should still be able to drive a lorry. However, these two conditions are not related to the injury.

75. Mr Poon asked for a sum representing 6 months’ salary under this head. On the other hand, Mr Lim submitted that a nominal sum of $20,000 is all that is required.

76. For this head of damages, the major consideration is whether and to what extent the plaintiff would be at a disadvantaged position in the labour market because of his impairment, if there is a ‘substantial’ or ‘real’ risk that if the plaintiff will lose his present job at some time before the estimated end of his working life.[[78]](#footnote-78) Given the age of the plaintiff, his general health condition and his work experience, I have no doubt that but for his impairment, he would have no difficulties in finding another employment after his retirement from the defendant. I accept Dr Lee’s evidence that the problems with the plaintiff’s right knee and left bottom would to some extent affect his ability to drive but these conditions have nothing to do with the accident and the resulting injuries. Moreover, in view of the expert medical evidence, the plaintiff can still be fit for driving jobs which do not require him to move heavy loads or to drive continuous for long hours.

77. Taking into account the plaintiff’s age and discounting for his conditions not relating to the accident, I would adopt a reduced multiplier of 4 months instead of 6 months. Therefore, the amount of damages awarded under this head is:-

$12,000 x 4 = $48,000.

e

*Future loss of earnings*

78. It is fair to assume that, in view of his impairment the plaintiff would not be able to earn as much in his future job as he did immediately prior to his departure from the employ of the defendant. As aforesaid, his last income with the defendant was $11,332. and the difference in monthly income before and after the accident is about $668 ($12,000 - $11,332). Mr Poon was happy to use this difference in income as the basis for calculating the amount of damages under this head. I find that this is a fair basis.[[79]](#footnote-79)

79. The plaintiff is now aged 55. At the time of the trial, he was due to retire from the defendant in a few weeks’ time. Recent case authorities show that, given the prevailing economic conditions, the new discount rate for plaintiffs with future needs not exceeding 10 years is 1% and that the applicable multiplier in the plaintiff’s case for future loss of earnings is 9.27.[[80]](#footnote-80) However, this multiplier should be subject to discount for the plaintiff’s pre-existing conditions. In *Chan Kam Hoi v Dragages et Travaux Publics*, it was said that when calculating the damages for future loss of earnings, a reduced multiplier was usually the most accurate way of giving effect to the risk of disability due to a pre-existing injury, particularly when a plaintiff’s working life was likely to be limited by that pre-existing condition.[[81]](#footnote-81) Here, I adopt a reduced multiplier of 4.63, which is about one half of 9.27. The amount of damages under this head (including MPF) is therefore:-

$668 x 105% x 12 x 4.63 = $38,970

*Pre-trial medical expenses*

80. This has been agreed by the parties at $11,142.

*Transportation Expenses & Tonic food*

81. Mr Poon claimed a total of $1,500 for transportation and $2,500 for tonic food. On the other hand, Mr Lim says $1,000 and $1,500 respectively should be sufficient.

82. Adopting the approach in *Mui Ling Kwan v Wong Yin Wah,*[[82]](#footnote-82) I award $1,500 for transportation and $2,500 for tonic food which appear to be reasonable sums in the absence of the relevant receipts or evidence as to their advisability or suitability.

*Future Expenses*

83. Mr Poon claimed $20,000 for intermittent treatment for his distal thigh pain. Mr Lim disagreed with this claim. I do not consider this head to be supported by medical evidence. The plaintiff has reached maximum medical improvement and there is no mention in the Joint Medical Report that the plaintiff would require any further treatment or medication. All that is recommended by both experts is that the plaintiff should do some stretching exercise regularly to improve his left knee stiffness and to strengthen quadriceps muscles.

84. Based on the above, I disallow the claim under this head.

*Conclusion*

85. The plaintiff is awarded damages the following by the defendant:-

PSLA $100,000

Pre-trial loss of earnings $149,171

Loss of earning capacity $48,000

Future loss of earnings $38,970

Special damages

Pre-trial medical expenses $11,142

Travelling expenses $1,500

Tonic food $2,500

\_\_\_\_\_\_\_\_

$351,283

Less

30% for contributory negligence ($105,385)

Employees’ Compensation ($163,724)

\_\_\_\_\_\_\_\_\_

Total: **$82,174**

86. I make an order nisi that there be interest on general damages at 2% per annum from the date of the service of the writ to the date of this judgment and interest on special damages at half judgment rate from the date of the accident to the date of this judgment. From the date of this judgment onwards, the damages, general and special, will carry interest at the judgment rate.

87. I also make an order nisi that the plaintiff’s costs be paid by the defendant, to be taxed if not agreed, with certificate for counsel. The plaintiff’s own costs be taxed according to the Legal Aid Regulations.

( Alex Lee )

District Judge

Mr Poon Ting Bond, Edward, instructed by Or & Partners, assigned by the Director of Legal Aid, for plaintiff

Mr Patrick Lim, instructed by Winnie Mak, Chan & Yeung, for defendant

1. Namely, s 6A of the Factories and Industrial Undertakings Ordinance, Cap 59; s 38A, Construction Sites (Safety) Regulations, Cap. 59I; ss 6 & 7, Occupational Safety and Health Ordinance, Cap. 509; and ss 23-25, 27-31, the Occupational Safety and Health Regulation, Cap. 509A. [↑](#footnote-ref-1)
2. Shown in the upper photograph on p 254 of the Trial Bundle. [↑](#footnote-ref-2)
3. Kwok’s evidence was that the replacement signboard was heavier. [↑](#footnote-ref-3)
4. At p.256-2 to 12 of the Trial Bundle [↑](#footnote-ref-4)
5. At p 256-10 of the Trial Bundle [↑](#footnote-ref-5)
6. According to Kwok, the supervisor was So Hung Tak. [↑](#footnote-ref-6)
7. “跣腳引致扭傷” [↑](#footnote-ref-7)
8. “樓梯上有碎石” [↑](#footnote-ref-8)
9. (2009) 12 HKCFAR 705, §§47-48 [↑](#footnote-ref-9)
10. “比平時快D” [↑](#footnote-ref-10)
11. “比我自己同平時行樓梯快D” [↑](#footnote-ref-11)
12. “小心奕奕” [↑](#footnote-ref-12)
13. “搬個牌，盡快上車我認為係小心”

    [↑](#footnote-ref-13)
14. “當時冇諗到” [↑](#footnote-ref-14)
15. “本人托住該招牌的前端而郭慶文托後端，小心奕奕地搬運，當時石級滿佈沙石，加上石級本身不平坦，本人行下幾級突然腳下一跣，個人失去平衡，並向前倒下，由石級跌落地下受傷。” [↑](#footnote-ref-15)
16. “跣失平衡，跳咗兩三級，跌低” [↑](#footnote-ref-16)
17. “他突然叉錯腳似的跌坐地上。當時原告人向本人指他自己滑倒。” [↑](#footnote-ref-17)
18. In the Description of the Accident, the plaintiff said “與同事郭慶文一齊抬廣告牌時, 經過門口樓梯時,踩到地上的石仔再跣落幾級樓梯而出事.” [↑](#footnote-ref-18)
19. According to Kwok, the supervisor was So Hung Tak. [↑](#footnote-ref-19)
20. “跣腳引致扭傷” [↑](#footnote-ref-20)
21. “樓梯上有碎石” [↑](#footnote-ref-21)
22. See the photograph at p 256-26 of the Trial Bundle. [↑](#footnote-ref-22)
23. (2006) 9 HKCFAR 371, at §34. [↑](#footnote-ref-23)
24. At §11-66, citing Lord Greene M.R. in *Speed v Thomas Swift & Co Ltd* [1943] KB 557 at 563, 564. [↑](#footnote-ref-24)
25. [1950] 1 All ER 819, 822-823, followed in *Cheung Suk Wai v Attorney General*, HCPI 536/1996; *雲淑莉對力根有限公司*, HCPI 1142/1996, *Wong Tai Wai David v Hong Kong Cable Television Ltd*, HCPI 541/2001; and *Liu Wai Leung v Asia Construction Co Ltd*, DCPI 501/2008. [↑](#footnote-ref-25)
26. Supra, at §11-67 [↑](#footnote-ref-26)
27. CACV 100/2012 [↑](#footnote-ref-27)
28. See the plaintiff’s 2nd statement dated 19 January 2013, at §3. [↑](#footnote-ref-28)
29. See the plaintiff’s 1st statement dated 4 May 2012, at §13. [↑](#footnote-ref-29)
30. See the plaintiff’s 2nd statement dated 19 January 2013, at §4. [↑](#footnote-ref-30)
31. At p 185-2, Trial Bundle: “搬運前留意環境,安排合適路線 (上落樓梯前先清除障礙物).” [↑](#footnote-ref-31)
32. Ibid., “部門需要為體力處理操作的工作進行評估,這是香港法例所要的, 還有要定期給有關培訓給員工.” It appears that the Safety Officer was referring to the statutory duty under s 23 of Cap 509A. [↑](#footnote-ref-32)
33. [2000] 3 HKLRD 241 [↑](#footnote-ref-33)
34. [1991] 2HKLR 232, 235J-236E. Although it was a case under the Employees Compensation Ordinance, Cap 282, the test on causation has been held to be also applicable to cases of negligence: *Lam Tam Luen v Asia Television Ltd* [2008] 5 HKLRD 5. [↑](#footnote-ref-34)
35. I am alive to what Kwok said under cross-examination that after the accident, he and other workers had been to the Store for repairing and installing signboards on 7 to 8 occasions but they did not use the Stairway on those occasions. [↑](#footnote-ref-35)
36. [1996] AC 552 [↑](#footnote-ref-36)
37. CACV 165/2010, at §§31-33. [↑](#footnote-ref-37)
38. See *Clerk & Lindsell on Torts*, 12th edition, at §13-64. [↑](#footnote-ref-38)
39. Supra, at 249F-I. [↑](#footnote-ref-39)
40. See *Clerk & Lindsell on Torts*, supra, at §13-65. [↑](#footnote-ref-40)
41. [2000] 2 HKLRD 295, at 302C-I [↑](#footnote-ref-41)
42. [2004] 1 HKLRD 778, at 797B-D [↑](#footnote-ref-42)
43. [2013] 4 HKLRD 150, §15 [↑](#footnote-ref-43)
44. p 125, Trial Bundle [↑](#footnote-ref-44)
45. p 126, Trial Bundle [↑](#footnote-ref-45)
46. p 128, Trial Bundle [↑](#footnote-ref-46)
47. pp 130-131, Trial Bundle [↑](#footnote-ref-47)
48. p 134, Trial Bundle [↑](#footnote-ref-48)
49. p 132, Trial Bundle [↑](#footnote-ref-49)
50. It is noted in the Joint Medical Report that the plaintiff had history of meniscus injury of his right knee in a football match long time ago and he had received arthroscopic treatment twice. See p 144, Trial Bundle. [↑](#footnote-ref-50)
51. p 143, Trial Bundle [↑](#footnote-ref-51)
52. Conducted in February 2012 which was not related to the accident. See also pp 145 & 149 [↑](#footnote-ref-52)
53. In October 2009, the plaintiff also complained of right elbow pain. See the Physiotherapy Report of Kwong Wah Hospital, at p 130, Trial Bundle. [↑](#footnote-ref-53)
54. Joint Medical Report, p 152, Trial Bundle [↑](#footnote-ref-54)
55. Joint Medical Report, p 138, Trial Bundle [↑](#footnote-ref-55)
56. Joint Medical Report, p 143, Trial Bundle [↑](#footnote-ref-56)
57. [1998] 2 HKLRD 958, at 965E [↑](#footnote-ref-57)
58. HCPI 439/2007 [↑](#footnote-ref-58)
59. HCPI 529/2008 [↑](#footnote-ref-59)
60. CACV 43/2005 [↑](#footnote-ref-60)
61. HCPI 163/2000 [↑](#footnote-ref-61)
62. HCPI 237/2001 [↑](#footnote-ref-62)
63. HCPI 1341/1996 [↑](#footnote-ref-63)
64. DCPI 586/2007 [↑](#footnote-ref-64)
65. DCPI 2149/2006 [↑](#footnote-ref-65)
66. DCPI 1223/2006 [↑](#footnote-ref-66)
67. DCPI 2537/2007 [↑](#footnote-ref-67)
68. [1980] HKLR 657 [↑](#footnote-ref-68)
69. p 163, Trial Bundle [↑](#footnote-ref-69)
70. pp 189 & 190, Trial Bundle [↑](#footnote-ref-70)
71. [2008] 5 HKLRD 210, at §18. [↑](#footnote-ref-71)
72. Joint Medical Report, at §9.15-16, p 155, Trial Bundle [↑](#footnote-ref-72)
73. ibid, at §1.4.2, p 139, Trial Bundle [↑](#footnote-ref-73)
74. ibid, at § 9.14, p 154, Trial Bundle [↑](#footnote-ref-74)
75. ibid, at p 155, Trial Bundle [↑](#footnote-ref-75)
76. ibid, at §9.16, p 155, Trial Bundle [↑](#footnote-ref-76)
77. p 128, Trial Bundle [↑](#footnote-ref-77)
78. See *Moeliker v A Reyrolle & Co Ltd* [1997] 1 WLR 132, 140; see also *Chan Chi Shing v Tsang Fook Metal Engineering & Anor*, CACV 238/1999, §13. [↑](#footnote-ref-78)
79. I note that the average monthly salary of a driver, according to the Quarterly Report on Wage and Payroll Statistics March 2013, is $13,462. [↑](#footnote-ref-79)
80. See Personal Injury Tables Hong Kong 2013, Table 9; *Chan Pak Ting v Chan Chi Kuen (No 2)* [2013] 2 HKLRD 1; and *Lam Chan Hung v Hang Yue Engineering Ltd*, HCPI 121/2011. [↑](#footnote-ref-80)
81. Supra, at p 965F-G. See also *Tamang Udas v Global Sunny Engineering Ltd*, HCPI 732/2011, at §80. [↑](#footnote-ref-81)
82. [1973] HKLR 465, 472 [↑](#footnote-ref-82)